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FREDERICK DAVIE
CHAIR

February 26, 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
Fourth Quarter of 2019**

Dear Commissioner Shea:

This report will address the following matters: (I) one (1) guilty verdict reversed by Police Commissioner Dermot Shea (II) seven (7) guilty verdicts upheld by Police Commissioner James O’Neill (III) seven (7) not guilty verdicts upheld by Commissioner O’Neill; (IV) the retention of two (2) cases under Provision Two of the April 2, 2012 Memorandum of Understanding (“MOU”); (V) the treatment of Administrative Prosecution Unit (“APU”) pleas by Commissioner O’Neill; (VI) the dismissal of cases by the APU; (VII) cases administratively closed by Commissioner O’Neill; (VIII) the size of the APU's docket; and (IX) the length of time to serve Respondents.

While the majority of this report reflects decisions made by your predecessor, Commissioner O’Neill, the Civilian Complaint Review Board (“CCRB”) believes it is important for you to be aware of these instances of misconduct, how the Deputy Commissioner of Trials (“DCT”) or an Assistant Deputy Commissioners of Trial (“ADCT”) have rendered decisions, and the lack of concurrence between the APU and DCT/ADCT penalty recommendations. We look forward to continuing to work with the New York City Police Department (“NYPD” or “Department”) to hold officers accountable when they have committed misconduct, and to increasing concurrence under your leadership.

Over the course of the next year, we look forward to utilizing, on a trial basis, the recently announced NYPD Discipline Matrix, which outlines presumptive penalties for instances of officer misconduct. As you are aware, through a Memorandum of Understanding (MOU) between the NYPD and the CCRB, both agencies have committed to use the Discipline Matrix as the framework for discipline recommendations in all but the most extraordinary circumstances. The MOU also confirms the CCRB will also have access to an officer’s employment history in all cases where the CCRB investigator recommends substantiation. We hope implementation of the Discipline Matrix will advance transparency in the police disciplinary process and more public

awareness about the penalty an officer faces for engaging in misconduct. The CCRB will apply the Discipline Matrix starting in the First Quarter of 2021.

I. Guilty Verdicts

In the fourth quarter of 2019, fifteen (15) CCRB verdicts for trials conducted before an ADCT were finalized. The APU treats each officer against whom an allegation is substantiated as a separate case. Of the fifteen (15) cases, eight (8) resulted in guilty verdicts. Fourteen (14) of the cases were upheld by Commissioner O'Neill. One (1) guilty verdict was reversed by Commissioner Shea. The guilty verdicts are discussed further below:

Case One, Guilty Verdict, Reversed

In June 2017 at approximately 5:15 pm, the Victim, a Black male, was attending a funeral ceremony in Manhattan for the rapper Prodigy. Hundreds of people attended the ceremony and the police were present to control the crowds. As the Victim was leaving the funeral and crossed the street to wait for a friend, he was approached by two officers. The Victim took out his camera to record and the Respondent tried to grab the camera from the Victim, pushed him, and told him to keep moving. The Victim moved on further up the block when he was approached by the Respondent. The Respondent told the Victim to go home and the Victim responded that he was waiting for the traffic light. The Respondent stated that he would push the Victim into the street and that he did not care if traffic was moving. The Victim responded that the Respondent couldn't push him into the street. A car stopped and the Respondent told the driver to mind his business and go. The Respondent then grabbed the Victim by the upper arm and began to push him in front of the car. The driver hit their brakes and asked the Respondent what he was doing. The Respondent told the driver once again to mind his business. Traffic continued moving and the Respondent used both hands to shove the Victim's back into the middle of the street where a taxicab and a car stopped abruptly. Video footage from an unknown individual captured the Respondent telling the Victim to go, the walk signal being red, and a yellow taxicab and black car driving through the intersection. The Respondent proceeded to grab the Victim's hands and pull them behind his back. The Victim was dropped to the ground, handcuffed by other officers, and was taken to a police vehicle and transported to the stationhouse.

The Board substantiated one (1) Wrongful Use of Force allegation against the Respondent for pushing the Victim without police necessity and recommended Charges. The APU filed and served Charges and Specifications, with a penalty recommendation of fifteen (15) days' vacation forfeiture. ADCT Nancy Ryan found the Respondent guilty of the sole charge. ADCT Ryan recommended a reprimand stating that, "while Respondent is guilty of using unnecessary force, this conclusion is based solely on his timing of the use of force." Commissioner Shea reversed ADCT Ryan's guilty verdict and did not impose any discipline stating that the pushes were not unacceptable and that the Respondent, "moved with the individual to the opposite side of the street ensuring that the individual was not in harm's way."

Cases Two and Three, Guilty Verdicts, Penalties Upheld

In May 2017, the Victim and his friend, both Hispanic males, were driving on the Bruckner Expressway when Respondent 1 and Respondent 2 of the 45th Precinct pulled the Victim over for speeding. While approaching the vehicle, Respondent 1 pointed his gun and threatened to shoot the men. Respondent 1 entered the back seat on the driver's side of the vehicle, instructed the men that they were not free to leave, and directed the Victim to drive off the expressway. Respondent 2 who was planning to follow behind in the police vehicle, instructed Respondent 1 to shoot the men in the back of the head if they got out of control. The men noted that both the Respondents spoke discourteously to them throughout the interaction. Respondent 1 threatened the Victim saying that if he saw him driving again, he would follow him until he could give him a summons. The passenger requested Respondent 1's name, which he did not provide. Respondent 1 then ordered the Victim to call a tow truck to transport the Victim's vehicle.

Cellphone video, provided by the passenger, recorded audio of the incident. It captured the Respondents telling the men, "What the fuck's wrong with you . . . You're out of your fucking mind, bro . . . Let me explain something to you. A broken fucking arm is bullshit. You understand that? You see the people out here? You'll fucking kill them . . . I really don't give a fuck dude." Two minutes into the video, Respondent 1 is heard stating, "I'm going to shoot you in your face." Shortly thereafter, Respondent 1 is captured saying that he is going to get into the back seat of the driver's car, and Respondent 2 replies, "He gets out of control you shoot him in the back of the fucking head." During his CCRB interview, upon reviewing the video recording, Respondent 1 denied or did not recall the majority of the alleged profanities.

The Board substantiated six (6) allegations against the Respondents: two (2) Force allegations for threatening to shoot the Victims, two (2) Discourtesy allegations for the profanity, and two (2) Abuse of Authority allegations for detaining the Victims. The Board also substantiated one (1) additional Force Allegation against Respondent 1 for pointing his gun, and four (4) Abuse of Authority allegations against Respondent 1 for search of the vehicle, threat to issue a summons, refusal to provide his name, and seizure of the Victim's property. The APU filed and served Charges and Specifications with a penalty recommendation of twenty-five (25) days' vacation forfeiture for Respondent 1 and twenty (20) days' vacation forfeiture for Respondent 2. ADCT David Weisel found the Respondents guilty of all six (6) shared allegations. Respondent 1 was found guilty of seizing the Victim's property and found not guilty on the remaining four (4) counts. The ADCT found that the escalation by the Respondents during the incident was "highly inappropriate," that there was no need to diverge from proper procedure of car stops on the highway in this way, and that the Respondents had "engaged in serious misconduct." The ADCT recommended a penalty of twenty (25) days' vacation forfeiture for Respondent 1 and twenty (20) days' vacation forfeiture for Respondent 2. Commissioner O'Neill approved the ADCT's recommendation and imposed the recommended penalty.

Case Four, Guilty Verdict, ADCT Penalty Upheld¹

In September 2017, the two Victims met at the 34th precinct stationhouse to exchange custody of their child. Victim 1 had his siblings drop off the child while he waited a short distance away because there was an Order of Protection prohibiting him from being near Victim 2. After

¹ 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.

exchanging the child, Victim 1 remembered that he left his bag on the stroller and he approached Victim 2 to try to retrieve it. Victim 2 walked into the stationhouse and Victim 1 followed her inside. Respondent, a domestic violence officer who was familiar with both Victims from issues involving their child, spoke with them. During the conversation, Respondent told the Victims, “You guys have a child, both of you do. Excuse me! Don’t talk, I am talking. You both have a child, both of you should be concerning about, better than being fucking each other and bothering each other. Enough is enough.” Footage of this incident was captured by cell phone video.

The Board substantiated two (2) Discourtesy allegations for Respondent’s use of discourteous language. Charges and Specifications were filed with a penalty recommendation of ten (10) days’ vacation forfeiture. ADCT Jeff Adler, found Respondent guilty of all Charges and Specifications, but recommended the forfeiture of three (3) days’ vacation. According to Respondent’s service record, she was appointed to the Department in 2005; in 2014 she forfeited 32 days served on suspension, 20 vacations days, and was placed on one-year dismissal probation for two separate cases, one involving Respondent making harassing phone calls, and the other for her excessive use of force and failure to fully cooperate with the CCRB. The ADCT decided that Respondent was voicing her concern in this case, albeit in an unprofessional manner. The ADCT considered the Respondent’s six medals for Excellent Police Duty and decided that ten (10) vacation days for this misconduct would be excessive. Commissioner O’Neill approved the ADCT’s recommendation and imposed the recommended penalty.

Cases Five, Six, and Seven, Guilty Verdicts, ADCT Penalties Upheld²

In September 2017 at approximately 12:50 a.m., the Victim, a Black male, was walking home from his job as a security guard in Brooklyn when he was stopped by the three Respondents, all plainclothes Anti-Crime officers of the 75th precinct in an unmarked vehicle. The officers approached the Victim without identifying themselves, testifying that they saw a bulge in his pocket and thought the object could have been a weapon, but also acknowledging that it could have been a wallet or cell phone. Respondent 1 asked the Victim “what’s going on, what are you doing, where are you going?” As the Victim put his hands in his pockets to get his ID, Respondent 1 grabbed at the Victim’s arm. The Victim, who explained to the CCRB that he “feared for his life,” ran from the officers. Upon apprehension, Respondent 2 punched the Victim three (3) times on the left side of his face, causing his eye to swell and bruise. Respondent 1 then handcuffed the Victim, searched him, and placed him in the unmarked vehicle. There were no weapons found on the Victim or in the vicinity. Shortly thereafter, the Victim was let go without an arrest or summons. The Victim subsequently went to the hospital where he was diagnosed with a hematoma to his left eye. The Respondents did not complete a stop-and-frisk-report or inform any supervisor of the interaction.

The Board substantiated three (3) Abuse of Authority allegations against all the Respondents for the wrongful stop, and one (1) Force allegation against Respondent 2 for punching the Victim in the face. The APU filed and served Charges and Specifications, with a penalty recommendation of seven (7) days’ vacation forfeiture for Respondent 1, fifteen (15) days’

² Although the Police Commissioner upheld the guilty verdict and the penalty recommended by the ADCT, the ADCT’s recommended penalty was lower for Respondent 1, and higher for Respondent 3, than the penalty recommended by the APU.

vacation forfeiture for Respondent 2, and three (3) days' vacation forfeiture for Respondent 3. Although Respondent 2 denied punching the Victim in the face and claimed that the two instead collided during the foot chase, the hospital records clearly showed that the Victim suffered a black eye that could not be explained by a collision. ADCT Nancy Ryan found the Respondents guilty of all Charges and Specifications. Citing the Respondents' disciplinary history as well as penalties imposed for prior similar misconduct, the ADCT recommended three (3) days' vacation forfeiture for Respondents 1 and 3. For Respondent 2, the ADCT departed upward, recommending a penalty of eighteen (18) days' vacation forfeiture—three (3) days for the stop and fifteen (15) days for punching the Complainant. Commissioner O'Neill approved the ADCT's recommendation and imposed the recommended penalty.

Case Eight, Guilty Verdict, ADCT Penalty Upheld³

In November 2017 at approximately 3:00 pm, the Victim, a Hispanic male, was driving in his car when he was stopped by Respondents, two Anti-Crime uniformed officers assigned to PSA 8. The Respondents told the Victim to get out of the car. The Victim said he wasn't stepping out of the vehicle and asked if the Respondents needed to see his license. Respondent 1 opened the car door, and while the Victim still had his seatbelt on, attempted to pull the Victim out of the vehicle. A struggle ensued in which Respondent 1 punched the Victim in the face and Respondent 2 deployed pepper spray inside the Victim's vehicle. The Respondents pulled the Victim out of the vehicle and arrested him. They searched his vehicle pursuant to the arrest; they recovered a lit marijuana cigarette and transported him to the stationhouse. The Respondents did not request EMS to the scene to administer an eyewash for the pepper spray. The Victim was charged with resisting arrest, criminal possession of marijuana, and reckless driving; he ultimately pled guilty to disorderly conduct.

The Board substantiated two (2) Wrongful Use of Force allegations against Respondent 2 for unlawfully using pepper spray without police necessity and recommended Charges. The APU filed and served Charges and Specifications, with a penalty recommendation of fourteen (14) days' vacation forfeiture. ADCT Nancy Ryan found Respondent 2 not guilty of one use of pepper spray allegation, reasoning that although the Patrol Guide notes that pepper spray should not be used in small spaces such as automobiles, the use of pepper spray here was reasonable because the Victim was actively resisting. ADCT Ryan did find Respondent 2 guilty of failure to follow the explicit requirement to request an EMS response after pepper spray has been used on a person. ADCT Ryan recommended one (1) vacation day forfeiture for what she described to be a "technical violation" of the Patrol Guide. Commissioner O'Neill approved ADCT Ryan's recommendation and imposed the recommended penalty.

II. Not-Guilty Verdict Upheld by the Police Commissioner

³ 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.

In the fourth quarter of 2019, seven (7) cases resulted in not guilty verdicts, all upheld by Commissioner O’Neill.⁴ The not guilty verdicts are discussed further below:

Case One, Not Guilty Verdict Upheld

In April 2016, at approximately 11:00 p.m., the Victim, a White transgender female, was walking to a store near her home in Staten Island when she was stopped by Respondent, and two other officers; all three were male plainclothes officers, from the 121st Precinct, who were in an unmarked dark-colored sedan. Respondent, who was the commanding officer on-scene, and the other officers approached the Victim and asked for her identification. Respondent searched the Victim’s jacket and pants pockets and pulled down the Victim’s pants to the back of her knees, exposing her undergarments. Respondent, after viewing the Victim’s identification that listed her birth name, asked the Victim, “Why you changed your name for? Why are you trying to be a woman? You are still a man. You are still a man.” Respondent then added, “What is that panty for? What’s that bulge for? Is that to hold your dick? Is that to hide your cock?” After a couple minutes, another officer told the Victim that she was free to go. The Victim asked Respondent for his shield number, but he did not respond. Instead he took out his handcuffs and clicked them in the direction of the Victim. The Victim was not issued a summons or arrested. Respondent and the other officers did not prepare a stop, question, and frisk report regarding the incident.

The Board substantiated seven (7) total allegations against Respondent: three (3) Abuse of Authority allegations for the stop, search and strip search of the Victim; one (1) Offensive Language allegation for comments made in regard to the Victim’s gender; one (1) Abuse of Authority allegation for making discourteous comments; and two (2) Abuse of Authority allegations for refusing to provide his shield and threatening to arrest the Victim. The APU filed and served Charges and Specifications with a penalty recommendation of thirty (30) days’ vacation forfeiture and one (1) year dismissal probation.⁵ During the trial, Respondent testified that he was at the stationhouse during the alleged incident and never had contact with the Victim. ADCT David Weisel found Respondent not guilty, stating that the CCRB had failed to prove by a preponderance of the evidence that the Respondent was the officer who interacted with the Victim.

The Commissioner’s office returned the decision to the Court based on new evidence showing a positive license plate reader match for the Respondent’s vehicle 0.6 miles from the incident location minutes after the incident occurred. There was also evidence that a phone search of the Victim’s birth name had been conducted by one of the officers on scene. The CCRB requested that Deputy Commissioner of Trials (“DCT”) Rosemarie Maldonado reopen the hearing to confront Respondent with this new evidence. The DCT informed the CCRB that a post-decision interview (GO-15) of the officers was conducted by the Internal Affairs Bureau (“IAB”), but the transcripts could not be released to the CCRB due to an “ongoing investigation.” The CCRB appealed to the Police Commissioner asking that the DCT provide

⁴ 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.

⁵ 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.

both parties with the relevant GO-15 transcripts and conduct a new hearing, or, in the alternative, reopen the hearing. The request was denied as the DCT found that the new information “did not outweigh the probative value of the documents presented at trial.” The CCRB appealed the decision to Commissioner O’Neil. He did not reopen the hearing or provide the GO-15s to the CCRB and approved the not guilty verdict.

Cases Two and Three, Not Guilty Verdicts Upheld

Shortly before midnight in May 2017, Respondent 1, a black male officer, stopped the Victim, a white male, on a Queens expressway for speeding. Respondent 1 asked the Victim for his license, which he initially refused to provide. Respondent 1 requested additional units and Respondent 2 arrived on scene. After Respondent 1 issued two summonses to the Victim, the Victim exited his vehicle to protest the summonses, and addressed Respondent 1, with racial slurs. Respondent 1 decided to arrest the Victim, who had returned to his vehicle, for disorderly conduct. While attempting to remove the Victim from his vehicle, Respondent 1 removed his can of pepper spray and discharged it towards the Victim. Respondent 2 punched the Victim’s left eye and then swung his flashlight two times towards the Victim, allegedly striking the Victim once in the back of the head. Dashboard camera footage showed Respondent 1 pepper spraying the Victim and removing him from his vehicle and showed Respondent 2 swinging his flashlight two times at the Victim.

The Board substantiated three (3) allegations against Respondent 1: two (2) Force allegations for the wrongful use and deployment of pepper spray, and one (1) Abuse of Authority allegation for the wrongful arrest of the Victim; as well as two (2) Force allegations against Respondent 2 for striking the Victim in the face with his fists and flashlight. The APU filed and served Charges and Specifications with a penalty recommendation of five (5) days’ vacation forfeiture for Respondent 1 and fifteen (15) days’ vacation forfeiture for Respondent 2. At trial, ADCT Nancy Ryan found the Respondents not guilty of all five (5) allegations, crediting the Respondents’ testimony that the Victim’s refusal to cooperate and the Respondents’ position next to fast-moving vehicle traffic posed a safety threat that necessitated an escalated level of force. Commissioner O’Neil approved the not guilty verdict.

Case Four, Not Guilty Verdict Upheld

In October 2017 at approximately 5:30 pm inside the MTA Subway station at Canal Street (J Station), Respondent, who was the supervisor on-scene, and two other plainclothes officers were assigned to transit duty. The officers were positioned near a subway station entrance. The Victim, a Hispanic male, and his wife, a Hispanic female, who were visiting from Texas, entered the subway station. The Victim’s wife used her MetroCard to swipe the turnstile, and then opened the emergency exit gate for the Victim, who entered without paying. The officers stopped the Victim, who noted in his CCRB interview that he did not realize the men were police officers as they were dressed in plainclothes and did not identify themselves. After arguing with the officers about the stop, the Victim handed the officers his identification. The Victim also took out his cell phone and began recording the officers. The Respondent grabbed the Victim’s right wrist and interfered with his video recording. The Respondent also frisked the Victim. The CCRB retrieved the Victim’s cell phone video and obtained subway surveillance footage.

The Board substantiated two (2) Abuse of Authority allegations against the Respondent for the frisk and interference with the cellphone recording. The APU filed and served Charges and Specifications with a recommended penalty of forfeiture of seven (7) vacation days. At trial, the Respondent testified that throughout the stop, despite the Respondent's repeated instructions not to do so, the Victim kept putting his hands inside his pockets. After the Victim put his hand in his rear back pocket, the Respondent grabbed the Victim's elbow. The Respondent testified that he never frisked the Victim and only made incidental contact with his rear pants pockets when he tried to prevent the Victim from putting his hand into his pocket. The Respondent added that that he never grabbed the Victim's phone nor told him to stop recording. ADCT Nancy Ryan credited the Respondent's testimony and found the Respondent not guilty of the allegations. Commissioner O'Neill approved the not guilty verdict.

Case Five, Not Guilty Verdict Upheld

The case from the same incident described in Case #8 (from the Guilty Verdicts section), for Respondent 1. The Victim, a Hispanic male, was driving in his car when he was stopped by two (2) uniformed Anti-Crime officers assigned to the PSA. The Respondents told the Victim to get out of the car and a struggle ensued in which Respondent 1 punched the Victim in the face and Respondent 2 deployed pepper spray against the Victim who was still inside the vehicle. The Respondents arrested and charged him with resisting arrest, criminal possession of marijuana, and reckless driving. The Victim pled guilty to disorderly conduct.

The Board substantiated one (1) Force allegation against Respondent 1 for punching the Victim in the face without police necessity. The APU filed and served Charges and Specifications, with a penalty recommendation of eight (8) days' vacation forfeiture. ADCT Nancy Ryan found Respondent 1 not guilty after determining that the Respondents account of the incident was more credible than the Victim's version of the incident. The ADCT also found that Respondent 1 used one tactical strike to effectuate an arrest and gain compliance from an uncooperative individual. Commissioner O'Neil approved the not guilty verdict.

Cases Six and Seven, Not Guilty Verdicts Upheld

Over a seven-month period, Respondent 1 conducted surveillance of a residence in response to complaints of squatters, garbage and narcotics. During this time, Con Ed made several unsuccessful attempts to enter the residence and shut off the electricity. After an eviction notice was served on the Victim, a Black female and the occupant of the residence, Respondent 1 accompanied Con Ed to the residence in January 2017 at approximately 10:00 am. After 10 minutes of knocking on the door, Con Ed called for a truck that had the ability to turn off power from the street. While waiting for the truck, other officers, including Respondent 2, who was the supervising officer on-scene, as well as individuals known to the occupant, arrived at the location. Shortly thereafter, the Victim emerged from the residence. The Respondents and the Victim discussed the entry of a Con Ed worker, and Respondent 2 threatened to arrest the Victim if she did not let Con Ed enter the residence. Con Ed and the Respondents, who did not possess a search warrant, then entered the residence and searched the premises for the electrical panel.

The Board substantiated four (4) Abuse of Authority allegations against both Respondents for the entry and search, and one (1) additional Abuse of Authority allegation against Respondent 2 for the threat to arrest. The APU filed and served Charges and Specifications with a penalty recommendation of eight (8) days' vacation forfeiture for Respondent 1 and ten (10) days' vacation forfeiture for Respondent 2. At trial, Respondent 1 testified that once she explained to the Victim that Con Ed needed to enter the premises, the Victim opened the door and told Respondent 1 that she could "go find" the electrical panel. Respondent 2 testified that while he spoke briefly to the Victim about Con Ed shutting her power off, he denied entering the premises, directing Respondent 1 to do so, or threatening to arrest the Victim. ADCT Paul Gamble found the Respondents not guilty of all five (5) charges. The ADCT stated that Respondent 1 had a "reasonable basis" to accompany the Con Ed workers into the residence and the Victim gave consent to enter. The ADCT also credited Respondent 1's testimony and dismissed the threat to arrest allegation on the basis that it was a hearsay statement that lacked credibility. Commissioner O'Neill approved the not guilty verdict.

III. Cases Retained by the Police Commissioner

The Department retained two (2) cases pursuant to Provision Two of the MOU between the CCRB and NYPD in the fourth quarter 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.

Cases One and Two, Retained without Discipline

In March 2013 at approximately 11:30 p.m., the Respondents, two (2) plainclothes officers, stopped their unmarked vehicle and approached the Victim, a 16-year-old Black male, and several other males who were standing in front of a gated residential home. Respondent 1, who was the commanding officer on-scene, stated that he observed the Victim in possession of a handgun, and informed Respondent 2 of this observation. The Respondents approached the Victim and yelled, "Stop" and "drop the gun!" The Respondents both testified that the Victim pointed his gun at the Respondents and in response, the Respondents discharged their weapons, striking him several times. The Victim subsequently died from his injuries. The autopsy findings indicated that the Victim sustained seven (7) gunshot wounds, some traveling back to front and others traveling front to back. Although three (3) civilian witnesses testified that they did not see the Victim with a gun, a firearm was recovered a short distance from where the Victim was shot. Three (3) swabs of DNA were recovered from the firearm. One (1) swab excluded the Victim as a contributor, but the

remaining two (2) swabs could not be tested. A witness recorded the aftermath of the shooting on a cell phone, but the video did not capture the shooting or initial police interaction.

The Board substantiated two (2) Use of Excessive Force allegations against the Respondents for firing their guns at the Victim, and recommended Charges. Commissioner O’Neill retained the two (2) cases and imposed no disciplinary action, stating that Charges and Specifications would be detrimental to the Police Department’s disciplinary process as the matter had been fully investigated by both the District Attorney’s Office, which declined to prosecute the matter, and the NYPD’s Firearms Discharge Review Board, which found that no misconduct had been committed by either Respondent.

IV. Treatment of APU Pleas

In the fourth quarter of 2019, the Department finalized one (1) plea. 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.

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
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
2 nd Quarter 2019	4	0	0	0
3 rd Quarter 2019	2	1	0	0
4th Quarter 2019	1	0	0	0

As seen in the chart above, Commissioner O’Neill approved the penalty agreed to by the CCRB in one (1) plea.

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 the fourth quarter of 2019.

VI. Cases Administratively Closed by the Police Commissioner

In the fourth quarter of 2019, Commissioner O’Neill administratively closed two (2) cases where the subject officers involved had retired from the NYPD.

VII. The APU’s Docket

As seen in the following table, the APU’s docket saw a slight growth in the fourth quarter of 2019, following a small increase in the third quarter of 2019. The APU’s docket increased from a total of one hundred twenty-three (123) cases in the third quarter of 2019, to a total of one hundred twenty-six (126) cases in the fourth quarter of 2019.

Cases in Open Docket⁶					
Period	Start of Quarter	Received During Quarter	Closed During Quarter	End of Quarter	Growth
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%
2 nd Quarter 2019	120	22	20	122	1.7%
3 rd Quarter 2019	122	11	10	123	0.8%
4th Quarter 2019	123	23	20	126	2.4%

VIII. Time to Serve Respondents

⁶ 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.

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 remained steady between the third and fourth quarters of 2019.

As of December 31, 2019, there were thirty-one (31) Respondents who had not been served with Charges. In the fourth quarter of 2019, Respondents waited an average of sixty-eight days (68) days to be served with Charges. In the third quarter of 2019, there were seventeen (17) Respondents who had been served with Charges, and the average length of time for service was sixty-seven (67) days. In the fourth quarter of 2019 there were seven (7) Respondents who had been served with Charges, and the average length for service was sixty-eight (68) days – a one (1) day increase between the third and fourth quarters of 2019.

Time to Serve Respondents			
Period	Number of Respondents Served	Average Length to Serve Respondents	Average Length to Serve Respondents (Business Days)
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
2 nd Quarter 2019	11	76	54
3 rd Quarter 2019	17	67	48
4th Quarter 2019	7	68	48
* In 2016 there was an increase in the number of cases in which the Department requested reconsideration of the Board’s recommendation, which led to an increase in the length of time it took the Department to serve Respondents.			

Improving concurrence between the CCRB and the Police Department is crucial – Commissioner Shea reversed an ADCT guilty verdict just two weeks into his tenure. It is our hope that this reversal is an anomaly and efforts will be made to continue to improve concurrence rates between our Agencies. With the state legislature’s 2020 repeal⁷ of Civil Rights Law § 50-a increased transparency will bring renewed and increased attention to the police department’s treatment of police misconduct cases. Increased concurrence will prove to New York City’s citizens that their complaints are treated seriously and are treated with the full attention of the Commissioner.

⁷ As of January 28, 2021, there is a stay of the repeal of 50a pending appeal.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Darche', is centered below the closing. The signature is fluid and cursive, with a large initial 'J' and a stylized 'D'.

Jonathan Darche
Executive Director

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