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MAYOR

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FREDERICK DAVIE  
CHAIR

May 28, 2021

The Honorable Dermot F. Shea  
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 (“APU”) First, Second, Third, and Fourth Quarters of 2020**

Dear Commissioner Shea:

This report discusses the final resolutions of cases prosecuted by the Civilian Complaint Review Board’s (“CCRB”) Administrative Prosecution Unit (“APU”).

The APU conducts trials before either the NYPD Deputy Commissioner of Trials (“DCT”) or an Assistant Deputy Commissioner of Trials (“ADCT”).<sup>1</sup> The DCT or ADCT will render a verdict and recommend penalties for guilty verdicts. The APU also negotiates plea agreements with officers and such pleas are approved by either the DCT or an ADCT. Per the City Charter, the Police Commissioner is the final arbiter of discipline, and as such may accept, reject, or modify any verdict rendered by the DCT’s office or negotiated APU pleas with subject officers.

Sections I and II discuss the twenty-six (26) finalized verdicts issued by the DCT or an ADCT.<sup>2</sup> Section III discusses the treatment of six (6) APU pleas.

**Retentions, Administrative Closures, and Dismissals**

Cases may also be resolved by (1) the Police Commissioner retaining a case, thus removing it from APU’s review pursuant to Provision Two of the MOU between the CCRB and NYPD, or by (2) administratively closing a case. This generally occurs in the event that an

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<sup>1</sup> On March 8, 2021, the NYPD published a Trial Decisions Library which can be found at <https://nypdonline.org/link/15>.

<sup>2</sup> Detective William Vargas and Detective Steve Richards went to trial on three (3) specifications each. At trial, they pled guilty to two (2) specifications and were found not guilty of the third specification. In this report, the incident is included as a guilty verdict.

administrative issue affects a subject officer or a case has been resolved by the Internal Affairs Bureau (“IAB”). The APU may dismiss a case if new evidence makes it improper to continue prosecution against a member of service (“MOS”).

Section IV discusses the retention of seven (7) cases under Provision Two of the April 2, 2012 Memorandum of Understanding (“MOU”). Section V discusses APU case dismissals. Section VI discusses two (2) administrative closures.

### General Case Statistics

The report discusses the number of cases in the APU docket and the time the NYPD took to serve disciplinary charges on officers

Section VII discusses the APU docket and Section VIII discusses the time to serve officers with disciplinary charges.

### Special Note

As this is the Agency’s first APU report since the repeal of Civil Rights Law Section 50-a, the names of officers have been included in the case descriptions. We believe the increased transparency in this report and others will provide New Yorkers with a better understanding of policing in New York City. The cases (trial verdicts and pleas) contained in this report were finalized in 2020 and thus do not fall under the 2021 NYPD Disciplinary Matrix. Cases that are adjudicated under the new Disciplinary Matrix will appear in future reports.

## **I. Guilty Verdicts**

In 2020, twenty-six (26) CCRB verdicts for trials conducted before the DCT or an ADCT were finalized. The APU treats each officer against whom an allegation is substantiated as a separate case.<sup>3</sup> Of the twenty-six (26) cases, thirteen (13) resulted in guilty verdicts that were upheld by the Police Commissioner and three (3) resulted in guilty verdicts that were reversed by the Police Commissioner. Ten (10) cases resulted in not guilty verdicts that were upheld by the Police Commissioner.<sup>4</sup> The guilty verdicts are discussed further below:

### **Case One. Guilty Verdict. Penalty Upgrade<sup>5</sup>**

*Case 201703752; Sgt. Dany Fana*

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<sup>3</sup> The APU treats each officer as a separate “case.” As such, all APU data discussed in this report uses the same terminology. While there may be trials or incidents that involve multiple officers, the word “case” should be interpreted as “case against a single officer.”

<sup>4</sup> As the final arbiter of discipline, the Police Commissioner may accept, reject, or modify any trial verdict or plea. *See* NY Civ. Serv. Law § 75; N.Y.C Admin. Code § 14-115; NY City Charter §§ 434; 440; 38 RCNY §15-12; 38 RCNY §15-17; 38 RCNY §1-46.

<sup>5</sup> The ADCT’s penalty recommendation was higher than the CCRB’s penalty recommendation

In May 2017 at approximately 11:00 p.m. in the Bronx, Sergeant Dany Fana (the Respondent) and his partner were driving down the street when a Hispanic man in his late twenties (hereinafter identified as “Victim”) was crossing the street and stopped when he saw an unmarked police vehicle driven by Sgt. Fana. The incident was captured by a surveillance camera that does not have audio. When Sgt. Fana’s vehicle stopped, the Victim walked to the passenger side of the vehicle and after a few seconds Sgt. Fana’s vehicle resumed driving. The Victim threw an object at the vehicle and the vehicle came to a stop. The Victim picked up the object and Sgt. Fana stopped, exited the vehicle, and approached the Victim with his Taser in his hand. According to Sgt. Fana, the Victim made threatening remarks and Sgt. Fana walked up to the Victim and struck him in the face. The Victim fell to the ground, where Sgt. Fana proceeded to punch and kick him. At no time during the encounter was the Victim physically aggressive or physically resistant towards Sgt. Fana. The Victim was taken to the hospital and was treated for an injury to his right eye.

The Board substantiated one (1) Use of Force allegation against Sgt. Fana for punching and kicking the Victim. The APU filed and served Charges and Specifications with a penalty recommendation of fifteen (15) days’ vacation forfeiture. ADCT Nancy Ryan found Sgt. Fana guilty of the sole allegation. ADCT Ryan found that the “Respondent’s persistent shifting of his testimony concerning whether he did or didn’t punch or connect with [the Victim] leads the court to question the credibility of Respondent’s testimony surrounding the force he used.” ADCT Ryan recommended a penalty of twenty (20) days’ vacation forfeiture. Commissioner Shea approved ADCT Ryan’s recommendation and imposed the recommended penalty.

### **Case Two, Guilty Verdict, Penalty Upgrade<sup>6</sup>**

#### *Case 201710514 Det. Juan Jimenez*

In December 2017 at approximately 12:30 p.m. in Brooklyn, Victim 1, a fourteen-year-old Black male, Victim 2, a seventeen-year-old Black male, Victim 3, a sixteen-year-old Black male, Victim 4, an eighteen-year-old Black female, and Victim 5, a seventeen-year-old Black male, were in their school uniforms as they entered an apartment building. Shortly after they entered the building, Detective Juan Jimenez (the Respondent), an off-duty officer in civilian clothing, entered the building and told them to get down on the ground. As they complied, Det. Jimenez pulled his service weapon from its holster and pointed it at the back of Victim 4’s head. The teenagers asked what they had done wrong and Det. Jimenez told them to “shut up” and swept his weapon at all five teenagers. As the teenagers lay on the ground, Det. Jimenez used his personal cellphone to call for additional units to his location. He kept his weapon pointed at the teenagers until approximately three minutes before the additional units arrived. He then arrested the teenagers. Det. Jimenez stated that the teenagers were wearing the same uniform as another group of unknown individuals – one

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<sup>6</sup> The Police Commissioner upgraded the ADCT penalty to match the CCRB’s disciplinary recommendation

of whom had pushed Det. Jimenez's father several weeks earlier. All five (5) Victims' arrests were voided.

The Board substantiated ten (10) total allegations: five (5) Abuse of Authority allegations against Det. Jimenez for arresting the five Victims, and five (5) Use of Force allegations for pointing his weapon at the five Victims. The APU filed and served Charges and Specifications with a penalty recommendation of thirty (30) days' vacation forfeiture and one (1) year dismissal probation<sup>7</sup>. ADCT Nancy Ryan found Det. Jimenez guilty of all ten (10) counts and recommended a penalty of thirty (30) days' vacation forfeiture, finding that he "admitted that he pointed his gun at the group he arrested." Commissioner Shea approved the guilty verdict and departed upward, imposing a penalty to thirty (30) days' vacation forfeiture and one-year dismissal probation.

### **Case Three, Guilty Verdict, Penalty Upheld**

*Case 201805519; PO Keynes Pena*

In July 2017 at approximately 6:30 p.m. at a subway station in the Bronx, the Victim, a Hispanic male in his fifties, was stopped by PO Keynes Pena (the Respondent) and his partner for fare evasion. PO Pena questioned the Victim about his entry into the subway system while he checked the Victim's information in a police database. PO Pena communicated to his partner that the Victim had a warrant and should be taken into custody. MTA surveillance video captured footage of the Victim running towards the turnstiles before being apprehended by PO Pena. PO Pena placed the Victim in a chokehold for several seconds and then took the Victim down to the ground. PO Pena's partner handcuffed the Victim while he was on the ground.

The Board substantiated one (1) Use of Force allegation against PO Pena for placing the Victim in a chokehold. The APU filed and served Charges and Specifications with a penalty recommendation of ten (10) days' vacation forfeiture. ADCT Paul Gamble found PO Pena guilty of the sole allegation. ADCT Gamble found that PO Pena's "arm was positioned in a manner likely to restrict [the Victim's] breathing if he pulled him backward." ADCT Gamble made the same penalty recommendation as the APU. Commissioner Shea approved ADCT Gamble's recommendation and imposed the recommended penalty.

### **Case Four, Guilty Verdict, Penalty Upheld**

*Case 201708558; Sgt. Edwin Soto*

In October 2017 at approximately 6:00 p.m. at a midtown Manhattan subway station, the Victim, a white man in his thirties, was stopped along with other individuals for fare evasion. While waiting to receive his summons, the Victim observed a separate police

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<sup>7</sup> Under Dismissal Probation, an officer's dismissal will be held in abeyance for a period of one (1) year pursuant to Section 14-114(d) of the NYC Administrative Code, during which time the officer remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings.

interaction several feet away from him and took out his cellphone to record the incident. As he recorded the incident, Sergeant Edwin Soto (the Respondent) and another officer approached him. Sgt. Soto used discourteous language towards the Victim, telling him to stop “fucking recording” as he wrapped his hand around the phone lenses, took out his handcuffs and threatened to arrest the Victim if he did not stop recording. The Victim tried to continue recording but was pushed up against a wall and held there by Sgt. Soto’s forearm. The Victim asked if he was being arrested and Sgt. Soto released him and flashed his handcuffs. The officer who had stopped the Victim issued the Victim a summons for fare evasion. MTA video surveillance showed the incident in its entirety.

The Board substantiated four (4) total allegations: two (2) Abuse of Authority allegations against Sgt. Soto for interfering with the Victim’s use of a recording device and threatening to arrest the Victim, one (1) Discourtesy allegation for telling the Victim to not “fucking record,” and one (1) Use of Force allegation for pushing the Victim against a wall. The APU filed and served Charges and Specifications with a penalty recommendation of twelve (12) days’ vacation forfeiture. ADCT Paul Gamble found Sgt. Soto guilty of one (1) count: speaking discourteously to the Victim, and not guilty on the three (3) remaining counts. ADCT Gamble found that the “Respondent should have behaved more professionally and avoided using profanity towards [The Victim] who it seems was genuinely unaware that he was under arrest at the time.” ADCT Gamble recommended a penalty of three (3) days’ vacation forfeiture. Commissioner Shea approved ADCT Gamble’s recommendation and imposed the recommended penalty.

### **Cases Five, Six, and Seven, Guilty Verdict, Penalty Upheld<sup>8</sup>**

*Case 201706371; Sgt. Avinash Patel, PO Patrick Craig, PO Alex Viera, PO Umar Khitab*

In July 2017 at approximately 10:30 p.m. in Brooklyn, the Victim, a Black man in his twenties wearing a yellow shirt, entered an Uber pool vehicle. The vehicle travelled for just a few minutes before being pulled over by PO Umar Khitab (Respondent 1) and PO Alex Viera (Respondent 2). PO Khitab and PO Viera had previously encountered a bicyclist who told them that he had argued with “a six feet tall man with braids with an Indian skin tone wearing a white t-shirt who was carrying a firearm in his hand.” PO Khitab and PO Viera observed the Victim exit a building and enter an Uber vehicle and decided to pull the vehicle over. They called for backup and asked the Victim to exit the vehicle. PO Viera described the Victim as being a Black male, 6’2” in height with a braided hairstyle, wearing a yellow shirt and red pants. PO Viera frisked the Victim. The Victim told them that he did not have a weapon; he lifted up his shirt and spun in a circle to show his entire waist area to the officers and sat back inside the vehicle. PO Patrick Craig (Respondent 3), Sgt. Avinash Patel (Respondent 4), and other officers arrived on the scene and instructed the Victim to step out of the vehicle again and put his hands behind his back. They told him that they still needed to check him. The Victim exited the vehicle and was held with his back against the Uber vehicle while the

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<sup>8</sup> Although the Police Commissioner upheld the guilty verdict and the penalty recommended by the ADCT, the ADCT’s recommended penalty was lower than the penalty recommended by the APU.

officers searched the vehicle. The Victim asked why they were searching him and insisted that he had done nothing wrong. Sgt. Patel instructed the officers to handcuff the Victim and PO Craig searched the Victim's hat for a weapon. The Victim's hands were held behind his back as he was held against the vehicle. PO Craig struck the Victim in the face with his hand. The Victim yelled out that PO Craig had struck him as PO Craig put handcuffs on the Victim. PO Craig called the Victim an "idiot," and said, "somebody film him acting like an animal," as the officers attempted to place the Victim inside a police vehicle. PO Viera called the Victim a "stupid motherfucker." The Victim's mother exited the building and approached the officers as people stopped to observe what was happening. PO Craig refused to provide his name to the Victim's mother. Sgt. Patel ordered that the Victim be issued a disorderly conduct summons.

The Board substantiated ten (10) total allegations: one (1) Abuse of Authority allegation against PO Khitab for stopping the Victim; one (1) Abuse of Authority allegation against Sgt. Patel for issuing the Victim a summons; two (2) Abuse of Authority allegations against PO Viera for stopping and frisking the Victim, one (1) Discourtesy allegation against PO Viera for calling the Victim a "stupid motherfucker;" three (3) Discourtesy allegations against PO Craig for calling the Victim, "an animal," "an idiot," and for using profanity at the Victim, one (1) Use of Force allegation against PO Craig for striking the Victim in the face, and one (1) Abuse of Authority allegation against PO Craig for refusing to provide his name to the Victim's mother. The APU filed and served Charges and Specifications with a penalty recommendation of five (5) days' vacation forfeiture for PO Khitab, ten (10) days' vacation forfeiture for PO Viera, eighteen (18) days' vacation forfeiture for PO Craig, and twelve (12) days' vacation forfeiture for Sgt. Patel.

ADCT Jeff Adler found PO Viera guilty of one (1) count: speaking discourteously to the Victim by calling him "stupid motherfucker," and not guilty on the remaining two (2) counts; found PO Craig guilty of four (4) counts: wrongfully using force by striking the Victim in the face, speaking discourteously to the Victim by calling him "an idiot", and "an animal," and for abusing his authority by failing to provide his name to the Victim's mother and not guilty on the remaining one (1) count; found Sgt. Patel guilty of one (1) count: abusing his authority by issuing a summons to the Victim. ADCT Adler found that, "the [Victim] had been lawfully stopped on suspicion of possessing a firearm," that "given the number of additional officers present, and the level of control over the subject at the time, the punch to the face was not reasonable or appropriate," and that "to issue a summons where the facts did not justify it...there was evidence that the [Victim] was screaming stiffening his body, and resisting the officers' efforts to reposition him." ADCT Adler recommended a penalty of (2) days' vacation forfeiture for PO Viera, ten (10) days' vacation forfeiture for PO Craig and five (5) days' vacation forfeiture for Sgt. Patel. ADCT Adler found PO Khitab not guilty of his sole count finding that "the officers had a had a reasonable basis to stop the vehicle and detain [the Victim] in order to investigate further." Commissioner Shea approved ADCT Adler's guilty and not guilty verdicts and imposed the recommended penalties for the guilty verdicts for PO Craig, PO Viera, and Sgt. Patel and upheld the not guilty verdict for PO Khitab.

## **Cases Eight and Nine, Guilty Verdict, Penalty Upheld<sup>9</sup>**

*Case 201706642; Sgt. Lamont Gibson & PO Nicholas Rios*

In August 2017 at approximately 9:30 p.m. in the Bronx, the Victims, two Black brothers, one aged thirteen and the other aged sixteen, were walking on the sidewalk; carting diapers and food in a Disney's *Frozen* backpack. Sergeant Lamont Gibson (Respondent 1) and two other officers, all in plain clothes, exited an unmarked vehicle and attempted to stop them. The Victims ran away as Sgt. Gibson and the two other officers did not identify themselves as police. Sgt. Gibson stated that he had stopped the Victims because he observed one of them pass the other an object that he thought was indicative of a drug transaction, and that the backpack carried by the older teen had a round bulge that he believed was a firearm. Sgt. Gibson caught up to Victim 1, the younger brother, and placed him in handcuffs. Police Officer Nicholas Rios (Respondent 2) and another officer pursued Victim 2, the older brother. PO Rios caught up to him and identified himself as a police officer as he grabbed Victim 2 from behind, lifted him up and slammed him to the ground. Victim 2 stated that as he lay on the ground face up, PO Rios stomped his foot on Victim 2's chest, turned him face down, stomped on the Victim 2's back and placed him in handcuffs. Victim 2 did not physically resist. Sgt. Gibson searched Victim 2's backpack. No weapons or contraband was recovered from either Victim.

The Board substantiated five (5) total allegations: three (3) Abuse of Authority allegations against Sgt. Gibson for stopping the Victims, and for searching Victim 2's backpack; two (2) Use of Force allegations against PO Rios for slamming Victim 2 to the ground and for stomping on Victim 2's chest and back. The APU filed and served Charges and Specifications with a penalty recommendation for both Respondents of fifteen (15) days' vacation forfeiture. ADCT Jeff Adler found both Respondents guilty of all five (5) counts. ADCT Adler found that Sgt. Gibson "initiated the stop of [the Victims] without a reasonable basis for doing so, then improperly searched the book bag," and found that PO Rios "threw [Victim 2] to the ground and stomped on him without police necessity." ADCT Adler recommended a penalty of ten (10) days' vacation forfeiture for each Respondent. Commissioner Shea approved ADCT Adler's recommendation and imposed the recommended penalty.

## **Cases Ten and Eleven Guilty Verdict, Penalty Upheld<sup>10</sup>**

*Case 201800734; Det. Roberto Pagan & Det. Salvator Granata* In January 2018 at approximately 6:00 a.m. in Staten Island, the Victim, a Hispanic woman in her mid-forties, was awoken by someone banging on her apartment door. The Victim opened the door and saw Detective Roberto Pagan (Respondent 1), Detective Salvator Granata (Respondent 2), and another detective. Det. Pagan stuck his foot in the door so that the Victim could not close

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<sup>9</sup> Although the Police Commissioner upheld the guilty verdict and the penalty recommended by the ADCT, the ADCT's recommended penalty was lower than the penalty recommended by the APU.

<sup>10</sup> Although the Police Commissioner upheld the guilty verdict and the penalty recommended by the ADCT, the ADCT's recommended penalty was lower than the penalty recommended by the APU.

it. The Respondents asked the Victim for a Hispanic woman unknown to the Victim. The Victim told them that she was not the woman named nor did she know any such person. She told the Respondents that she would get her identification and to wait for her at which point Det. Pagan pushed the Victim's door open and the Respondents and the additional officer entered and searched the Victim's home. The Respondents were in possession of a 2012 bench warrant for a Hispanic woman unknown to the Victim with the Victim's address listed. The Respondents searched the Victim's apartment and then left, taking the stairs up to the 2<sup>nd</sup> floor. The Victim filmed the Respondents standing inside her apartment and them walking up to the 2<sup>nd</sup> floor when Det. Granata made a discourteous comment, "like you pay taxes," to the Victim as she argued with them about being in her apartment.

The Board substantiated three (3) total allegations: two (2) Abuse of Authority allegations against Det. Pagan for entering the Victim's home and searching the Victim's home; and one (1) Discourtesy allegation against Det. Granata for saying "like you pay taxes" to the Victim. The APU filed and served Charges and Specifications with a penalty recommendation of twenty-five (25) days' vacation forfeiture for Det. Pagan and ten (10) days' vacation forfeiture for Det. Granata. ADCT Paul Gamble found both Respondents guilty of all counts. ADCT Gamble found that the "the brevity of Respondent Granata's prior investigation did not rise to the level of due diligence required to empower him to use a six-year old bench warrant to forcibly enter [the Victim's] apartment and search for [unknown individual]." ADCT Gamble recommended a penalty of seven (7) days' vacation forfeiture for Det. Pagan and three (3) days' vacation forfeiture for Det. Granata. Commissioner Shea approved ADCT Gamble's recommendation and imposed the recommended penalty.

### **Cases Twelve and Thirteen, Guilty Verdict, Penalty Upheld**

*Case 201705224; DT3 Steve Richards & DT3 William Vargas*

In June 2017 at approximately 4:00 p.m. in Brooklyn, Victim 1, a Hispanic man in his late twenties, was home with his sister, Victim 2, a Hispanic woman in her late twenties, when Detective Steve Richards (Respondent 1) and Detective William Vargas (Respondent 2) knocked on the door. Victim 1 answered the door and Det. Richards said the officers needed to search the house at which point Victim 2 came to the door. The victims asked for a warrant and Det. Richards stated that he did not need one. The Respondents entered the home and both Victims stood on the staircase inside the home. The Victims asked for a warrant and the Respondents stated that there were looking for Victim 2's boyfriend. Both Victims stated that the boyfriend did not live in the house but would visit occasionally to see his child. The Respondents accompanied by another officer moved to walk up the stairs and were blocked by the Victims. Det. Richards told Victim 2 that he could arrest her for obstructing governmental administration. The Respondents walked up the stairs to the second floor of the home. Victim 1 began filming the Respondents yelling for them to leave. The Respondents ignored him and moved toward a doorway. Victim 1 then stood next to the doorway yelling into Det. Vargas's face. Det. Vargas grabbed Victim 1's hands and got a handcuff on one of his wrists. Victim 1 pulled the handcuffed wrist away from Det. Vargas. Det. Vargas pulled back on the handcuffed wrist, causing injury to the wrist. Victim 1 stopped



pulling away and Det. Vargas fastened both wrists in handcuffs. The Respondents searched the home.

The Board substantiated six (6) total allegations: three (3) Abuse of Authority allegations against Det. Richards for entering and searching the Victims' home, and threatening to arrest Victim 2; two (2) Abuse of Authority allegations against Det. Vargas for entering and searching the Victims' home and one (1) Use of Force allegation for pulling at the handcuffs on Victim 1's wrist. The APU filed and served Charges and Specifications with a penalty recommendation of fifteen (15) days' vacation forfeiture for each Respondent. At the trial before ADCT Jeff Adler, both Det. Richards and Det. Vargas pled guilty to entry and search of the Victims' home. ADCT Adler found Det. Richards and Det. Vargas not guilty on the sole remaining count. ADCT Adler found that the Respondents "did not have a reasonable basis for believing that the subject resided at the location, and so their entry and search of the location constituted misconduct, which they each candidly admitted." ADCT Adler recommended a penalty of five (5) days' vacation forfeiture for each Respondent. ADCT Adler found Det. Richards not guilty of the remaining count stating that Det. Richards making the statement to Victim 2 as she blocked his access to the stairs was, "a warning that was justified under the circumstances." ADCT Adler found Det. Vargas not guilty of the remaining count stating that, "[Victim 1] acknowledged that Det. Vargas had to yank on the handcuffs 'four of five times' before he was able to completely handcuff [Victim 1]." Commissioner Shea approved ADCT Adler's guilty and not guilty verdicts and imposed the recommended penalties for the guilty verdicts and upheld the not guilty verdicts.

#### **Cases Fourteen, Fifteen, and Sixteen, Guilty Verdict Reversed**

*Case 201803342; PO Artur Espenberg, PO Anthony Baresi, PO Sheila Ramos*

In July 2017 at approximately 10:30 p.m. in Manhattan, the Victim, a Hispanic woman in her mid-forties, was outside her home waiting for her children to return from the park when her teenage son and his friend arrived back from visiting a friend in the Bronx. Approximately five minutes after the Victim and her children went inside their home, PO Artur Espenberg (Respondent 1), PO Anthony Baresi (Respondent 2), and PO Sheila Ramos (Respondent 3), all plainclothes officers, knocked on her door. One of her daughters who had not been outside cracked the door open. The Respondents stated that they wanted to talk to her brother. The Victim came up to the door and asked if the Respondents had a warrant. They stated that they wanted to question her son about an assault that took place while the Victim had been outside with her children. The Victim reiterated her question about a warrant and the Respondents argued with her for approximately thirty minutes. The Victim moved to close her door when PO Espenberg pushed the door open and all three Respondents entered the Victim's home. Cellphone video from the Victim's son shows all three Respondents standing inside the home with the Victim telling the Respondents to leave.

The Board substantiated three (3) total allegations: one (1) Abuse of Authority against PO Espenberg for entering the Victim's home, one (1) Abuse of Authority allegation

against PO Baresi for entering the Victim's home, and one (1) Abuse of Authority allegation against PO Ramos for entering the Victim's home. The APU filed and served Charges and Specifications with the same penalty recommendation for each of the three (3) Respondents: five (5) days' vacation forfeiture. ADCT Nancy Ryan found all three Respondents guilty of each of their sole counts finding that "while the [Victim's daughter] initially consented to the entry, I also find that both her mother and [the Victim's son], who were co-occupants of the apartment, did not consent to the Respondents' entry." ADCT Ryan also found that the Respondents "showed remarkable restraint in light of people yelling, a woman pushing one of them, dogs barking and the presence of two people who had been identified by injured victims as having recently committed a violent assault." ADCT recommended a penalty of a reprimand for each Respondent considering "the totality of the circumstances surrounding the Respondents' entry into the apartment, as well as my review of their unblemished record and commendable records." Commissioner Shea reversed ADCT Ryan's guilty verdict for all three Respondents and did not impose any discipline stating that he "reviewed and considered the entire record in this matter including the video evidence." He agreed with ADCT Ryan that "the officers had consent for their initial entry into the apartment." He disagreed with ADCT Ryan's finding that "the initial consent to enter the premises was subsequently revoked." He stated that ADCT Ryan "discusses at length the right to revoke consent to search" but that the "issue here is whether consent to enter a premises to effectuate an arrest may be revoked after initially being voluntarily given." He stated that, "New York courts do not recognize such a maxim and the New York City Police department does not train officers that consent to enter a premises in order to effectuate an arrest may be revoked after initially being voluntarily given."

## II. Not-Guilty Verdicts

In 2020, ten (10) cases resulted in not guilty verdicts that were all upheld by the Police Commissioner.<sup>11</sup> The not guilty verdicts are discussed further below:

### **Case One. Not Guilty Verdict Upheld<sup>12</sup>**

*Case 201704630; DT3 Duane Percy*

In June 2017 at approximately 11:00 a.m. in Brooklyn, the Victim, a Black woman in her thirties, was leaving a courthouse in Brooklyn when Detective Duane Percy (the Respondent) a member of the borough's gang unit followed her. Det. Percy called out to the Victim and asked for her name. The Victim asked Det. Percy why he wanted to know who she was and told him to go to the courthouse if he wanted to know. The Victim resumed walking

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<sup>11</sup> As the final arbiter of discipline, the Police Commissioner may accept, reject, or modify any trial verdict or plea. See NY Civ. Serv. Law § 75; N.Y.C. Admin. Code § 14-115; NY City Charter §§ 434; 440; 38 RCNY§ 15-12; 38 RCNY § 15-17; 38 RCNY §1-46.

<sup>12</sup> This case was previously reported as a retained case in the Fourth Quarter of 2018. Police Commissioner O'Neill originally retained the case and then reversed the decision to retain allowing APU to prosecute the case.

and Det. Percy kept walking behind her and asking for her name. Det. Percy asked to see her ID and the Victim gave him her last name and told him that that she did not have any warrants. The Victim resumed walking, tried to enter a cab, and then went to catch a bus. She got on the bus and Det. Percy followed her onboard. He showed his police shield to the bus operator. The operator stopped the bus and a marked police vehicle stopped in front of the bus. The Victim got off the bus and Det. Percy grabbed her and pushed her against the police vehicle. Three police officers in the police vehicle exited and assisted in holding the Victim. Det. Percy handcuffed her and went through her bag and retrieved the Victim's wallet. Det. Percy reviewed the Victim's ID and after speaking to someone on his phone, he released the Victim stating to the Victim that it was a case of mistaken identity.

The Board substantiated two (2) total allegations: one (1) Abuse of Authority allegation against Det. Percy for stopping the Victim and one (1) Use of Force allegation for pushing the Victim. The APU filed and served Charges and Specifications with a penalty recommendation of twelve (12) days' vacation forfeiture. ADCT Jeff Adler found that "it is undisputed that Respondent stopped [the Victim] and questioned her about her identity. It is also is undisputed that she was not, in fact, the woman for whom Respondent was looking." ADCT Adler stated that, "whereas [the Victim] did not appear to testify, and could not be questioned and challenged as to the details of her account, Respondent testified in a detailed and consistent manner regarding what transpired...after [the Victim] continued to ignore his requests for identification, and made efforts to elude him, Respondent stopped and detained her, quickly determined that she was not the individual who was wanted, and promptly released her. To his credit, Respondent did not try to conceal the mistake he had made; he recorded the stop in his memo book, immediately reported what had occurred to his supervisor, and prepared the appropriate paperwork. Regarding the pushing of the Victim, ADCT Adler found, "Respondent's testimony that an irate and uncooperative [Victim] had her hands near his face, was yelling loudly, and that he used a minimal amount of force to lean her against the front of the car in order to briefly detain her and check her identification...there is no confirmation in the medical records of injuries that would corroborate [the Victim]'s hearsay account of being forcefully slammed into the car." ADCT Adler found Det. Percy not guilty of all counts. Commissioner Shea approved the not guilty verdict.

### **Case Two, Not Guilty Verdict Upheld**

*Case 201706063; DT3 Christopher Greiner*

In July 2017 at approximately 4:00 p.m. in Brooklyn, the Victim, a Hispanic man in his thirties, was walking from his grandmother's apartment to a corner store a few blocks away. Detective Christopher Greiner (the Respondent) and his partner, who were assigned to the borough's narcotics unit, were sitting in a vehicle observing the grandmother's apartment building. Det. Greiner stated that he saw the Victim exchange an object with an unknown individual. The Victim stated that when he made it to the block with the corner store, two white males in plain clothing approached him and one of them, Det. Greiner, grabbed him. Det. Greiner stated that he observed marijuana in the Victim's hand. The Victim pushed away

from Det. Greiner thinking that he was about to be robbed and ran away. Det. Greiner's partner quickly chased down the Victim and the two fell to the ground. The Victim struggled with Det. Greiner's partner who identified himself as police and handcuffed the Victim. Det. Greiner and his partner searched the Victim and recovered a small amount of marijuana from his pockets.

The Board substantiated one (1) total allegation: one (1) Abuse of Authority allegation against Det. Greiner for stopping the Victim. The APU filed and served Charges and Specifications with a penalty recommendation of four (4) days' vacation forfeiture. ADCT Jeff Adler found "[the Victim]...did not appear to testify, and defense counsel did not have an opportunity to cross-examine him regarding his version of this incident...Respondent came across as highly professional on the witness stand...and I credit his description of events...based on his extensive narcotics experience, training, and the high narcotics-related crime area, Respondent reasonably concluded that he had observed [the Victim] partake in a hand-to-hand drug transaction." ADCT Adler found that "Respondent had a reasonable basis to believe that [the Victim] was in possession of marijuana which Respondent observed [the Victim] holding in his hand, open to public view." ADCT Adler found Det. Greiner not guilty of the sole count. Commissioner Shea approved the not guilty verdict.

### **Case Three, Not Guilty Verdict Upheld**

*Case 201700064; PO Manuel Gutierrez*

In December 2016 at approximately 11:00 a.m. in the Bronx, the Victim, a Hispanic man in his mid-fifties, had an altercation with PO Manuel Gutierrez (the Respondent) and two other officers. The Victim did not provide any statements to the CCRB (but gave one at a deposition hearing). There was only a video filmed by a bystander who also refused to provide any further information to the CCRB. The video shows the Victim being held on the ground in the street by the Respondent and two other officers. The Victim in his deposition statement said that he had been driving his vehicle when he was pulled over and issued a summons for driving while on his cellphone. He stated that after he received the summons for obstruction of governmental administration, resisting arrest, and disorderly conduct, he cursed and yelled at the officers as they left. He continued to yell at them, and PO Gutierrez came back to the Victim's vehicle. PO Gutierrez asked the Victim to exit his vehicle and before the Victim could respond, PO Gutierrez pulled the Victim from his vehicle. The bystander's video showed the Victim laying belly down in the street, with PO Gutierrez's body near his head and two other officers pressing down on the rest of the Victim's body. The Victim lay on the ground and continued to yell. PO Gutierrez then struck the Victim in the face three times. PO Gutierrez held down the Victim's head while PO Gutierrez's partners placed handcuffs on the Victim. The Victim was then pulled to his feet and placed up against a police van. The Victim sustained a black eye and a laceration over his eye.

The Board substantiated one (1) total allegation: one (1) Use of Force allegation against PO Gutierrez for striking the Victim in the face multiple times. The APU filed and served Charges and Specifications with a penalty recommendation of thirty (30) days'

vacation forfeiture with one-year dismissal probation.<sup>13</sup> ADCT Nancy Ryan found that “Officer Rodriguez can be seen grabbing at [the Victim]’s arms and is unable to secure them even with the assistance of Respondent and Officer Soto holding [the Victim]. [The Victim]’s actions in failing to release his arms to be handcuffed meets the definition of active resistance. ADCT Ryan found that “as in clear in the audio portion...Respondent attempted to use verbal commands to gain compliance, but [the Victim] was not following the Respondent’s directives to put his hands behind his back. The area where the struggle ensued was in active lane of traffic. As verbal commands were not working, the Respondent was justified in using the four quick strikes to [the Victim] to get him to release his hands in order to effectuate the arrest as quickly as possible so that both [the Victim] and the officers could get out of the dangerous position they were in.” ADCT Nancy Ryan found PO Gutierrez not guilty of the sole count. Commissioner Shea approved the not guilty verdict.

### **Case Four, Not Guilty Verdict Upheld**

*Case 201801230; PO Julia Goldberg & PO Omar Habib*<sup>14</sup>

In November 2017 at approximately 6:00 p.m. at a transition home in the Bronx, the Victim, a Black male in his fifties, was on the 6<sup>th</sup> floor of the building when he encountered PO Omar Habib (Respondent 1) and two police officers. The Victim asked why they were in the building without an escort as required by the building’s rules. The Victim, a building resident, PO Habib, and the two officers entered an elevator. The elevator went down to the fifth floor while the Victim argued with the officers about being unescorted in the building. The elevator had a camera that had no audio. The video captured the Victim and the officers standing inside the elevator with their backs towards him as they rode down one floor. The officers exited the elevator on the fifth floor and PO Habib came back into the elevator and shoved the Victim against the wall of the elevator. The two other officers tried to pin the Victim against one of the elevator walls and PO Habib placed the Victim in a chokehold while the two officers held on to his arms. The video also showed that when PO Julia Goldberg (Respondent 2) along with two other officers arrived at the scene, they rushed into the elevator and PO Goldberg immediately fired her Taser at the Victim. PO Goldberg then walks backwards out of the elevator.

The Board substantiated four (4) total allegations: one (1) Use of Force allegation against PO Goldberg for using a Taser on the Victim; two (2) Use of Force allegations against PO Habib for using physical force and a chokehold against the Victim and (1) Abuse of Authority allegation for stopping the Victim. The APU filed and served Charges and Specifications with a penalty recommendation of thirty (30) days’ vacation forfeiture with

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<sup>13</sup> Under Dismissal Probation, an officer’s dismissal will be held in abeyance for a period of one (1) year pursuant to Section 14-114(d) of the NYC Administrative Code, during which time the officer remains on the force at the Police Commissioner’s discretion and may be terminated at any time without further proceedings.

<sup>14</sup> PO Habib’s case was not adjudicated at trial. His case was adjudicated via administrative closure- See Section VI – Administrative Cases

one-year dismissal probation.<sup>15</sup> ADCT Paul Gamble found that “Respondent testified that when she heard the commotion which caused her to run to the elevator, she had no idea what caused the police officers to engage in a physical struggle with [the Victim].” ADCT Gamble found that the Victim’s “statement is corroborated by Respondent’s testimony. As well as the video recording of the incident.” ADCT Gamble found that PO Goldberg “saw three of her fellow officers struggling with a suspect. At that point, she had the right to decide how was going to assist them but did not have the option to remain a bystander...I note that by the time Respondent announced that she was about to deploy her Taser, two additional police officers had joined the first three and they collectively were still unable to subdue [the Victim].” ADCT Gamble found PO Goldberg not guilty of the sole count. Commissioner Shea approved the not guilty verdict.

### **Case Five, Not Guilty Verdict Upheld**

*Case 201807705; PO Arland Belande*

In September 2018 at approximately 3:00 a.m. in Manhattan, the Victim, a Hispanic man in his late twenties, was observed urinating in public by PO Arland Belande (the Respondent) and his partner. PO Belande took the Victim’s ID in order to issue him a summons and subsequently learned that the Victim had an outstanding bench warrant. PO Belande rear-cuffed the Victim and stood him up against a police vehicle. The Victim moved his body against the police vehicle and PO Belande held his left forearm against the Victim’s chest to hold him in place. The Victim attempted to turn his body away from PO Belande and PO Belande used his forearm to press against the Victim’s upper chest and neck and push him against the police vehicle. The Victim tried to turn his body away again and he and PO Belande ended up moving towards the back of the police vehicle. PO Belande attempted to place the Victim in a bear hug style hold and the Victim planted his feet firmly on the ground. They spun in circles for a few moments and then PO Belande kicked out the back of one of the Victim’s legs and then threw him onto the sidewalk, the Victim landing flat on his back. PO Belande then stood over the Victim, and the Victim remained laying on the ground until backup arrived. PO Belande’s partner’s body-worn camera (BWC) captured the Victim already rear cuffed and standing up against the police vehicle. The footage ended with the takedown of the Victim by PO Beland. Because the incident was captured during the first 30 seconds after activation of the body-worn camera, there was no audio on this portion of the BWC footage.

The Board substantiated two (2) total allegations: two (2) Use of Force allegations against PO Belande for using a chokehold while the Victim was rear-cuffed and for placing his hand around the Victim’s neck and pushing him while rear-cuffed. The Board also referred a false official statement to the Department because PO Belande testified that he did not use a takedown maneuver on the Victim. The APU filed and served Charges and

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<sup>15</sup> Under Dismissal Probation, an officer’s dismissal will be held in abeyance for a period of one (1) year pursuant to Section 14-114(d) of the NYC Administrative Code, during which time the officer remains on the force at the Police Commissioner’s discretion and may be terminated at any time without further proceedings.

Specifications with a penalty recommendation of fifteen (15) days' vacation forfeiture. ADCT Nancy Ryan found that "the video confirms that Respondent's hand was in the general area of [the Victim]'s neck, but it not clear that he touched the throat or windpipe. rather, it appears that his hand touched the right side of [the Victim]'s jaw and neck for an instant incidentally, as he reached for [the Victim]'s collarbone and upper chest." ADCT Ryan also found that the Victim's statement that the Respondent choked him "his brief and vague hearsay statement, which could not be probed further with cross-examination and is not corroborated by any medical records is an insufficient basis to depart from the impression drawn from the video." ADCT Ryan also found that "the video confirms that during the incident, [the Victim] was actively resisting...[the Victim] appeared on the verge of breaking away and escaping... Respondent attempted to control [the Victim] for at least 45 seconds before eventually positing himself to bring him to the ground." ADCT Ryan found PO Belande not guilty of all counts. Commissioner Shea approved the not guilty verdict.

### **Cases Six and Seven, Not Guilty Verdict Upheld**

*Case 201709759; PO Jonathan Martinez & PO Matthew Lambert*

In November 2017 at approximately 4:00 p.m. in Brooklyn, the Victim a nineteen-year-old Black male, was driving with three friends in his Nissan vehicle when an MTA bus behind him was struck by a Honda vehicle that had run a red light. The Honda struck another vehicle before stopping a few feet away from the Victim's vehicle. The Victim and his passengers exited the vehicle to inspect it for damage. The Victim was reentering his vehicle to move it away from the Honda which was now smoking when PO Jonathan Martinez (Respondent 1) and PO Matthew Lambert (Respondent 2) arrived at the accident scene and approached the Victim with their guns drawn. The Respondents had previously stopped the Honda vehicle and had observed a firearm in the center console. PO Martinez opened the Victim's door and pulled him from the vehicle. PO Lambert placed the Victim face down in the street and handcuffed him and laid him face down in the street; the Victim did not resist. PO Lambert told the Victim that he, "almost ruined a fucking kid's life," and "look what you fucking did," as the Victim laid handcuffed on the ground. Approximately ten (10) minutes later the Respondents released the Victim and voided his arrest. They arrested an individual who had been lying injured in the street near the Honda vehicle. That individual turned out to be an occupant of the fleeing Honda vehicle.

The Board substantiated five (5) total allegations: one (1) Use of Force allegation against PO Martinez for pointing his gun at the Victim and one (1) Abuse of Authority allegation for arresting the Victim; one (1) Use of Force allegation against PO Lambert for pointing his gun at the Victim, one (1) Abuse of Authority allegation for arresting the Victim, and one (1) Discourtesy allegation for speaking discourteously to the Victim. The APU filed and served Charges and Specifications with a penalty recommendation of ten (10) days' vacation forfeiture for each of the Respondents. ADCT Paul Gamble found that "Respondent Martinez testified credibly that as he entered the intersection...he heard people shouting, 'that's him, he's got a gun' and pointing at [the Victim]. Martinez then saw [the Victim] enter a car and attempt to drive away...finally, Respondent Martinez and Respondent Lambert

possessed a reasonable belief that each had seen a firearm in a car that they had spent the past few minutes chasing at a distance and then observed said car drive in the direction of the same intersection...based upon the totality of the circumstances it was reasonable for Respondent Martinez and Respondent Lambert to draw their weapons." ADCT Gamble also found that "if the facts were as Respondents believed them to be, they would have had probable cause to believe that [the Victim] possessed a firearm; as such, Respondents could have lawfully effect a warrantless arrest...this was a dynamic situation which occurred over 0.3 miles, at high speed, and which culminated in a crowd of civilians...bases upon the totality of the evidence, I find that Respondent's decisions to arrest [the Victim] as well as draw their weapons and point them at him during the encounter, though based upon a mistake, were made in good faith." ADCT Gamble finally found that the discourtesy statement by PO Lambert "was not used to disparage [the Victim] or wielded on an act of verbal aggression." ADCT Paul Gamble found both Respondents not guilty of the all counts. Commissioner Shea approved the not guilty verdicts.

### **Cases Eight and Nine, Not Guilty Verdict Upheld**

#### *Case 201702427; SGT Mobeen Yasin & PO Hassan Gheith*

In March 2017 at approximately 9:30 p.m. in Brooklyn, the Victims, an Asian man and a white man in their twenties, were standing outside smoking a marijuana cigar when Sgt. Mobeen Yasin (Respondent 1) and PO Hassan Gheith (Respondent 2) observed them on the street. The Respondents arrested the Victims and transported them to the precinct. At the precinct Sgt. Yasin stated that because of the arrest history of one of the Victim's he authorized a strip search of the Victims even though he did not make any observations that the Victims were concealing contraband on their person or made motions indicative of such concealment – factors required by the NYPD patrol guide to perform such a search. Instead Sgt. Yasin stated that a confidential informant saw contraband on the Victims' person and that PO Gheith informed him that he observed that the Victims walked with an unusual gait and had made movements in the vehicle. PO Gheith stated that he had made no such observations. The strip search resulted in the recovery of pills from both Victims.

The Board substantiated four (4) total allegations: two (2) Abuse of Authority allegations against Sgt. Yasin for improperly authorizing the strip search of Victim 1 and Victim 2, and two (2) Abuse of Authority allegations against PO Gheith for strip searching Victim 1 and Victim 2. The APU filed and served Charges and Specifications with a penalty recommendation of twenty-five (25) days' vacation forfeiture for Sgt. Yasin and fifteen (15) days' vacation forfeiture for PO Gheith. ADCT Paul Gamble found "there is no dispute that Respondent Yasin, who was at the time of the searches Respondent Gheith's immediate supervisor, authorized the strip searches of both [Victims]. There is further no dispute that both suspects were searched at the scene of their arrests and again before the Desk Officer." ADCT Gamble also found that "Respondent Gheith observed both men walk...exhibiting an odd gait which he described as waddling...corroborated by Respondent Yasin's concomitant observation of the same behavior, was sufficiently noteworthy combined with...Police



Officer Martinez's report that both men were moving about while handcuffed in the back of the police car, it provided a sufficient legal basis for him to suspect that both men were hiding contraband of some sort on their persons, most likely their pants." ADCT Gamble found both Respondents not guilty of the all counts. Commissioner Shea approved the not guilty verdicts.

### **Case Ten, Not Guilty Verdict Upheld**

*Case 201706371; PO Umar Khitab*

This case is from the same incident described in Cases Five (5), Six (6), and Seven (7) (from the Guilty Verdicts section), for PO Umar Khitab. In July 2017 at approximately 10:30 p.m. in Brooklyn, the Victim, a Black man in his twenties wearing a yellow shirt, entered an Uber pool vehicle. The vehicle travelled for just a few minutes and was pulled over by PO Umar Khitab and PO Alex Viera. PO Khitab and PO Viera encountered an unknown bicyclist in the general area of the Victim who told them that he had argued with "a six feet tall man with braids with an Indian skin tone wearing a white t-shirt who was carrying a firearm in his hand." PO Khitab and PO Viera observed the Victim exit a building and enter an Uber vehicle and decided to pull the vehicle over. They called for backup and asked the Victim to the exit the vehicle.

The Board substantiated one (1) total allegation: one (1) Abuse of Authority against PO Khitab for stopping the Victim. The APU filed and served Charges and Specifications with a penalty recommendation of five (5) days' vacation forfeiture for PO Khitab. ADCT Jeff Adler found that "[the Victim], was the only one individual observed in the vicinity of where the firearm job originated, and he was wearing a white shirt and had cornrows, which generally matched the description provided by the witness on the bicycle." ADCT Adler found that "the officers had a reasonable basis to stop the vehicle and detain [the Victim] in order to investigate further." ADCT Adler found PO Khitab not guilty of the sole count. Commissioner Shea approved the not guilty verdict.

### **III. Treatment of APU Pleas**

In 2020, the Department finalized six (6) pleas. The APU makes penalty recommendations for all cases in which Charges and Specifications are substantiated by the Board. The APU uses a number of factors to determine these recommendations, including, but not limited to: a member of service's ("MOS") length of service; MOS rank; MOS disciplinary history; the facts of the instant case; the strength of the instant case; the vulnerability of the victim; the extent of injury, if any; the number of Complainants; and DCT precedent of analogous charges. The APU penalty recommendations tend to be consistent for MOS who are similarly situated. With the implementation of the NYPD's disciplinary matrix in 2021, the APU will use the Disciplinary matrix in making guilty plea recommendations that should be upheld without modifications by the Police Commissioner.

<b>Pleas Closed</b>				
Period	Plea Approved	Pleas Closed At Discipline Level Below Agency Recommendations		
		Plea Penalty Reduced	Plea Set Aside, Discipline Imposed	Plea Set Aside, No Discipline Imposed
4 <sup>th</sup> Quarter 2017	2	5	3	0
1 <sup>st</sup> Quarter 2018	6	7	1	0
2 <sup>nd</sup> Quarter 2018	0	1	0	0
3 <sup>rd</sup> Quarter 2018	6	0	0	0
4 <sup>th</sup> Quarter 2018	4	0	0	0
1 <sup>st</sup> Quarter 2019	1	0	0	0
2 <sup>nd</sup> Quarter 2019	4	0	0	0
3 <sup>rd</sup> Quarter 2019	2	1	0	0
4 <sup>th</sup> Quarter 2019	1	0	0	0
<b>1<sup>st</sup> Quarter 2020</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>
<b>2<sup>nd</sup> Quarter 2020</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>0</b>
<b>3<sup>rd</sup> Quarter 2020</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>
<b>4<sup>th</sup> Quarter 2020</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

As seen in the chart above, in 2020, there were six (6) cases in which guilty pleas were agreed to by the CCRB. In five (5) out of the six (6) cases that were resolved by plea, the Police Commissioner accepted the pleas but reduced the penalties. In the remaining case<sup>16</sup>, the Police Commissioner accepted the pleas without alteration. The five (5) cases with downgraded pleas are discussed below.

**Case One. Resolved by Plea, Penalty Downgrade**

*Case 201708958; SGT Damion Brown*

In October 2017 at approximately 10:00 a.m. in the Bronx, the Victim, a Black male in his thirties, was informed by his building manager that police officers had entered his apartment to search for the Victim’s brother-in-law. The Victim returned to his apartment and found that his door had been forced open, furniture had been moved, and closet doors were open. He found a business card left by an officer and the Victim called the officer. The officer informed him that the Victim’s brother-in-law was a fugitive and the Victim stated that his brother-in-law was not a resident in his home. Sergeant Damion Brown (the Respondent) and other officers had entered the Victim’s home without a warrant and searched the Victim’s home for the Victim’s brother-in-law. They did not find the Victims brother-in-law or anyone else present in the home. Sgt. Brown and the other officers did not have specific information to place the Victim’s brother-in-law at the Victim’s home at the time they conducted their search.

<sup>16</sup> Unmodified plea case – 201503434 PO Daniel Cross

The Board substantiated two (2) total allegations: two (2) Abuse of Authority allegations against Sgt. Brown for entering and for searching the Victim's home. Sgt. Brown pleaded guilty and agreed to accept eighteen (18) days' vacation forfeiture. Commissioner Shea set aside the negotiated plea and instead imposed ten (10) days' vacation forfeiture. He stated that the ADCT Paul Gamble who oversaw the negotiated plea settlement stated that the penalty was excessive and not consistent with penalties for similar misconduct. The Police Commissioner stated that the ten (10) days' vacation forfeiture was more consistent with penalties imposed for similar misconduct while acknowledging that Sgt. Brown had "failed to exercise proper judgment when he improperly entered the premises."

### **Case Two, Resolved by Plea, Penalty Downgrade**

*Case 201701267; SGT Robert Durst*

In February 2017 at approximately 10:00 p.m. in the Bronx, the Victim, a seventeen-year-old pregnant Hispanic female, along with her sister, were on the fourth floor of an apartment building. Two male individuals were on the floor as well and were engaged in an argument. A resident of the building informed officers who were present on the floor below responding to a medical emergency that there was a fight on the fourth floor. Sgt. Robert Durst and other officers went to the fourth floor and encountered the Victim, her sister and an officer. Sgt. Durst spoke to the officer who told him that the Victim had attacked her. Sgt. Durst decided to place the Victim under arrest and moved to place her in handcuffs with the assistance of five other officers. The Victim told the officers that she was pregnant. After getting one handcuff on the Victim, Sgt. Durst discharged a Taser into the Victim's side. Surveillance video (and cellphone video) captured the swarm of officers holding and handcuffing the Victim and Sgt. Durst deploying his Taser.

The Board substantiated one (1) total allegation: one (1) Use of Force allegation against Sgt. Durst for discharging his taser into the Victim. Sgt. Durst pleaded guilty and agreed to accept twenty-five (25) days' vacation forfeiture. Commissioner Shea set aside the negotiated plea and instead imposed fifteen (15) days' vacation forfeiture, which he stated was more consistent with penalties imposed for similar misconduct and that Sgt. Durst "utilized a Taser against an individual who was resisting arrest, without sufficient police necessity."

### **Case Three, Resolved by Plea, Penalty Downgrade**

*Case 201702888; PO Richard Browne*

In March 2017 at approximately 1:30 p.m. in Staten Island, the Victims, two Black males in their early twenties, were standing in front of a building alongside other individuals. PO Richard Browne and his partner, a fellow officer pulled up in their vehicle and approached the Victim stating, "I see you rolling up. I can see the weed through the car." PO Browne and his partner frisked the outside of one of the Victim's clothing and searched the inside of the other Victim's hooded sweatshirt. PO Browne stated that he conducted the search to recover a suspected marijuana cigarette and did not recover any marijuana cigarettes from either Victim. The searches and frisks were captured on cellphone video.

The Board substantiated three (3) total allegations: three (3) Abuse of Authority allegations against PO Browne for searching and frisking Victim 1 and searching Victim 2. PO Browne pleaded guilty and agreed to accept eight (8) days' vacation forfeiture. Commissioner Shea set aside the negotiated plea and instead imposed four (4) days' vacation forfeiture, stating that in reaching the penalty he considered the cases cited by the CCRB and PO Browne's history with the Department.

#### **Cases Four and Five, Resolved by Joint Plea, Penalty Downgrade**

*Cases 201502028 & 20150922 CPT Erik Worobey*

In March 2015 at approximately 8:40 p.m. in Brooklyn, the Victim, a Black male in his forties, was at a restaurant when he received a call from one of his tenants who informed him that officers were breaking into the basement of his building. The Victim returned home and observed damage to the door of the residence. The tenant who informed him of the police presence said that she had spoken to Captain Erik Worobey (the Respondent) and his partner, a lower ranked officer, when they came to the residence. She saw Cpt. Worobey and his partner go through the basement door and she returned to her apartment.

The Board substantiated two (2) total allegations: two (2) Abuse of Authority allegations against Cpt Worobey for entering and searching the Victim's home.

In April 2015 at approximately 7:30 a.m. in Brooklyn, the Victim a Black woman in her fifties, was at her home when her doorbell rang several times. The Victim's daughter opened the door and saw Cpt. Worobey and two lower ranked officers. Cpt. Worobey told the daughter that he was looking for the father of the daughter's child. The Victim's daughter told him that he could not enter without a warrant. Cpt. Worobey then entered the apartment at which point the Victim attempted to physically obstruct Cpt Worobey by standing in front of him and pushing him. Cpt Worobey and the other officers searched the apartment and then left.

The Board substantiated two (2) total allegations: two (2) Abuse of Authority allegations against Cpt Worobey for entering and searching the Victim's home.

Cpt Worobey pleaded guilty in both cases and agreed to accept twenty-five (25) days' vacation forfeiture to resolve both cases. Commissioner Shea set aside the negotiated plea and instead imposed twenty (20) days' vacation forfeiture, which he stated was more consistent with penalties imposed for similar misconduct.

#### **IV. Retained Cases**

The New York City Police Department ("NYPD" or the "Department") retained seven (7) cases pursuant to Provision Two of the MOU between the CCRB and NYPD in 2020.

Provision Two of the MOU states:

in those limited circumstances where the Police Commissioner determines that CCRB's prosecution of Charges and Specifications in a substantiated case would be detrimental to the Police Department's disciplinary process, the Police Commissioner shall so notify CCRB. Such instances shall be limited to such cases in which there are parallel or related criminal investigations, or when, in the case of an officer with no disciplinary history or prior substantiated CCRB complaints, based on such officer's record and disciplinary history the interests of justice would not be served.

### **Cases One and Two, Retained with Discipline**

*Case 201805676; PO Michael Duggan & PO Sandra Martinez*

In July 2018 at approximately 6:00 p.m. in the Bronx, the Victim, a Black male in his early twenties, was sitting on a stoop with an unknown individual smoking when they were approached by PO Michael Duggan, PO Sandra Martinez and two other officers. PO Duggan frisked and searched the Victim while PO Martinez frisked the unknown individual. Neither the Victim nor the unknown individual were arrested or issued a summons. The incident was captured by a surveillance camera.

The Board substantiated two (2) Abuse of Authority allegations against PO Duggan for frisking and searching the Victim and substantiated one (1) Abuse of Authority allegation against PO Martinez for frisking the unknown individual. Commissioner Shea retained the case and instead imposed Schedule "A" Command Discipline and Training on both Respondents stating that "notwithstanding the concerns expressed in your response letter, the Police Commissioner maintains that it would be detrimental to the Police Department's disciplinary process to allow the [CCRB] to continue its prosecution of P.O. Duggan and P.O. Martinez." Under the NYPD Disciplinary Matrix, the improper stop and frisk of a person will result in a minimum penalty of Training and a maximum penalty of fifteen (15) days' vacation forfeiture.

### **Case Three, Retained with Discipline**

*Case 201806460; SGT Luis Rodriguez & PO Wilfred Martinez<sup>17</sup>*

In July 2018 at approximately 3:00 a.m. in Manhattan, the Victim, a white man in his mid-twenties, stole items from a Duane Reade and was pursued and taken to the ground by Sgt. Luis Rodriguez (Respondent 1), PO Wilfred Martinez (Respondent 2) and two other officers. During the pursuit the Victim's pants fell. As the officers attempted to handcuff the

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<sup>17</sup> PO Martinez's case is discussed under Section VI – Administrative Closed Cases

Victim PO Martinez stated, “give me your hands motherfucker.” The Victim was handcuffed and left lying on the ground. The Victim was laying on his side with his pants down to his knees exposing his buttocks and testicles. Neither of the Respondents nor the surrounding officers attempted to cover the Victim so that he would no longer be exposed. The Victim lay exposed on the sidewalk for approximately eight (8) minutes until a transporting vehicle arrived. BWC footage captured the Victim lying handcuffed and exposed on the sidewalk with officers standing around him.

The Board substantiated three (3) total allegations: one (1) Abuse of Authority allegation against Sgt. Rodriguez for sexually humiliating the Victim by leaving him on the ground with his pants pulled down and his buttocks and testicles exposed; one (1) Discourtesy allegation against PO Martinez for saying “motherfucker” to the Victim, and one (1) Abuse of Authority allegation against PO Martinez for sexually humiliating the Victim by leaving him on the ground with his pants pulled down and his buttocks and testicles exposed. Commissioner Shea retained the case against Sgt. Rodriguez and instead imposed Schedule “A” Command Discipline on Sgt. Rodriguez stating that “a review of the video evidence and statements by the officers, as well as witnesses, indicate that neither Sergeant Rodriguez nor any of the officers made overt actions in an attempt to ridicule or humiliate the individual in any way...Sergeant Rodriguez did not demonstrate courtesy or civility towards the arrested individual when he failed to cover or shield the individual’s exposed private area after the individual was under his care and control.”

#### **Cases Four and Five, Retained with Discipline**

##### *Case 201809909; PO David Fitchik & PO Ariel Klepadlo*

In November 2018 at approximately 6:00 p.m. in Queens, the Victim, a Black man in his mid-twenties, was driving home when he passed PO David Fitchik and PO Ariel Klepadlo who were conducting a car stop. The Respondents concluded the car stop and started following the Victim. The Victim reached his home, pulled into his driveway and exited his vehicle. The Respondents pulled up in front of the Victim’s home and asked the Victim to get back into his vehicle and asked for his license and registration. The Victim stated that his hands were full so he could not get the requested documentation. The Victim told the Respondents that they were trespassing, and the Respondents went ahead and searched his vehicle. The Victim asked if the Respondents had a warrant and one of them responded, “we don’t need a warrant if it smells like weed.” The Victim responded that he did not smoke. The Respondents arrested the Victim and seized his vehicle. The Victim asked at the precinct what he was he was being arrested for and the Respondents said that they pulled him over for running a stop sign.

The Board substantiated two (2) total allegations: one (1) Abuse of Authority allegation against PO Fitchik for the improper seizure of the Victim’s vehicle and one (1) Abuse of Authority allegation against PO Klepadlo for the improper seizure of the Victim’s vehicle. Commissioner Shea retained the case and instead imposed a Schedule “B” Command Discipline with a penalty of five (5) vacation days’ forfeiture for each Respondent stating that

he “agrees with the CCRB that the officers’ conduct was not within Department guidelines as they could not articulate a legal basis for their actions. However, as previously stated, Police Commissioner has determined that, in light of the officers’ limited tenure at the time of the incident and their lack of disciplinary history, Charges/Specifications are not appropriate in this matter.”

### **Case Six, Retained with Discipline**

*Case 201900835; DT3 Sebastian Drozniak*

In January 2019 at approximately 8:00 a.m. in Brooklyn, the Victim, a Black woman in her mid-forties, was at home when Detective Sebastian Drozniak (the Respondent), who was in plain clothes accompanied by other officers, knocked on her front door. Det. Drozniak told the Victim that he had a warrant to search her apartment. The Victim asked who the warrant was for and Det. Drozniak gave her the name of an individual not known to the Victim. The Victim asked to see the warrant and Det. Drozniak showed it to her. Per the Fourth Amendment, arrest warrants require an officer to have probable cause that the person that they seek to arrest is currently in a specific physical location. The warrant Det. Drozniak presented to the Victim was over seven years old and he had made no inquires to verify that the individual listed on the warrant was currently located at the Victim’s home. This made the warrant invalid for the purposes of granting lawful entry into the Victim’s home. Det. Drozniak told the Victim that since he had the warrant, the Victim was required to let the officer into her apartment to conduct a search. The Victim allowed Det. Drozniak and the other officers into her apartment and they searched her home. After the search, Det. Drozniak told the Victim that they were looking for the Victim’s brother and asked about his whereabouts. Det. Drozniak and the other officers left the Victim’s home approximately ten minutes later.

The Board substantiated two (2) total allegations: two (2) Abuse of Authority allegations against Det. Drozniak for entering and searching the Victim’s home. Commissioner Shea retained the case against Det. Drozniak and instead imposed Training stating he “has determined that Detective Drozniak acted properly in this case. Specifically, the complainant permitted Detective Drozniak to enter her residence after Detective Drozniak identified himself, explained the reasons for his being there, and then provided the complainant with an active third-party warrant, which he allowed the complainant to inspect. Such actions evince an entry and search based on consent.”

### **Case Seven, Retained without Discipline<sup>18</sup>**

*Case 201701838; SGT Stephen Viani*

In March 2017 at approximately 1:00 a.m. in Staten Island, the Victim, a white man in his mid-twenties, was lying on his stomach in handcuffs on the floor of the ferry terminal

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<sup>18</sup> While this case was retained in August 2018 under Commissioner O’Neil, APU did not receive the final paperwork until July 2020.

surrounded by officers. He kept trying to roll onto his side because he felt uncomfortable lying face down on the floor. Multiple officers stood in a circle around the Victim as he remained on the ground. The Victim had rolled onto his side when Sergeant Stephen Viani (the Respondent) approached and spoke to the Victim. The Victim rolled so that he was lying face up. Sgt. Viani nudged the Victim's body with his foot and used his hands to turn the Victim back face down on the floor, placing his left knee on the middle of the Victim's back stopping the Victim's movement. A few seconds later, Sgt. Viani removed his knee from the Victim's back and stood up leaving the Victim remaining face down on the floor in contravention to the Patrol Guide procedure of placing handcuffed people in either an upright position or on their side. The entire incident was captured on DOT surveillance video.

The Board substantiated one (1) total allegation: one (1) Use of Force against Sgt. Viani for restricting the Victim's breathing. Commissioner O'Neill retained the case and did not take any disciplinary action against Sgt. Viani stating that "the surveillance video of the incident shows that Sgt. Viani placed his knee on, or in close proximity to, the individual's arm, and not, as had been alleged, on the individual's back. Therefore, the Police Commissioner has concluded that Sgt. Viani's actions were proper and reasonable, under the totality of the circumstances."

#### V. 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 MOS, the APU dismisses the Charges against that Respondent. The APU did not dismiss any cases against an officer in 2020.

#### VI. Cases Administratively Closed by the Police Commissioner

In 2020, the Police Commissioner administratively closed two(2) cases.

##### **Case One, Administratively Closed** 201806460 PO Wilfred Martinez<sup>19</sup>

This case is from the same incident described in Case #3 (from the Retained cases section) dealing with PO Martinez. The APU filed charges and was informed by the Department that the charges would not be served because PO Martinez retired.

##### **Case Two, Administratively Closed** 201806460 PO Omar Habib

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<sup>19</sup> While PO Martinez retired in 2019, the APU received the final paperwork and closed the case in 2020.



This case is from the same incident described in Case #4 (from the Not Guilty Verdicts section) dealing with PO Habib. IAB filed their own charges against PO Habib and he pled guilty. He was given a Department penalty of thirty (30) days' vacation forfeiture and a one-year dismissal probation.

**VII. The APU's Docket**

As seen in the following table, the APU's docket did not have substantial growth in 2020 compared with 2019.

<b>Cases in Open Docket<sup>20</sup></b>					
Period	Start of Quarter	Received During Quarter	Closed During Quarter	End of Quarter	Growth
4 <sup>th</sup> Quarter 2017	106	11	35	82	-22.6%
1 <sup>st</sup> Quarter 2018	82	28	22	88	7.3%
2 <sup>nd</sup> Quarter 2018	88	21	10	99	12.5%
3 <sup>rd</sup> Quarter 2018	99	11	17	93	-6.1%
4 <sup>th</sup> Quarter 2018	93	16	12	97	4.3%
1 <sup>st</sup> Quarter 2019	97	28	5	120	23.7%
2 <sup>nd</sup> Quarter 2019	120	22	20	122	1.7%
3 <sup>rd</sup> Quarter 2019	122	11	10	123	0.8%
4 <sup>th</sup> Quarter 2019	123	23	20	126	2.4%
<b>1<sup>st</sup> Quarter 2020</b>	<b>122</b>	<b>5</b>	<b>8</b>	<b>119</b>	<b>-2.5%</b>
<b>2<sup>nd</sup> Quarter 2020</b>	<b>119</b>	<b>21</b>	<b>23</b>	<b>117</b>	<b>-1.7%</b>
<b>3<sup>rd</sup> Quarter 2020</b>	<b>115</b>	<b>3</b>	<b>6</b>	<b>114</b>	<b>-0.9%</b>
<b>4<sup>th</sup> Quarter 2020</b>	<b>114</b>	<b>6</b>	<b>3</b>	<b>117</b>	<b>2.6%</b>

**VIII. Time to Serve Respondents**

As can be seen in the following chart, the length of time the Department took to serve Respondents after the APU filed charges with the Charges Unit increased between the fourth quarter of 2019 and fourth quarter of 2020. As of December 31, 2020, there were seven (7) Respondents who had not been served with Charges

In March 2020, the COVID-19 global pandemic began to take a significant toll on all New Yorkers. Governor Cuomo passed executive orders that mandated a significant change

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<sup>20</sup> The number of cases in the open docket were updated to reflect additional data received from the Department with regards to the closure of long-standing cases.

in work force levels throughout all city agencies.<sup>21</sup> Most agencies shifted to remote working environments to prevent the further loss of human life from the disease. As a result, the average wait time for Respondents to be served charges increased from the fourth quarter of 2019 at sixty-eight (68) days to one hundred twenty-nine (129) days by the end of the first quarter of 2020. By the fourth quarter of 2020 the time for charges to be served went down to seventy-one (71) days. We expect that until the pandemic is under control, there will be fluctuations in the time to serve Respondents.

<b>Time to Serve Respondents</b>			
<b>Period</b>	<b>Number of Respondents</b>	<b>Average Length to Serve</b>	<b>Average Length to Serve Respondents (Business</b>
4 <sup>th</sup> Quarter 2017	9	44	33
1 <sup>st</sup> Quarter 2018	7	80	58
2 <sup>nd</sup> Quarter 2018	15	132	95
3 <sup>rd</sup> Quarter 2018	17	89	63
4 <sup>th</sup> Quarter 2018	15	105	75
1 <sup>st</sup> Quarter 2019	24	115	82
2 <sup>nd</sup> Quarter 2019	11	76	54
3 <sup>rd</sup> Quarter 2019	17	67	48
4 <sup>th</sup> Quarter 2019	7	68	48
<b>1<sup>st</sup> Quarter 2020</b>	<b>10</b>	<b>129</b>	<b>92</b>
<b>2<sup>nd</sup> Quarter 2020</b>	<b>18</b>	<b>62</b>	<b>44</b>
<b>3<sup>rd</sup> Quarter 2020</b>	<b>16</b>	<b>88</b>	<b>63</b>
<b>4<sup>th</sup> Quarter 2020</b>	<b>6</b>	<b>71</b>	<b>51</b>

The implementation of a new disciplinary matrix in 2021 should streamline disciplinary penalties for instances of police misconduct and lead to an increase in concurrence between the CCRB and the NYPD. We also expect that some instances of misconduct will result in higher baseline penalties than previous precedent cases would ordinarily suggest. The DCT and ADCT must be also be aware that the disciplinary matrix will have an impact on penalties that they recommend in their rulings. The vacatur of the stay in the federal litigation regarding what information can be disclosed regarding law enforcement employees will also improve the Agency’s ability to provide more complete information in our future reports and ensure that the public has access to crucial data regarding the quality of policing in their neighborhoods.

Thank you for your consideration.

<sup>21</sup> <https://www.governor.ny.gov/news/no-2021-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

Sincerely,

A handwritten signature in black ink, appearing to read 'JD', is positioned above the typed name.

Jonathan Darche  
Executive Director

Cc: CCRB Chair Frederick Davie  
Deputy Commissioner Rosemarie Maldonado  
Department Advocate Chief Amy Litwin