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FREDERICK DAVIE
CHAIR

June 5, 2020

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”) Second and Third Quarters of 2019**

Dear Commissioner Shea:

This report will address the following matters: (i) seven (7) guilty verdicts issued by an Assistant Deputy Commissioner of Trials (“ADCT”); (ii) the retention of four (4) cases under Provision Two of the April 2, 2012 Memorandum of Understanding (“MOU”); (iii) the treatment of APU pleas by former Police Commissioner James O’Neill; (iv) the dismissal of cases by the APU; (v) cases administratively closed by former Commissioner O’Neill; (vi) the size of the APU’s docket; and (vii) the length of time to serve Respondents.

While this report reflects decisions made by your predecessor, Commissioner O’Neill, the Civilian Complaint Review Board (“CCRB”) believes that it is important for you to be aware of these instances of misconduct and the lack of concurrence between our two agencies. We look forward to continuing to work with you to hold officers accountable when they have committed misconduct, and to increasing concurrence under your leadership.

i. **Guilty Verdicts Upheld by the Police Commissioner**

In the second and third quarters of 2019, eleven (11) verdicts for APU trials conducted before an ADCT were finalized. The APU treats each officer against whom an allegation is substantiated as a separate case.¹ Of the eleven (11) cases, seven (7) resulted in guilty verdicts and four (4) cases resulted in not guilty verdicts, all upheld by Commissioner O’Neill.² Of those guilty

¹ Because the APU treats each officer as a separate “case,” 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 a “case against a single officer.”

² 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; NY City Charter § 440; 38 RCNY 15-12; 38 RCNY 15-17; 38 RCNY 1-46.

verdicts, one (1) case resulted in a penalty of termination. The guilty verdicts are discussed further below:

Case One, Guilty Verdict, Penalty Upheld

On July 17, 2014, the Respondent, Police Officer Daniel Pantaleo, and his partner, approached the Victim, Eric Garner, to arrest him for the nonviolent misdemeanor offense of selling loose cigarettes. While trying to effect the arrest, Officer Pantaleo placed Mr. Garner in a prohibited chokehold. Officer Pantaleo clasped his right hand with his left hand, while his arm was around Mr. Garner's neck, and pulled back. After Officer Pantaleo released Mr. Garner's neck, Mr. Garner, who was laying prone on the ground, gasped "I can't breathe," eleven times before eventually falling silent.

During this time, a Sergeant and other members of service arrived on scene. Officers joined three handcuffs together to secure Mr. Garner before moving him from the prone position to his side. Mr. Garner was unresponsive and one of the officers called for someone to notify EMS. Shortly thereafter, a second Sergeant arrived on scene. He made a second call to EMS and instructed Officer Pantaleo's partner to search Mr. Garner. Pantaleo's partner recovered four sealed packs of cigarettes and a fifth open pack containing 15 cigarettes from Mr. Garner's left pocket. After EMS arrived, the second Sergeant briefly went to the hospital before returning to the precinct and advising his Commanding Officer that it "doesn't look good." He texted a Lieutenant to inform him that Mr. Garner had "resisted" and "might be DOA." The Lieutenant replied to the Sergeant, "Ok, keep me posted...Not a big deal, we were effecting a lawf[ul] arrest." At trial, the Lieutenant explained his intent was not to minimize the significance of a civilian's death, but to put the officers' "mind[s] at ease" after a "bad situation." Shortly thereafter, Officer Pantaleo advised the second Sergeant that Mr. Garner was pronounced dead.

When Pantaleo's partner processed the arrest paperwork, he entered "No" in the field labeled "Force used." He also cited the felony section of New York Tax Law § 1814(A) as the "top" charge against Mr. Garner, although this section is only violated if taxes are evaded on 10,000 or more cigarettes. At trial, Pantaleo's partner confirmed that Mr. Garner did not possess the quantity of tobacco necessary for a felony charge.

Video footage depicted Officer Pantaleo using and maintaining a chokehold while Mr. Garner was off balance and on the ground. The Board substantiated one (1) allegation against Officer Pantaleo for Use of Force in the form of a chokehold. Officer Pantaleo's departmental trial was deferred at the request of the Department of Justice ("DOJ") while it conducted its own investigation. In July 2018, the APU filed and served two (2) charges against Officer Pantaleo: one (1) charge for Use of Force (Chokehold) and one (1) charge for Use of Force (Restricted Breathing).

During the trial, Dr. Floriana Persechino, a medical examiner with the Office of the Chief Medical Examiner of New York City who performed Mr. Garner's autopsy, testified that she found deep-layered bruising and hemorrhaging on Mr. Garner's neck strap muscles. Relying on over 20 years of expertise, Dr. Persechino concluded that the cause of Mr. Garner's death was neck compression by chokehold, chest compression, and prone positioning during physical restraint by

police, and that the manner of death was homicide. The First Deputy Chief Medical Examiner concurred with Dr. Persechino's conclusion that compression of the neck and prone positioning "set in motion a lethal chain of events."

The lead Internal Affairs Bureau ("IAB") investigator testified that Deputy Inspector Charles Barton had requested that Charges and Specifications be filed against Officer Pantaleo for placing Mr. Garner in a chokehold. The Commanding Officer of the New York City Police Department ("NYPD") Recruit Training Section, Inspector Richard Dee, testified that Officer Pantaleo received training that chokeholds were potentially lethal and strictly prohibited, including in multiple modules in both classroom lessons and tactical training in the gym. He noted that Officer Pantaleo also received a Student Guide that "supplement[ed] and further explain[ed] the [relevant] guidelines and the Patrol Guide." Training materials provided strongly-worded and repeated warnings about the potentially lethal effects of chokeholds. Officer Pantaleo submitted the transcript from his IAB interview in lieu of testifying in person. In the transcript, Officer Pantaleo admitted that he was aware that chokeholds were prohibited by the Department. When asked specifically about his understanding of this policy, he replied, "That we are not to use them."

After trial, Deputy Commissioner of Trials ("DCT") Rosemarie Maldonado found Officer Pantaleo guilty of Count 1: Use of Force (Chokehold), and not guilty of Count 2: Use of Force (Restricted Breathing), and recommended that he be dismissed from the NYPD. DCT Maldonado found that there was "overwhelming evidence" that Officer Pantaleo used a prohibited chokehold, that his actions were reckless and constituted a gross deviation from the standard of conduct of a NYPD officer, and that his denial that he used a chokehold was "both implausible and self-serving." DCT Maldonado determined, with respect to Count 2, that the record failed to establish that Officer Pantaleo intended to impede Mr. Garner's breathing. In coming to her decision, DCT Maldonado cited cell phone video footage of the incident, in conjunction with the uncontested autopsy findings that the hemorrhaging across multiple layers of Mr. Garner's neck muscles was caused by the application of pressure to his neck. Commissioner O'Neill approved DCT Maldonado's recommendation and imposed a penalty of termination.

Case Two, Guilty Verdict, Penalty Upheld

Complainant 1 was driving with his girlfriend and his friend, Complainant 2, when he got into a traffic dispute with the Respondent, who was off-duty and not in uniform. After cutting off each other's vehicles in traffic, the Respondent followed Complainant 1 until both cars pulled over. Complainant 1 and the Respondent were arguing on the street when the Respondent struck Complainant 1 in the center of his throat. The Respondent then struck Complainant 1 on the back of his neck with a metal object that Complainant 1 believed to be a handgun. Complainant 1 stumbled backward and saw the Respondent with his arm extended, pointing a firearm at him. The Respondent instructed Complainant 1 and his companions to get in their car and leave the location. The Respondent stated he was "law enforcement" and threatened to shoot Complainant 1 and Complainant 2. Complainant 1 asked the Respondent for his name and shield number, but the Respondent did not supply the information. During this time, multiple 911 calls were made regarding the incident and officers responded. The Complainants were brought to the stationhouse, and Complainant 1 was eventually arrested for allegedly not doing "what the Captain wanted you to do."

The Board substantiated five (5) total allegations: two (2) Use of Force allegations against the Respondent for pointing his gun at the two Complainants, one (1) Use of Force allegation for striking Complainant 1 with his gun, and two (2) Abuse of Authority allegations for refusal to provide his name and shield. The APU filed and served Charges and Specifications with a penalty recommendation of thirty (30) days' vacation forfeiture and one (1) year dismissal probation.³ The ADCT found the Respondent guilty of two (2) counts: wrongfully using force by pointing his gun at Complainant 1, and striking Complainant 1 with his gun, and not guilty on the remaining three counts. The ADCT made the same penalty recommendation as the Board, explaining that while the Court was mindful of the Respondent's years of service and recognized his job performance, the situation was "largely one of Respondent's own making" in that he "badly overreacted to a road dispute." Commissioner O'Neill approved the ADCT's recommendation as written and imposed the recommended penalty.

Case Three, Guilty Verdict, ADCT Penalty Upheld⁴

The Respondent and three other officers went to the Complainant's residence in response to a complaint that there were marijuana plants growing inside of the location. The Respondent knocked on the front door and the Victim, the Complainant's son, answered. The Respondent told him that there was a gas leak at a nearby house and stated that the officers needed to enter the house to evacuate everyone. The Victim replied that there was a dog in the house and that he first needed to put the dog away, to which the Respondent replied, "Put the dog away or otherwise there'll be casualties inside the house." The Victim yelled for the Complainant to come to the door. By the time the Complainant got to the door, however, the Respondent and other officers had already entered the house. The Respondent did not have a search warrant and had not requested consent to enter or search from anyone at the residence. The Respondent reiterated to the Complainant that there was a gas leak at a nearby house, and added, as he walked further into the house, that he smelled an odor of marijuana. The Respondent subsequently recovered marijuana plants from the residence.

The Board substantiated three (3) Abuse of Authority allegations for the unlawful entry, the unlawful search, and the threat to kill the Complainant's dog. The APU filed and served Charges and Specifications with a penalty recommendation of twenty (20) days' vacation forfeiture. The ADCT found the Respondent guilty of the unlawful entry and the unlawful search, and not guilty of the remaining charge. The ADCT recommended a penalty of fifteen (15) days' vacation forfeiture, explaining that while the Respondent's actions were "deliberate and cavalier," due to the acquittal of the third charge, twenty (20) days would be "excessive." Commissioner O'Neill approved the ADCT's recommendation as written and imposed the recommended penalty of fifteen (15) days' vacation forfeiture.

Case Four, Guilty Verdict, Penalty Upheld

³ 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.

⁴ 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.

At approximately 12:25 a.m., the Complainant, an 18-year old black male, was standing on the corner waiting for his girlfriend. The Respondent, who was in an unmarked vehicle with two other plainclothes Anti-Crime officers, exited the vehicle and stopped the Complainant. The officers did not identify themselves. At the time, the Complainant had a phone in his right hand, which he promptly placed into his right pants pocket. One of the officers grabbed the Complainant's left arm and tried to pull him, but the Complainant, who did not realize the men were police officers, pulled free. In response, the Respondent swung his right fist, making contact with the area around the Complainant's right jaw and lower lip. The Respondent then placed his right forearm against the Complainant's throat and pushed the Complainant's back onto a street pole. The Respondent held his forearm against the Complainant's throat for about 20-30 seconds, making it difficult for the Complainant to breathe and speak. The Respondent frisked the Complainant's pants pockets, but only found a phone and a set of keys. The Complainant repeatedly asked the Respondent for his name and shield number, but the Respondent did not provide it. The Respondent told the Complainant they were looking for a gun and returned to his car. The Complainant followed the Respondent to his car and grabbed the driver's side window to prevent the officers from leaving. The Respondent told the Complainant to get away from the vehicle and pushed him in his upper chest area beneath his throat. The officers then drove away from the location.

The Board substantiated seven (7) allegations against the Respondent and recommended Charges and Specifications for one (1) allegation of Wrongful Force for using a chokehold against the Complainant, one (1) allegation of Wrongful Force for restricting the Complainant's breathing, two (2) allegations of Wrongful Force for striking the Complainant in the face and chest, one (1) Discourtesy allegation for failure to provide his name and shield, and two (2) allegations of Abuse of Authority for stopping and frisking the Complainant without sufficient legal authority. At trial, the Respondent testified that he was assigned that night to an area where there had been a spike in violent felonies, including shootings. Prior to stopping the Complainant, the Respondent and his team were flagged down by an older man who told the officers that a child was on the next corner with a gun, while pointing to the next intersection. When the officers arrived at the intersection, they saw the Complainant, who was the only person present. The older man, who was previously unknown to the Respondent, did not appear intoxicated or unreliable, but the Respondent conceded that the officers did not get the man's name or further details about the individual with a gun. The Respondent also acknowledged that he wrote in his memo book that the tip was for a "male" with a gun, rather than a "kid." The ADCT found the Respondent guilty of all charges except the stop-and-frisk, stating that the tip from the older man, the Complainant's act of placing an object in his pants pocket, and the high-crime location, provided reasonable suspicion for the stop-and-frisk. The ADCT accepted APU's recommended penalty of fifteen (15) days' vacation forfeiture. Commissioner O'Neill approved the recommendation of the ADCT as written and imposed the recommended penalty.

Case Five, Guilty Verdict, ADCT Penalty Upheld⁵

Respondent and his partner, both Public Service Area officers, went to an apartment building they believed employed a person of interest in a domestic violence case. When they arrived, they spoke to the Complainant, a building employee, and asked him where they might find

⁵Although 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.

the person of interest. The Complainant replied that he did not know, but offered to call the person from his own cell phone and let the officer speak to him. The person of interest told the Respondent on the phone that he was not in the building and would not be there for a number of hours. The officers left.

Out of the Complainant's presence, the Respondent called the person of interest's supervisor, who worked off-site. The supervisor told the Respondent that the person of interest was scheduled to be at work. The officers then went back to the Complainant and accused him of preventing them from arresting the person of interest. The Respondent told the Complainant to text message the person of interest and tell him that the officers had left, in an effort to lure him to the location. When the Complainant refused to comply with this directive, the Respondent accused him of "hindering prosecution" and placed him under arrest. The Respondent frisked and searched the Complainant. The Respondent seized the Complainant's phone and sent the text message he had told Complainant to send moments earlier. The officers then waited in the lobby with the Complainant until the person of interest showed up a few minutes later. The Complainant was then released without being summonsed. Video cameras from the lobby of the building captured the incident.

The Board substantiated seven (7) Abuse of Authority allegations against the Respondent for the stop, arrest, frisk and search of the Complainant, and seizure and search of the Complainant's phone. The APU filed and served Charges and Specifications, with a penalty recommendation of fifteen (15) days' vacation forfeiture. The ADCT found that there was no probable cause to arrest the Complainant, and thus the Respondent's stop, arrest and frisk of the Complainant, search of the Complainant's person, and seizure of his phone were conducted without sufficient legal authority. The ADCT found the Respondent guilty of all Charges and Specifications and recommended a penalty of ten (10) days' vacation forfeiture, taking into account the Respondent's "excellent" service history. Commissioner O'Neill approved the ADCT's recommendation and imposed the recommended penalty.

Cases Six and Seven, Guilty Verdict, ADCT Penalty Upheld⁶

The Complainant, a Black male, and the Victim, a Hispanic male, were waiting for the bus at 3:30 p.m., when a black, unmarked vehicle pulled up and plainclothes narcotics officers exited the vehicle and approached them. Two (2) Respondents questioned the Victim about whether he had just thrown something. Respondent 1 stated that he had observed, from a moving vehicle at least 100 feet away, the Victim smoking "something," which the officer believed may have been narcotics or a cigarette, and then throwing the unidentified object. None of the other officers on scene observed either the Complainant or the Victim smoking prior to the stop. While Respondent 2 observed the Victim make a motion as if he may have thrown something, Respondent 2 stated that the motion could have been innocuous. There were no additional factors that would have provided the officers with reasonable suspicion for the stop. The Board substantiated two (2) Abuse of Authority allegations against the Respondents for stopping the Complainant and Victim. The APU filed and served Charges and Specifications with a penalty recommendation of five (5) days' vacation forfeiture. The ADCT found the Respondents guilty, but after examining

⁶ 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.

Respondents' service records, recommended the forfeiture of four (4) vacation days. Commissioner O'Neill affirmed the trial decision and imposed a penalty of forfeiture of four (4) vacation days.

ii. Cases Retained by the Police Commissioner

The Police Commissioner retained five (5) cases pursuant to Provision Two of the MOU between the CCRB and NYPD in the second and third quarters of 2019.

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.

Case One, Retained with Discipline

Officers responded to a 911 call from the Victim's girlfriend, who stated that the Victim was attempting to kill himself. The Victim acknowledged that he told the officers that he was sometimes suicidal and that he refused to be taken to the hospital voluntarily. Body-worn camera ("BWC") footage captured the Respondent discouraging the Victim from committing suicide by telling the Victim he was, "fucking young, in shape, and all." Respondent also told the Victim, "I'm not gonna bullshit you. You gotta go to the hospital." The Victim continued to refuse to comply, and the officers used force to handcuff him and bring him to an ambulance. BWC footage showed the Respondent grabbing the Victim by his collar and pushing him against the interior of the ambulance. At the time, the Victim was being held by his arm by another officer, handcuffed, motionless, and not offering any physical resistance. The Respondent instructed the Victim to "calm the fuck down" and told him that he was "being a retard." The Victim was sent to the hospital.

The Board substantiated three (3) allegations against the Respondent and recommended Charges and Specifications for one (1) allegation of Discourteous Language, one (1) allegation of Offensive Language relating to the Victim's physical disability, and one (1) allegation of Wrongful Use of Force. Commissioner O'Neill retained the case and instead imposed Instructions on the Respondent for the use of the word "retard." Noting the Respondent had no disciplinary history and no prior substantiated CCRB Complaints, he cited a belief that Charges and Specifications would be detrimental to the Department's disciplinary process.

Case Two, Retained with Discipline

Officers responded to the Victim's residence in response to a dispute. While speaking to the Victim, a transgender woman, the Respondent addressed the Victim as "he" and "sir" three times. Each time the Respondent used the wrong pronoun, the Victim corrected the Respondent with "she" and "her," and the Respondent replied by saying "he." In his initial CCRB interview, the Respondent stated that he did not recall the complainant's gender, but when asked what the complainant said to him, the Respondent stated, "he got into a fight with the other individual." During a subsequent interview, the Respondent stated that he was aware that the complainant was a transgender individual, but he did not recall when or how he received this information. In contrast, the Respondent's partner stated to the CCRB that the Victim identified herself as a "transsexual" woman multiple times during the incident. The Victim's account of where she was lodged inside the stationhouse was consistent with the officers' account of where a female prisoner is generally lodged. Police documents prepared by the Respondent listed the Victim's gender as male.

The Board substantiated one (1) allegation of Offensive Language relating to the Victim's gender against the Respondent and recommended Charges and Specifications. Commissioner O'Neill retained the case and imposed Command Discipline A to the Respondent, stating that, as the Respondent had no disciplinary history and no prior substantiated CCRB complaints, the pursuit of Charges and Specifications would be detrimental to the Department's disciplinary process.

Case Three, Retained with Discipline

Officers arrested Complainant 1 for unlawful possession of marijuana and Complainant 2 for driving without a license and speeding. Complainant 1 was taken to an area with empty individual holding cells, ordered to remove all of his clothing, and then asked to squat and cough three times. A Detective also cupped his testicles and told him to cough. Complainant 2 was taken to a cell area, ordered to remove all of his clothing, and then told to squat, cough, and bend down. Officers visually inspected Complainant 2's mouth and rectal area. No narcotics were recovered.

The Respondent, the supervising officer on scene, authorized the strip searches based solely on the fact that a confidential informant had said they were going to buy cocaine from Complainant 2, but no cocaine had been recovered. The Board substantiated two (2) allegations of Abuse of Authority for the strip searches conducted on Complainants 1 and 2. Noting that the Respondent had no disciplinary history and no prior substantiated CCRB complaints, Commissioner O'Neill retained the case and imposed Command Discipline A on the Respondent, stating that the pursuit of Charges and Specifications would be detrimental to the Department's disciplinary process.

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Respondent, while trying to clear a group of protesters at a rally, used a chokehold against two protesters, Victim 1 and Victim 2. Unedited cell phone footage captured the Respondent using his hands to grab Victims 1 and 2 by their necks and pushing them back by their throats—potentially hindering the Victims' breathing and/or reducing their intake of air. Victim 1 stated that the Respondent wrapped both of his hands around his neck, squeezed his neck, and pushed him backwards by his neck. Victim 2 stated that he was standing with other protestors when the

Respondent approached him and grabbed the front of his throat directly under his chin. The CCRB interviewed six bystander witnesses, three of whom confirmed that they saw the Respondent use a chokehold against Victim 2. During his CCRB interview, the Respondent denied grabbing the Victims by the throat or placing any civilian in a chokehold. Upon review of the video file showing the incidents, the Respondent claimed that he could not recall the interaction depicted.

The Board substantiated two (2) Force allegations against the Respondent for the use of chokeholds against the Complainants. Charges and Specifications for two counts of Use of Force were filed and served. Commissioner O'Neill retained the case pending a concurrent IAB investigation. The Respondent pled guilty to the IAB allegations and Commissioner O'Neill imposed a penalty of forfeiture of thirty (30) vacation days.

Case Five, Retained with Discipline

The Respondent and his partner responded to a 911 call for a stolen vehicle. BWCs captured the incident. Complainant 1 told the officers that her ex-boyfriend, Complainant 2, had stolen her mother's car. Complainant 1 and the officers then went to a second location, where they found Complainant 2 sleeping inside of the vehicle. The Respondent shouted at Complainant 1 to "Back the fuck up," then pulled Complainant 2, who remained asleep, out of the vehicle by his left hand, causing him to land on the pavement. While handcuffed on the ground, Complainant 2 spat. The Respondent told him, "Do that again, I swear, I will fuck you up. I will bust the shit out [of] you. Spit on me again, I will fuck you up." Complainant 2 spat again. The Respondent punched Complainant 2 in his face twice. The Respondent told Complainant 1, "Why when y'all come to court, it's nigga this, nigga that? He didn't say that? I said stay back, stay back. Shut the fuck up nigga. That's what he said." The Respondent then said to Complainant 2, "Never mind no fucking badge. He ain't spitting in my fucking face."

The Board substantiated two (2) Force allegations, three (3) Discourtesy allegations, and one (1) Offensive Language: Race allegation against the Respondent and recommended Charges and Specifications. Commissioner O'Neill retained the case pending a concurrent IAB investigation. The NYPD subsequently charged, and the Respondent pled guilty to, two (2) Force allegations and one (1) Discourtesy allegation. Commissioner O'Neill imposed a penalty of twenty-five (25) days pre-trial suspension without pay, and forfeiture of five (5) vacation days.

iii. Treatment of APU Pleas

In the second and third quarters of 2019, the Department finalized seven (7) pleas. The APU makes penalty recommendations to the DCT 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.

Pleas Closed				
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
2 nd Quarter 2016	20	2	12	2
3 rd Quarter 2016	22	0	4	2
4 th Quarter 2016	17	1	2	0
1 st Quarter 2017	13	0	1	0
2 nd Quarter 2017	5	0	0	0
3 rd Quarter 2017	3	1	1	3
4 th Quarter 2017	2	5	3	0
1 st Quarter 2018	6	7	1	0
2 nd Quarter 2018	0	1	0	0
3 rd Quarter 2018	6	0	0	0
4 th Quarter 2018	4	0	0	0
1 st Quarter 2019	1	0	0	0
2nd Quarter 2019	4	0	0	0
3rd Quarter 2019	2	1	0	0

As seen in the chart above, Commissioner O’Neill approved the penalty agreed to by the CCRB in six (6) pleas and reduced the penalty in one (1) plea. During its review of cases, the CCRB identified two (2) additional reduced-penalty pleas from the second quarter of 2018 that were not included in the original status report.⁷

Case One, Resolved by Plea, Penalty Downgrade

The Complainant, a Black male, and the Victim, a Hispanic male, were waiting for the bus when they were stopped by two narcotics officers (referenced in Sec. i, Guilty Verdicts Cases Six and Seven). Shortly thereafter, a second unmarked vehicle arrived, and the Respondent, the supervisor on scene, and three other plainclothes narcotics officers exited an unmarked vehicle and approached the Victim and Complainant. The investigation found that, at the time, the officers had no reason to suspect that the Victim or Complainant were armed, or that they posed a threat to the officers’ safety. The officers also did not have probable cause to arrest the Complainant and Victim. Despite this, the Respondent supervised the search of the Complainant’s pockets and removal of his ID, as well as the frisk and search of the Victim. During his CCRB interview, the Respondent denied supervising these actions.

The Board substantiated three (3) Abuse of Authority allegations against the Respondent for conducting an unlawful frisk and two unlawful searches. The Respondent pleaded guilty and

⁷ CCRB, Report on the Administrative Prosecution Unit (“APU”) Second Quarter of 2018 (Mar. 12, 2019), https://www1.nyc.gov/assets/ccrb/downloads/pdf/prosecution_pdf/apu_quarterly_reports/20190312_APU_2Q18.pdf

agreed to accept ten (10) days' vacation forfeiture. Commissioner O'Neill set aside the negotiated plea and instead imposed four (4) days' vacation forfeiture, which he stated was more consistent with penalties previously imposed for similar misconduct.

Case Two, Penalty Downgrade*

The Complainant was walking to a doctor's appointment when he was stopped by the Respondent and two plainclothes narcotics detectives for suspicion of criminal possession of a controlled substance. Although the Respondent did not see the Complainant carrying or exchanging any drugs or contraband, and could only point to the Complainant's innocuous activity of walking to and from a phone booth, the Respondent tightly handcuffed the Complainant, fracturing his wrist. At the time, the Complainant was not under arrest, and the Respondent had no reason to believe that the Complainant was armed, dangerous, or intending to flee. The officers were standing in close proximity to the Complainant, who stated that he unintentionally spit on the officers while speaking quickly to them. In response, the Respondent told the Complainant to stop spitting or else he would be arrested. The Respondent then searched the Complainant's pockets and bags for drugs.

The Board substantiated four (4) allegations against the Respondent for Abusing his Authority by stopping, searching, and threatening to arrest the Complainant, and for Wrongfully using Force by tightly handcuffing the complainant. The Respondent pleaded guilty and agreed to accept twenty (20) days' vacation forfeiture. Commissioner O'Neill disapproved the plea agreement and ordered the renegotiation of the plea agreement with ten (10) days' vacation forfeiture. The stated reasoning was that the penalty was excessive in addressing the cited incidents of misconduct.

Case Three, Penalty Downgrade**

The Complainant and Victim were standing separately in front of a shopping center, when they were approached by the Respondent, an Anti-Crime officer in plainclothes. Video footage showed the Respondent frisking the Victim and searching the Victim's backpack by opening multiple zippers and reaching inside. The video also captured the Respondent moving his arms up and down the Complainant's side, and then grabbing the Complainant's open jacket and feeling the interior of the jacket. The Respondent stated that he frisked the Complainant because he saw a bulge in the Complainant's pocket, and due to his prior knowledge of the Complainant, he believed that the bulge could be a weapon. He denied searching the Complainant or frisking or searching the Victim. The Complainant asked the Respondent for his shield number multiple times before the Respondent eventually pushed his shield toward the Complainant's face. There was evidence to suggest the Respondent provided a false official statement to the CCRB as he denied frisking and searching the Victim and searching the Complainant in order to evade discipline.

The Board substantiated two (2) Abuse of Authority allegations for the frisk and search of the Complainant, and the frisk and search of the Victim, and one (1) allegation of Discourtesy toward the Complainant. The Respondent pled guilty and agreed to accept twenty-five (25) days' vacation forfeiture. Commissioner O'Neill disapproved the plea agreement because it was

excessive and ordered the renegotiation of the plea agreement with ten (10) days' vacation forfeiture.

iv. 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 the second or third quarters of 2019.

v. Cases Administratively Closed by the Police Commissioner

In the second and third quarters of 2019, the Police Commissioner administratively closed two (2) cases.⁸

Case One, Administratively Closed

The Respondent was assigned to a domestic violence case involving the Complainant and her ex-boyfriend. After interviewing the Complainant in person, the Respondent engaged in a text message conversation with the Complainant to ask follow-up questions. The Respondent inquired about the Complainant's career field, and the Complainant informed him that she was a chemical/biological engineer, to which the Respondent replied, "Oh wow hot scientist."

The Board substantiated one (1) Abuse of Authority allegation for a sexually suggestive remark made to the Complainant, and recommended Charges and Specifications. The allegation was separately investigated by IAB, which substantiated one (1) allegation of Sexually-Motivated Verbal Harassment, and one (1) Abuse of Authority allegation for sexually-motivated verbal harassment. The Respondent was instructed that "all MOS have a duty to uphold the standards of professionalism, courtesy and respect to all individuals that they encounter in the course of performing their duties." The Respondent was informed that, "The text messages were inappropriate and did not conform to the NYPD standards of professionalism, courtesy and respect, and that any misconduct of the nature will not be tolerated." The CCRB Charges and Specifications were administratively closed by the Department Advocate's Office because the case was handled at the borough level.

vi. The APU's Docket

⁸ The second case was closed administratively by the Department because they received Charges and Specifications from the APU days before the statute of limitations expired, and as such were unable to serve the Respondent.

*These cases will also be added as an Addendum to APU report 2Q18.

**This incident was previously described in APU 2Q18, Case One, Penalty Downgrade, where a co-Respondent's penalty was also downgraded by Commissioner O'Neill. The Board substantiated three (3) allegations against the co-Respondent for abusing his authority in stopping, frisking and searching a separate Victim without sufficient legal authority.

As seen in the following table, the APU’s docket saw a slight growth in the second and third quarters of 2019, following a significant increase in the first quarter of 2019. The APU’s docket increased from a total of one hundred twenty-two (122) cases in the second quarter of 2019, to a total of one hundred twenty-three (123) cases in the third quarter of 2019. This general increase in 2019 is due to the January 2018 implementation of a Discipline Framework pilot program, which has the goal of creating more consistent discipline recommendations from the Board. Since the implementation of the program, the Board has recommended Charges and Specifications at a rate just below the statistical average over the past five (5) years, or since the formation of the APU.⁹

Cases in Open Docket¹⁰					
Period	Start of Quarter	Received During Quarter	Closed During Quarter	End of Quarter	Growth
2 nd Quarter 2016	334	16	89	261	-21.9%
3 rd Quarter 2016	261	15	66	207	-20.7%
4 th Quarter 2016	207	7	53	161	-22.2%
1 st Quarter 2017	161	5	37	129	-19.9%
2 nd Quarter 2017	129	11	24	116	-10.1%
3 rd Quarter 2017	116	14	23	106	-8.6%
4 th Quarter 2017	106	11	35	82	-22.6%
1 st Quarter 2018	82	28	22	88	7.3%
2 nd Quarter 2018	88	21	10	99	12.5%
3 rd Quarter 2018	99	11	17	93	-6.1%
4 th Quarter 2018	93	16	12	97	4.3%
1 st Quarter 2019	97	28	5	120	23.7%
2nd Quarter 2019	120	22	20	122	1.7%
3rd Quarter 2019	122	11	10	123	0.8%

vii. 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 and Specifications with the Charges Unit decreased significantly between the first and third quarters of 2019.

As of September 30, 2019, there were seventeen (17) Respondents who had not been served with Charges and Specifications. In the third quarter of 2019, it took an average of sixty-seven (67) days for Respondents to be served with Charges and Specifications. This marks an

⁹ See Civilian Complaint Review Board Memorandum Accompanying August 8, 2018 Public Presentation of CCRB’s Disciplinary Framework (Aug. 14, 2018, 4:46 PM), https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/board/20180808_disciplinaryframework_memo.pdf.

¹⁰ The number of cases in the open docket has been updated to reflect additional data received from the Department regarding the closure of long-standing cases.

improvement from the first and second quarters of 2019, when an average of seventy-six (76) days elapsed before Charges and Specifications were served. In the first quarter of 2019, there were twenty-four (24) Respondents who were not served with Charges and Specifications, and the average length of time for service was one hundred fifteen (115) days.

Time to Serve Respondents			
Period	Number of Respondents Served	Average Length to Serve Respondents	Average Length to Serve Respondents (Business Days)
2 nd Quarter 2016	27	182*	131
3 rd Quarter 2016	26	121*	87
4 th Quarter 2016	15	108*	78
1 st Quarter 2017	3	42	31
2 nd Quarter 2017	0	N/A	N/A
3 rd Quarter 2017	2	37	27
4 th Quarter 2017	9	44	33
1 st Quarter 2018	7	80	58
2 nd Quarter 2018	15	132	95
3 rd Quarter 2018	17	89	63
4 th Quarter 2018	15	105	75
1 st Quarter 2019	24	115	82
2nd Quarter 2019	11	76	54
3rd Quarter 2019	17	67	48
* In 2016, there was an increase in the number of cases where the Department requested reconsideration of cases where the Board substantiated Charges and Specifications, which led to an increase in the length of time it took the Department to serve Respondents.			

This report highlights the impact Civil Rights Law § 50-a (“50-a”) has on the amount of information the Agency can release to the public. 50-a prohibits the public disclosure of “personnel records”—such as disciplinary records—of police officers, firefighters, and corrections officers, among others.¹¹ This means that under the current interpretation of the law, the CCRB can only provide limited information regarding its cases. However, as highlighted by the description of Officer Pantaleo’s case in this report, without the limitations of 50-a, the CCRB would be able to provide the public with greater information about each case, the investigative process, and the trial. Officer Pantaleo’s trial was exceptional because it was so widely reported by the media, enabling

¹¹ New York State Civil Rights Law § 50-a, available at <https://www.nysenate.gov/legislation/laws/CVR/50-A>.

the CCRB to report on the case without violating 50-a.¹² As noted by a New York Appellate Court, “CCRB findings and recommendations are clearly of significance to superiors in evaluating police officers’ performance.”¹³ The Board Chair, along with several members of the Board, have publicly commented on the need for a full repeal of 50-a as it is important for promoting greater transparency and oversight of the NYPD.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Darche', is positioned above a thin horizontal line.

Jonathan Darche
Executive Director

Cc: CCRB Chair Frederick Davie
Deputy Commissioner Rosemarie Maldonado
Deputy Commissioner Kevin Richardson

¹² Southall, Ashley. “Officer in ‘I Can’t Breathe’ Chokehold Was ‘Untruthful,’ Judge Says.” The New York Times, 18 Aug. 2019.

¹³ *Luongo v. Records Access Officer, Civilian Complaint Review Bd.*, 150 A.D.3d 13, 22 (1st Dept. 2017).