



CIVILIAN COMPLAINT REVIEW BOARD
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ERIC L. ADAMS
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March 21, 2023

The Honorable Keechant L. Sewell
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”)**
Third Quarter of 2022

Dear Commissioner Sewell:

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

I. **Not Guilty Verdicts Upheld by the Police Commissioner**

In the third quarter of 2022, five (5) 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.¹ Of the five (5) cases, all five (5) resulted in not guilty verdicts upheld by the Police Commissioner. The not guilty verdicts are discussed further below:

Case One, Not Guilty Verdict 201906398 SGT Michael Hansson

In July 2019, at approximately 8:00 p.m. in Brooklyn, the Victim, a Black male in his late twenties was smoking a marijuana cigarette on a sidewalk when he was stopped by Sergeant Michael Hansson [the Respondent] and two other officers who were in plainclothes. The Victim got into a physical altercation with the officers and Sgt. Hansson went behind the Victim and placed his left arm around the Victim’s neck and under his chin. Sgt. Hansson held his forearm

¹ 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.”

against the front of the Victim's neck for approximately three seconds and the Victim stated that his breathing was restricted.

On July 20, 2019, the Board substantiated two (2) total allegations: two (2) Use of Force allegations against Sgt. Hansson for using a chokehold on the Victim² and for restricting the Victim's breathing³. The APU filed and served Charges and Specifications with a penalty recommendation of thirty-two (32) days' vacation forfeiture. On May 17, 2022, a trial was held before ADCT Paul Gamble. On August 4, 2022, ADCT Gamble issued his decision, finding Sgt. Hansson not guilty on all counts. The decision was rendered after the implementation of the Disciplinary Matrix.

ADCT Gamble found that while "the video evidence was not entirely dispositive on the issue of whether Respondent used a chokehold, his explanation for his actions captured on the video, which were characterized as a chokehold, was plausible under the totality of the circumstances. Respondent's willingness to admit to using force during the encounter, which runs counter to his interest, further enhanced his credibility." ADCT Gamble found that the Victim's "hearsay statement was disjointed, self-serving, and embellished...His assertion that he merely minded his business smoking marijuana in front of his home suggests that he believed the police were outside their authority in approaching him and that he was justified in resisting them. These assertions, taken together, suggest anti-police bias, which arguably provides an incentive to color his description of the encounter." ADCT Gamble found that based "upon all the surrounding circumstances, I find Complainant to be an unreliable narrator of the events." ADCT Gamble found that "having reviewed the video and still shot carefully, this Tribunal cannot reasonable conclude that the hold depicted made contact with the neck or throat area in a manner that may have restricted Complainant's breathing or reduced air intake, thereby constituting a chokehold." ADCT Gamble found Sgt. Hansson not guilty on all counts. On August 18, 2022, the Police Commissioner upheld the not guilty verdict.

Cases Two, Three, Four, and Five, Not Guilty Verdicts 201805677 PO Jessica Lalli, PO Malinda Walker, PO Ted Saint-Gerard, PO Marisol Torres

In July 2013, at approximately 8:00 a.m. in Queens, the Victim, a Black female in her early fifties was in her home when she got into an argument with her niece. The Victim believed that her niece was about to strike her with her cellphone, so she picked up a kitchen knife. Her niece immediately left the home. The Victim went to shower and ten minutes later heard knocking at her door. She answered the door wearing only a towel and saw Police Officer Saint-Gerard [Respondent 1], Police Officer Malinda Walker [Respondent 2], Police Officer Marisol Torres [Respondent 3], and Police Officer Jessica Lalli [Respondent 4] outside her door. She opened the door, and the Respondents told her that her niece had called 911 and told them that the Victim threatened her with a knife. The Victim started explaining what happened when the Respondents walked through her front door. The Victim told the Respondents that she was going to go the bathroom to get toothpaste out of her mouth and put some clothes on. PO Walker

² Per Disciplinary matrix – application of a chokehold has a mitigated penalty of forced separation and a presumptive penalty of termination.

³ Per Disciplinary matrix – non-deadly force against another that results in no injury has a mitigated penalty of 5 vacation days' forfeiture, a presumptive penalty of 10 vacation days' forfeiture, and an aggravated penalty of termination

escorted the Victim to her bedroom to get dressed first before going to the bathroom. The Victim stated that her bedroom was very small and required her to enter and close the door to access her closet on the other side of the door. PO Saint-Gerard stopped her from closing the door. The Victim asked PO Walker to explain the closet issue to PO Saint-Gerard. The Victim shut the bedroom door and moments later PO Saint-Gerard opened it, entered the bedroom, and shut the door behind him. PO Saint-Gerard told the Victim that she was “coming with him” and she refused stating that she wasn’t going anywhere. The Victim picked up her phone to call her sister and stated that PO Saint-Gerard struck her multiples times in the face, causing her towel to fall, leaving her naked. The Victim began to scream, and PO Walker opened the door and asked PO Saint-Gerard what he was doing. He responded that he was going to handcuff the Victim. The Victim screamed “murder! murder!” and PO Saint-Gerard took out his pepper spray and sprayed it continuously into the Victim’s face. The Victim stated that the spray burned her skin and she defecated on herself and fell face down on her bed to avoid the pepper spray fumes. PO Saint-Gerard handcuffed her and left her naked on her bed and exited her bedroom, closing the door behind him. The Victim heard PO Saint-Gerard say, “she shit herself when I hit her, before I sprayed her.” She remained naked and handcuffed face down on her bed until EMTs entered at the Victim’s bedroom approximately 20 minutes and took her to the hospital.

On July 19, 2019, the Board substantiated six (6) total allegations⁴: one (1) Use of Force allegation against PO Saint-Gerard for using pepper spray against the Victim, one (1) Abuse of Authority allegation for sexually humiliating the Victim, and one (1) Discourtesy allegation for speaking discourteously to the Victim; one (1) Abuse of Authority allegation against PO Walker for sexually humiliating the Victim; one (1) Abuse of Authority allegation against PO Torres for sexually humiliating the Victim; one (1) Abuse of Authority allegation against PO Lalli for sexually humiliating the Victim.

The APU filed and served Charges and Specifications with a penalty recommendation of thirty-five (35) days’ vacation forfeiture for PO Saint-Gerard, ten (10) days’ vacation forfeiture for PO Walker, ten (10) days’ vacation forfeiture for PO Torres, and ten (10) days’ vacation forfeiture for PO Lalli. On April 4, 2022, a trial was held before ADCT Jeff Adler. On May 11, 2022, ADCT Adler issued his decision, finding PO Saint-Gerard, PO Walker, PO Torres, and PO Lalli not guilty on all counts. The decision was rendered after the implementation of the Disciplinary Matrix.

ADCT Adler found that “Each of the four Respondents were essentially consistent in their testimony about the events inside the apartment...the officers arrived at the location within five minutes of receiving the call. After speaking with the frightened niece, the officers ...entered the apartment, where they observed the aunt with a toothbrush in her hand, and her body wrapped in a towel.” ADCT Adler found that “[Victim] was screaming loudly and incoherently...Respondent Lalli, who has prior experience as an EMT, tried to calm her down, but the aunt...continued to jump up and down and scream.” ADCT Alder found that “the officers decided to have [Victim] get dressed...Respondent Lalli placed her knee on the bed in the process of entering the room...[Victim] unexpectedly followed directly behind her...and pushed her way into the bedroom. Respondent Lalli observed a second knife...immediately grabbed it...which she then handed off to one of her colleagues. [Victim], meanwhile, stood in another corner of the bedroom.” ADCT Adler found that “Respondent Saint-Gerard tried to grab the [Victim]’s wrist in order to handcuff her, but she pulled away...the [Victim] was now holding a cordless phone...she continued to scream and jump around, and swung the phone at Respondent

⁴ Case was closed before implementation of Disciplinary matrix

Saint-Gerard's face...the [Victim] continued to swing at Respondent Saint-Gerard, who concerned that the [Victim], who was not listening to the officers, would hurt one of them, he backed up, and sprayed the [Victim] with his O.C. pepper spray." ADCT Adler found that "at some point...the [Victim] defecated on herself and on the floor...Respondent Saint-Gerard explained that he used the word 'shit' because it is simple, common street-term to describe what had occurred, and his primary concern was conveying the situation to his fellow officers as quickly and clearly as possible." ADCT Adler found that "A towel was placed over the aunt's body, covering her private parts...EMS arrived less than five minutes later. EMS wrapped the aunt's body in another sheet and removed her from the location." ADCT Adler found "They [Respondents] came across as professional, answered questions willingly, and were essentially consistent in their accounts. In contrast, the [Victim] did not appear to testify...her erratic behavior inside the apartment raises serious questions about her reliability as a narrator, and her description of events in her hearsay statements often appeared embellished." ADCT Adler found "Respondent Saint-Gerard's use of the O.C. pepper spray was reasonable...the [Victim] was behaving in a dangerously, unpredictable, erratic manner. The officers did not have any familiarity with the apartment and did not know where there might be additional knives or other weapons." ADCT Adler found all four Respondents not guilty on all counts. On September 2, 2022, the Police Commissioner upheld the not guilty verdicts for all four Respondents.

II. Treatment of APU Pleas

In the third quarter of 2022, the Department finalized nine (9) pleas. The APU makes penalty recommendations for all cases in which Charges and Specifications are substantiated by the Board. The APU uses several 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 – if any – of injury to the number of Complainants, and the precedent cases of analogous charges. The APU penalty recommendations tend to be consistent for MOS who are similarly situated. The APU also uses the NYPD Disciplinary Matrix to account for the above listed factors and make penalty recommendations based upon the delineated penalty categories in the NYPD Disciplinary Matrix.

Period	Plea Approved	Pleas Closed		
		Pleas Closed At Discipline Level Below Agency Recommendations		
		Plea Penalty Reduced	Plea Set Aside, Discipline Imposed	Plea Set Aside, No Discipline Imposed
3 rd Quarter 2019	2	1	0	0
4 th Quarter 2019	1	0	0	0
1 st Quarter 2020	1	1	0	0
2 nd Quarter 2020	2	2	0	0
3 rd Quarter 2020	2	2	0	0
4 th Quarter 2020	0	0	0	0
1 st Quarter 2021	0	0	0	0

2nd Quarter 2021	0	0	0	0
3rd Quarter 2021	1	0	0	0
4th Quarter 2021	0	0	0	0
1st Quarter 2022	1	0	0	0
2nd Quarter 2022	4	0	0	0
3rd Quarter 2022	7	2	0	0

As seen in the chart above, in the third quarter of 2022 there were nine (9) cases in which a guilty plea was agreed to by the CCRB.

Case One, Penalty Unmodified 201809228 LT Eric Dym

In November 2018, at approximately 11:00 p.m. in the Bronx, the Victim, a Black male in his late twenties was outside his residence with members of his family. They had just returned from a liquor store, part of their preparations for the Victim's upcoming wedding taking place the following day. The Victim was approached by Lieutenant Eric Dym [the Respondent] and four (4) police officers. Lt. Dym tried to arrest the Victim because he was the subject of a probable cause I-card. The Victim refused to be handcuffed and asked why he was being arrested. The officers tried to put the Victim's hands behind his back and the Victim resisted. A struggle ensued and the Victim went to the ground with the officers. Lt. Dym grabbed the back of the Victim's head by his braids with his left hand and used his right hand to repeatedly punch the Victim in the head and face. The Victim was handcuffed and arrested. At a hospital, the Victim received medical treatment for significant swelling about his right eye and cheekbone and for lacerations on the left side of his head and near his right eyebrow. The incident was captured on BWC and cellphone video.

On February 24, 2022, the Board substantiated one (1) total allegation: one (1) Use of Force allegation against Lt. Dym for using physical force against the Victim⁵. On August 11, 2022, before DCT Rosemarie Maldonado, Lt. Dym pleaded guilty to the sole allegation and agreed to accept ten (10) vacation days forfeiture. On September 7, 2022, the Police Commissioner accepted the negotiated plea and did not modify the negotiated penalty.

Case Two, Penalty Unmodified 201906625 PO Girard Moscato

In July 2019, at approximately 4:00 a.m. in Brooklyn, the Victim, a seventeen-year-old Hispanic female was at a hospital to address an issue with a nose piercing. Hospital staff called the police because the Victim was absent without official leave (AWOL) from the foster care system. Police Officer Girard Moscato [the Respondent] and another officer came to the hospital to see the Victim. The Victim and her friend began filming the interaction and PO Moscato said, "stop it with your bullshit if you think you're filming." The incident was captured on cellphone video.

⁵ Per Disciplinary matrix – non-deadly force against another that results in physical injury has a mitigated penalty of 10 suspension days, a presumptive penalty of 10 suspension days + 10 vacation days' forfeiture, and an aggravated penalty of termination.

On August 17, 2021, the Board substantiated one (1) total allegation: one (1) Courtesy allegation against PO Moscato for speaking discourteously to the Victim⁶. On May 5, 2022, before DCT Rosemarie Maldonado, PO Moscato pleaded guilty to the sole allegation and agreed to accept one (1) vacation day forfeiture. On July 20, 2022, the Police Commissioner accepted the negotiated plea and did not modify the negotiated penalty.

Case Three, Penalty Unmodified 201906798 PO Stephen Sheppard

In July 2019, at approximately 1:00 p.m. in Brooklyn, the Victim, a Black male in his early twenties was driving his vehicle when he was pulled over by Police Officer Stephen Sheppard [the Respondent] and two other officers. The Victim was arrested and taken to the precinct stationhouse where PO Sheppard escorted him to a bathroom in the stationhouse. In the bathroom, PO Sheppard told the Victim to undress, take off his underwear and squat. The Victim complied. PO Sheppard then told the Victim to get redressed. The Victim did so and was placed in a holding cell.

On June 18, 2020, the Board substantiated one (1) total allegation⁷: one (1) Abuse of Authority allegation against PO Sheppard for strip-searching the Victim. On February 10, 2022, before ADCT Paul Gamble, PO Sheppard pleaded guilty to the sole allegation and agreed to accept ten (10) vacation days forfeiture. On July 14, 2022, the Police Commissioner accepted the negotiated plea and did not modify the negotiated penalty.

Case Four, Penalty Unmodified 202001652 LT Eric Dym

In February 2020, at approximately 11:00 p.m. in the Bronx, Victim 1, a twenty-year-old Black male, was driving his cousins, Victim 2, a twenty-year-old Black male, and Victim 3, a twenty-one-year-old Black female in his mother's vehicle. The Victims were going to purchase food at a local fast-food restaurant. Victim 1 parked the vehicle in front of an open parking spot and turned off the vehicle. All the windows were up. Before they could exit the vehicle, Victim 1 saw three plain clothes police officers approach his vehicle and officers knocked on the windows of the vehicle. Lieutenant Eric Dym [the Respondent] was by the driver side window and Victim 1 slightly lowered his car window and Lt. Dym told him that there was an odor of marijuana emanating from the vehicle and ordered everyone out of the vehicle. Victim 1 stated that he could smell no such odor, neither he nor his passengers had marijuana or had consumed it. Victim 1 stated that he would not exit the vehicle. Victim 1 then called his mother and sister. Lt. Dym ordered a police vehicle to block the space in front of Victim 1's vehicle. Lt. Dym then told the Victims that they could not leave until he had concluded the officers' law enforcement activities. Lt. Dym then told Victim 1 that he would have the vehicle towed if the Victims did not comply with the directive to lower the car windows and exit the vehicle. Victim 1 stated that he feared for his life and Lt. Dym told the three Victims that they would be arrested and that the vehicle's windows would be broken if they failed to comply with their orders. Victim 1's mother and sister arrived at the scene. Victim 1's mother told Victim 1, Victim 2, and Victim 3 to exit the vehicle. They did so and officers at Lt. Dym's direction searched the vehicle. Lt. Dym ordered Victim 1, Victim 2, and Victim 3 be taken to the nearby stationhouse. All three Victims

⁶ Per Disciplinary matrix – courtesy has a mitigated penalty of 1 vacation day forfeiture, a presumptive penalty of 5 vacation days' forfeiture, and an aggravated penalty of 10 vacation days' forfeiture.

⁷ Case was closed before implementation of Disciplinary matrix

were taken to the precinct stationhouse and placed in holding cells. The incident was captured on BWC.

On March 30, 2022, the Board substantiated ten (10) total allegations: ten (10) Abuse of Authority allegations against Lt. Dym for stopping the vehicle in which the Victims were occupants⁸, threatening to seize Victim 1's property⁹, threatening to arrest Victim 1¹⁰, threatening to arrest Victim 2¹¹, threatening to arrest Victim 3¹², threatening to damage Victim 1's property¹³, searching the vehicle in which the Victims were occupants¹⁴, detaining Victim 1¹⁵, detaining Victim 2¹⁶, and detaining Victim 3¹⁷. On August 11, 2022, before DCT Rosemarie Maldonado, Lt. Dym pleaded guilty to the ten (10) allegations and agreed to accept twenty-one (21) vacation days forfeiture. On September 7, 2022, the Police Commissioner accepted the negotiated plea and did not modify the negotiated penalty.

Case Five, Penalty Unmodified 202004048 DT3 Jerome Victor

In June 2020 at approximately 8:15 p.m. in Manhattan, the Victim, a White male in his late twenties was attending a Black Lives matter protest. A citywide curfew was in effect beginning at 8:00 p.m. At the start of the curfew, multiple officers began to advance en masse to disperse the large group of protestors. The Victim was taken to the ground by multiple officers and was asked to show his hands. He couldn't because he was pinned to the ground by multiple officers. Detective Jerome Victor [the Respondent] knelt on the Victim's lower legs. The Victim squirmed and Det. Victor stood up and struck the Victim's

⁸ Per Disciplinary matrix – an improper/wrongful stop of a vehicle has a mitigated penalty of training, a presumptive penalty of 3 vacation days' forfeiture, and an aggravated penalty of 15 vacation days' forfeiture.

⁹ Per Disciplinary matrix – an improper/wrongful search/seizure of a person/property has a mitigated penalty of training, a presumptive penalty of 3 vacation days' forfeiture, and an aggravated penalty of 15 vacation days' forfeiture.

¹⁰ Per Disciplinary matrix – enforcement action involving Abuse of Discretion or Authority has a mitigated penalty of 10 vacation days' forfeiture, a presumptive penalty of 20 vacation days' forfeiture, and an aggravated penalty of termination.

¹¹ Per Disciplinary matrix – enforcement action involving Abuse of Discretion or Authority has a mitigated penalty of 10 vacation days' forfeiture, a presumptive penalty of 20 vacation days' forfeiture, and an aggravated penalty of termination.

¹² Per Disciplinary matrix – enforcement action involving Abuse of Discretion or Authority has a mitigated penalty of 10 vacation days' forfeiture, a presumptive penalty of 20 vacation days' forfeiture, and an aggravated penalty of termination.

¹³ Per Disciplinary matrix – enforcement action involving Abuse of Discretion or Authority has a mitigated penalty of 10 vacation days' forfeiture, a presumptive penalty of 20 vacation days' forfeiture, and an aggravated penalty of termination

¹⁴ Per Disciplinary matrix – an improper/wrongful stop search of a vehicle has a mitigated penalty of training, a presumptive penalty of 3 vacation days' forfeiture, and an aggravated penalty of 15 vacation days' forfeiture.

¹⁵ Per Disciplinary matrix – enforcement action involving Abuse of Discretion or Authority has a mitigated penalty of 10 vacation days' forfeiture, a presumptive penalty of 20 vacation days' forfeiture, and an aggravated penalty of termination

¹⁶ Per Disciplinary matrix – enforcement action involving Abuse of Discretion or Authority has a mitigated penalty of 10 vacation days' forfeiture, a presumptive penalty of 20 vacation days' forfeiture, and an aggravated penalty of termination

¹⁷ Per Disciplinary matrix – enforcement action involving Abuse of Discretion or Authority has a mitigated penalty of 10 vacation days' forfeiture, a presumptive penalty of 20 vacation days' forfeiture, and an aggravated penalty of termination

ankles with his baton twice and knelt again to deliver another strike to the Victim's ankles. The incident was captured on cellphone video.

On February 7, 2022, the Board substantiated one (1) total allegation: one (1) Use of Force allegation against Det. Victor for striking the Victim with a baton¹⁸. On May 10, 2022, before ADCT Josh Kleiman, Det. Victor pleaded guilty to the sole allegation and agreed to accept ten (10) vacation days forfeiture. On August 18, 2022, the Police Commissioner accepted the negotiated plea and did not modify the negotiated penalty.

Case Six, Penalty Unmodified 202004301 LT Eric Dym

In June 2022, at approximately 7:55 p.m. in the Bronx, an Anti-Police brutality protest was taking place. Multiple individuals witnessed Lieutenant Eric Dym [the Respondent] climb on top of a parked civilian vehicle and strike multiple individuals with his baton. The individuals had been protesting peacefully and were unable to march down the street or disperse due to officers penning them in place. The incident was captured on cellphone video.

On February 7, 2022, the Board substantiated two (2) total allegations: one (1) Abuse of authority against Lt. Dym for damaging an individual's property¹⁹ and one (1) Use of Force allegation for striking individuals with a baton²⁰. On August 11, 2022, before DCT Rosemarie Maldonado, Lt. Dym pleaded guilty to both allegations and agreed to accept fifteen (15) vacation days forfeiture. On September 7, 2022, the Police Commissioner accepted the negotiated plea and did not modify the negotiated penalty.

Case Seven, Penalty Modified 201908813 PO Hosward Veloz

In September 2019, at approximately 4:00 a.m. in the Bronx, the Victim, a Black male in his late thirties was walking to a grocery store when he was stopped by Police Officer Hosward Veloz [the Respondent] and another officer. The Victim asked why he was being stopped as other officers approached them. The Respondent gave no response. Officers frisked him and the Victim asked why. The officers walked away, and the Victim took out his cellphone to take photos of them and their vehicles.

On July 15, 2021, the Board substantiated two (2) total allegations: two (2) Abuse of Authority allegations against PO Veloz for failing to explain to the Victim the reason for a law enforcement activity²¹ and for failing to provide the Victim with a business card²². On March

¹⁸ Per Disciplinary matrix – non-deadly force against another that results in no injury has a mitigated penalty of 5 vacation days' forfeiture, a presumptive penalty of 10 vacation days' forfeiture, and an aggravated penalty of termination.

¹⁹ Per Disciplinary matrix – improper/wrongful damage to a person's property has a mitigated penalty of 5 vacation days' forfeiture, a presumptive penalty of 10 vacation days' forfeiture, and an aggravated penalty of 20 vacation days' forfeiture

²⁰ Per Disciplinary matrix – non-deadly force against another that results in no injury has a mitigated penalty of 5 vacation days' forfeiture, a presumptive penalty of 10 vacation days' forfeiture, and an aggravated penalty of termination.

²¹ Per Disciplinary matrix – an improper/wrongful stop and question of a person has a mitigated penalty of training, a presumptive penalty of 3 vacation days' forfeiture, and an aggravated penalty of 15 vacation days' forfeiture.

²² Per Disciplinary matrix – an officer's failure/refusal to provide a right-to-know business card number has a mitigated penalty of training, a presumptive penalty of 3 vacation days' forfeiture, and an aggravated penalty of 5 vacation days' forfeiture

29, 2022, before ADCT Paul Gamble, PO Veloz pleaded guilty to both allegations and agreed to accept one (1) vacation day forfeiture. On September 19, 2022, the Police Commissioner accepted the negotiated plea but modified the penalty to a Command Discipline A with a one (1) vacation day forfeiture.

Case Eight, Penalty Unmodified 201909062 PO Kevin Morgan

In October 2019, at approximately 8:15 p.m. in Brooklyn, the Victim, a Black male in his early thirties was walking on the sidewalk and was about to FaceTime a friend when he was saw Police Officer Kevin Morgan [the Respondent] and another officer in an unmarked black sedan. The Victim suspected that they were officers because he has seen officers driving in similar vehicles in his neighborhood. The Victim crossed the street and continued walking and saw that the officers were following him. One officer made eye contact with the Victim and parked their vehicle next to the Victim. They exited their vehicle asked the Victim where he was going and told him to put his hands up and take his hands out of his pocket. The Victim asked them what was going on. The officers told the Victim they stopped him because of his wallet in his pants pocket. PO Morgan told the Victim that he was “stupid”, “uneducated”, “dumb”, and “ignorant”. The incident was captured on cellphone video.

On October 20, 2021, the Board substantiated two (2) total allegations: one (1) Courtesy allegation against PO Morgan for speaking discourteously to the Victim²³ and one (1) Abuse of Authority allegation for failing to provide the Victim with a business card²⁴. On March 1, 2022, before ADCT Jeff Adler, PO Morgan pleaded guilty to both allegations and agreed to accept thirteen (13) vacation days forfeiture. On September 19, 2022, the Police Commissioner accepted the negotiated plea and did not modify the negotiated penalty.

Case Nine, Penalty Modified 202004307 PO John Lamneck

In June 2020, at approximately 8:50 p.m. in Manhattan, the Victim, a White female in her early thirties was participating in a Black Lives Matter protest with her partner. The Victim began filming officers who were approaching the protestors. An officer grabbed a protestor close to her and she asked the officer what he was doing. The Victim was immediately surrounded by other officers and one of them grabbed her hands, pulled it behind her back, and swept her feet out from under her causing her to fall to the ground. One of the officers present, Police Officer John Lamneck [the Respondent] then told the Victim to “get on the fucking ground bitch”. The incident was captured on cellphone video.

On April 26, 2021, the Board substantiated two (2) total allegations: one (1) Courtesy allegation against PO Lamneck for speaking discourteously to the Victim²⁵ and one (1)

²³ Per Disciplinary matrix – courtesy has a mitigated penalty of 1 vacation day forfeiture, a presumptive penalty of 5 vacation days’ forfeiture, and an aggravated penalty of 10 vacation days’ forfeiture.

²⁴ Per Disciplinary matrix – an officer’s failure/refusal to provide a right-to-know business card number has a mitigated penalty of training, a presumptive penalty of 3 vacation days’ forfeiture, and an aggravated penalty of 5 vacation days’ forfeiture

²⁵ Per Disciplinary matrix – courtesy has a mitigated penalty of 1 vacation day forfeiture, a presumptive penalty of 5 vacation days’ forfeiture, and an aggravated penalty of 10 vacation days’ forfeiture.

Offensive Language allegation for making remarks to the Victim based upon their gender²⁶. On April 28, 2022, before ADCT Jeff Adler, PO Lamneck pleaded guilty to both allegations and agreed to accept ten (10) vacation days forfeiture. On September 7, 2022, the Police Commissioner accepted the negotiated plea but modified the penalty to a Command Discipline A with a one (1) vacation day forfeiture.

III. Cases Retained by Police Commissioner

In the third quarter of 2022, the New York City Police Department (“NYPD” or the “Department”) retained zero (0) cases pursuant to Provision Two of the MOU between the CCRB and NYPD.

IV. Dismissal of Cases by the APU

When while 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 third quarter of 2022.

V. Cases Administratively Closed by the Police Commissioner

In the third quarter of 2022, the Police Commissioner administratively closed six (6) cases.

Case One, Administratively Closed 202100714 PO James Photos

In January 2021, at approximately 10:00 a.m. in Manhattan, the Victim, a Black female in her early sixties entered a department store and was stopped by a security guard who informed her that the store would not be open for another hour. The Victim explained that she had an appointment with a personal shopper. Minutes later, Police Officer James Photos [the Respondent] entered the store through the same store entrance the Victim used and told her the store was closed and asked why she was there. The Victim told him the same thing she had told the security guard. PO Photos told the Victim to leave the store at least twice while other people tried to enter the store and PO Photos turned them away telling them that the store wasn’t open. PO Photos took the Victim’s shopping cart and took it out of the store and placed it on the sidewalk outside. The Victim went out of the store and called 911. She then asked PO Photos for his badge number twice and he tapped his shield and gave her an incorrect shield number. The incident was captured on cellphone video. At his CCRB interview PO Photos did not recall speaking to the Victim after she left the store, nor her asking him for his shield number. PO Photos was then played the Victim’s cellphone video and he stated multiple times that he did not hear himself giving the incorrect shield number. PO Photos giving inconsistent testimony concerning what he heard himself say on the Victim’s cellphone video when his statements were clearly audible suggested that he intended to mislead the investigation.

²⁶ Per Disciplinary matrix – offensive language has a mitigated penalty of 10 days’ vacation forfeiture, a presumptive penalty of 20 days’ vacation forfeiture, and an aggravated penalty of termination.

On May 25, 2022, the Board substantiated two (2) total allegations: one (1) Abuse of Authority allegation against PO Photos for refusing to provide his shield number to the Victim²⁷ and one (1) Untruthful Statement allegation providing a false official statement to the CCRB.²⁸ The APU filed charges and was informed by the Department that PO Photos retired from the Department before further action could be taken.

Case Two, Administratively Closed 202101222 DT3 Richard Ortiz

In February 2021, at approximately 5:20 a.m. in Manhattan, the Victim, a Hispanic female in her early sixties was at her home with her young grandchild when Detective Richard Ortiz [the Respondent] and two other officers knocked on her door. The Victim opened the door and Det. Ortiz said something to her in English which she did not understand. One of the officers called an interpreter over the phone so that they could communicate with the Victim. The Victim was afraid of the officers and let the officers into her home – she could not recall what words she used to consent to the entry. The officers searched the Victim’s home while Det. Ortiz through the interpreter on the phone explained that they were searching for the Victim’s son.

On August 3, 2022, the Board substantiated two (2) total allegations: two (2) Abuse of Authority allegations against Det. Ortiz for entering the Victim’s home²⁹ and for searching the Victim’s home.³⁰ The APU filed charges and was informed by the Department that Det. Ortiz retired from the Department before further action could be taken.

Case Three, Administratively Closed 202002258 LT Eric Dym

In March 2020, at approximately 12:00 a.m. in the Bronx, a Witness, a Black male in his mid-thirties was walking through a housing complex when he saw Lieutenant Eric Dym [the Respondent] frisk a group of individuals. Officers were captured on BWC telling the frisked individuals that they issued summonses to everyone whenever they came to the housing complex.

On March 22, 2022, the Board substantiated two (2) total allegations: two (2) Abuse of Authority allegations against Lt. Dym for frisking individuals³¹ and for threatening to issue summonses to individuals.³² The APU filed charges and was informed by the Department that Lt. Dym retired from the Department before further action could be taken.

²⁷ Per Disciplinary matrix – failure to provide an officer’s name or shield number has a mitigated penalty of training, a presumptive penalty of 3 vacation days’ forfeiture, and an aggravated penalty of 5 vacation days’ forfeiture.

²⁸ Per Disciplinary matrix – intentionally making a false official statement has a mitigated penalty of forced separation and a presumptive penalty of termination.

²⁹ Per Disciplinary matrix – an improper/wrongful entry and search of a premises for a prolonged period has a mitigated penalty of 10 vacation days’ forfeiture, a presumptive penalty of 20 vacation days’ forfeiture, and an aggravated penalty of 30 vacation days’ forfeiture.

³⁰ Per Disciplinary matrix – an improper/wrongful de minimis entry or search of a premises has a mitigated penalty of training, a presumptive penalty of 3 vacation days’ forfeiture, and an aggravated penalty of 5 vacation days’ forfeiture.

³¹ Per Disciplinary matrix – an improper/wrongful frisk of a person has a mitigated penalty of training, a presumptive penalty of 3 vacation days’ forfeiture, and an aggravated penalty of 15 vacation days’ forfeiture.

³² Per Disciplinary matrix - enforcement action involving Abuse of Discretion or Authority has a mitigated penalty of 10 vacation days’ forfeiture, a presumptive penalty of 20 vacation days’ forfeiture, and an aggravated penalty of termination.

Case Four, Administratively Closed 201908117 LT Eric Dym

In August 2019, at approximately 11:30 p.m. in the Bronx, Victim 1, an eighteen-year-old Hispanic male, Victim 2, a sixteen-year-old Hispanic male, and Victim 3, an eighteen-year-old female were sitting on the stoop of their apartment smoking marijuana cigarettes. Victim 4, a Black female in her early fifties was walking up to the building when she saw Lieutenant Eric Dym [the Respondent] and another officer approach Victim 1 and speak with him. Lt. Dym then left and Victim 2 and Victim 3 followed Victim 1 into the building. Victim 5, a sixteen-year-old Hispanic male, and Victim 6, a seventeen-year-old Hispanic male were sitting on the building's fire escape next to a vacant first floor apartment smoking marijuana. Lt. Dym returned to the building thirty minutes later with a large group of officers. Lt. Dym entered the vacant first floor apartment, went to its window and pulled Victim 5 by his foot through the window, off the fire escape and into the apartment. Officers came up the fire escape and pulled Victim 6 into the vacant apartment. Lt. Dym told Victim 5 and Victim 6 that "you better fucking figure it out" as they were handcuffed. Neither Victim had resisted the officers attempt to handcuff them. Lt. Dym then went to Victim 4's apartment door and demanded that Victim 1 open the door. Victim 7, a fifteen-year-old Black female and Victim 8, a Hispanic male in his early forties had both been asleep inside Victim 4's apartment. Victim 7 was awoken by Lt. Dym's shouts and went to awaken Victim 8. Victim 1 ran and hid in a closet in Victim 8's bedroom. Victim 2 was by the front door when Lt. Dym told him "open the fucking door". Lt. Dym knocked the peephole out of the door and entered the apartment and pointed his gun at Victim 7, Victim 8, Victim 2, and Victim 3. Lt. Dym pointed his gun directly in Victim 7's face and told her to "get the fuck on the ground." Victim 8 asked why the officers wanted to arrest Victim 3 and Lt. Dym pointed his gun directly at him and told him to mind his business. Lt. Dym and another officer entered Victim 8's bedroom and Victim 1 was pulled out of the bedroom closet. He was struck in the face and body by the other officer. Lt. Dym used his foot to pin down Victim 1's face to the floor and the other officer handcuffed Victim 1. Lt. Dym told him "you're not a fucking tough guy now." Lt. Dym then instructed officers to arrest Victim 7 and Victim 8 and to issue a summons to Victim 3. Victim 4 went down to the precinct stationhouse and asked Lt. Dym for a business card. He walked away from her without providing her the information. When Lt. Dym was interviewed about the entire incident, he falsely stated that a junior officer told him that Victim 1 had been in the third-floor apartment and falsely stated that the apartment's door had been open, and that he heard a firearm been racked. The falsehoods were used to fabricate his account of his entry into Victim 4's apartment. Lt. Dym also falsely stated that the BWC cameras were dead when he in fact instructed officers to turn them on to record part of the entry into the vacant first-floor apartment and to not record the incident in Victim 4's apartment.

On March 23, 2022, the Board substantiated twenty-one (21) total allegations: seven (7) Abuse of Authority allegations against Lt. Dym for entering the first floor apartment³³, for

³³ Per Disciplinary matrix – an improper/wrongful entry citing public safety/service function has a presumptive penalty of training, and an aggravated penalty of 1 vacation day forfeiture.

entering Victim 4's apartment³⁴, for damaging Victim 4's property³⁵, for arresting Victim 7³⁶, for arresting Victim 8³⁷, for arresting Victim 3³⁸, for failing to provide Victim 4 with a business card³⁹; seven (7) Use of Force allegations for using physical force against Victim 5⁴⁰, Victim 6⁴¹, and Victim 1⁴², for pointing his gun at Victim 2⁴³, Victim 8⁴⁴, Victim 7⁴⁵, Victim 3⁴⁶; five (4) Courtesy allegations for speaking discourteously to individuals⁴⁷, speaking discourteously to Victim 2⁴⁸, speaking discourteously to Victim 7⁴⁹, speaking discourteously to Victim 8⁵⁰,

³⁴ Per Disciplinary matrix – an improper/wrongful entry citing public safety/service function has a presumptive penalty of training, and an aggravated penalty of 1 vacation day forfeiture.

³⁵ Per Disciplinary matrix – improper/wrongful damage to a person's property has a mitigated penalty of 5 vacation days' forfeiture, a presumptive penalty of 10 vacation days' forfeiture, and an aggravated penalty of 20 vacation days' forfeiture

³⁶ Per Disciplinary matrix – enforcement action involving Abuse of Discretion or Authority has a mitigated penalty of 10 vacation days' forfeiture, a presumptive penalty of 20 vacation days' forfeiture, and an aggravated penalty of termination.

³⁷ Per Disciplinary matrix – enforcement action involving Abuse of Discretion or Authority has a mitigated penalty of 10 vacation days' forfeiture, a presumptive penalty of 20 vacation days' forfeiture, and an aggravated penalty of termination.

³⁸ Per Disciplinary matrix – enforcement action involving Abuse of Discretion or Authority has a mitigated penalty of 10 vacation days' forfeiture, a presumptive penalty of 20 vacation days' forfeiture, and an aggravated penalty of termination.

³⁹ Per Disciplinary matrix – failure to comply with the RTKA regarding consent to search has a mitigated penalty of training, a presumptive penalty of 3 vacation days' forfeiture, and an aggravated penalty of 5 vacation days' forfeiture.

⁴⁰ Per Disciplinary matrix – non-deadly force against another that results in no injury has a mitigated penalty of 5 vacation days' forfeiture, a presumptive penalty of 10 vacation days' forfeiture, and an aggravated penalty of termination.

⁴¹ Per Disciplinary matrix – non-deadly force against another that results in no injury has a mitigated penalty of 5 vacation days' forfeiture, a presumptive penalty of 10 vacation days' forfeiture, and an aggravated penalty of termination.

⁴² Per Disciplinary matrix – non-deadly force against another that results in no injury has a mitigated penalty of 5 vacation days' forfeiture, a presumptive penalty of 10 vacation days' forfeiture, and an aggravated penalty of termination.

⁴³ Per Disciplinary matrix –deadly physical force (incl. use of a deadly weapon or dangerous instrument) against another that results in no injury has a mitigated penalty of 30 suspension days + 30 vacation days' forfeiture+ 1 year dismissal probation and a presumptive penalty of termination

⁴⁴ Per Disciplinary matrix –deadly physical force (incl. use of a deadly weapon or dangerous instrument) against another that results in no injury has a mitigated penalty of 30 suspension days + 30 vacation days' forfeiture+ 1 year dismissal probation and a presumptive penalty of termination

⁴⁵ Per Disciplinary matrix –deadly physical force (incl. use of a deadly weapon or dangerous instrument) against another that results in no injury has a mitigated penalty of 30 suspension days + 30 vacation days' forfeiture+ 1 year dismissal probation and a presumptive penalty of termination

⁴⁶ Per Disciplinary matrix –deadly physical force (incl. use of a deadly weapon or dangerous instrument) against another that results in no injury has a mitigated penalty of 30 suspension days + 30 vacation days' forfeiture+ 1 year dismissal probation and a presumptive penalty of termination

⁴⁷ Per Disciplinary matrix – courtesy has a mitigated penalty of 1 vacation day forfeiture, a presumptive penalty of 5 vacation days' forfeiture, and an aggravated penalty of 10 vacation days' forfeiture.

⁴⁸ Per Disciplinary matrix – courtesy has a mitigated penalty of 1 vacation day forfeiture, a presumptive penalty of 5 vacation days' forfeiture, and an aggravated penalty of 10 vacation days' forfeiture.

⁴⁹ Per Disciplinary matrix – courtesy has a mitigated penalty of 1 vacation day forfeiture, a presumptive penalty of 5 vacation days' forfeiture, and an aggravated penalty of 10 vacation days' forfeiture.

⁵⁰ Per Disciplinary matrix – courtesy has a mitigated penalty of 1 vacation day forfeiture, a presumptive penalty of 5 vacation days' forfeiture, and an aggravated penalty of 10 vacation days' forfeiture.

speaking discourteously to Victim 1⁵¹, and two (2) Untruthful Statement allegations for providing a misleading official statement⁵² and a false official statement⁵³ to the CCRB. Before the APU could file charges, they were informed by the Department that Lt. Dym retired from the Department before further action could be taken.

Case Five, Administratively Closed 202003429 LT Eric Dym

In May 2020, at approximately 11:30 p.m. in the Bronx, Victim 1, a twenty-year-old Black male was sitting in his vehicle that was parked in a parking spot in front of a building. In his vehicle were two of his cousins – Victim 2, a twenty -year- old Black male, and Victim 3, a twenty-one-year-old Black male. Lieutenant Eric Dym [the Respondent] and other officers approached the vehicle. Lt. Dym ordered the Victims out of the vehicle. Victim 3 was handcuffed, and Lt. Dym pushed him into the vehicle, causing him to hit his chin. Lt. Dym then used a closed fist and punched Victim 3 in his ribs and pushed him to the ground, causing the Victim's mouth to hit his mouth on the ground. Lt. Dym then placed his knee on Victim 3's neck causing his breathing to be restricted. Lt. Dym then issued summonses to Victim 1 and Victim 2.

On March 30, 2022, the Board substantiated six (6) total allegations: three (3) Abuse of Authority allegations against Lt. Dym for stopping the vehicle in which Victim 1, Victim 2 and Victim 3 were occupants⁵⁴, issuing summonses to Victim 1⁵⁵ and Victim 2⁵⁶; three (3) Use of Force allegations for using physical force against Victim 2 in two⁵⁷ separate instances and for restricting Victim 2's breathing.⁵⁸ Before the APU could file charges, they were informed by the Department that Lt. Dym retired from the Department before further action could be taken.

Case Six Administratively Closed 202003703 PO Michael Sher

In May 2020, at approximately 5:30 p.m. in Brooklyn, the Victim, a Black male in his early thirties was attending an Anti-Police Brutality protest. The Victim was wearing a COVID-19 face mask as he stood with both of his hands up, and his palms facing outwards. He was

⁵¹ Per Disciplinary matrix – courtesy has a mitigated penalty of 1 vacation day forfeiture, a presumptive penalty of 5 vacation days' forfeiture, and an aggravated penalty of 10 vacation days' forfeiture.

⁵² Per Disciplinary matrix – intentionally making a misleading official statement has a mitigated penalty of 20 vacation days' forfeiture, a presumptive penalty of 30 vacation days' forfeiture + one year dismissal probation, and an aggravated penalty of termination.

⁵³ Per Disciplinary matrix – intentionally making a false official statement has a mitigated penalty of forced separation and a presumptive penalty of termination.

⁵⁴ Per Disciplinary matrix – an improper/wrongful stop of a vehicle has a mitigated penalty of training, a presumptive penalty of 3 vacation days' forfeiture, and an aggravated penalty of 15 vacation days' forfeiture.

⁵⁵ Per Disciplinary matrix - enforcement action involving Abuse of Discretion or Authority has a mitigated penalty of 10 vacation days' forfeiture, a presumptive penalty of 20 vacation days' forfeiture, and an aggravated penalty of termination.

⁵⁶ Per Disciplinary matrix - enforcement action involving Abuse of Discretion or Authority has a mitigated penalty of 10 vacation days' forfeiture, a presumptive penalty of 20 vacation days' forfeiture, and an aggravated penalty of termination.

⁵⁷ Per Disciplinary matrix – non-deadly force against another that results in no injury has a mitigated penalty of 5 vacation days' forfeiture, a presumptive penalty of 10 vacation days' forfeiture, and an aggravated penalty of termination.

⁵⁸ Per Disciplinary matrix – application of a chokehold has a mitigated penalty of forced separation and a presumptive penalty of termination.

standing with other protestors as a group of uniformed police officers stood in front of them, a police vehicle behind them. The officers were shouting at the crowd to get back. The protestors including the Victim stepped back as the police vehicle made its way through the crowd. Police Officer Michael Sher [the Respondent] walked up to the Victim. PO Sher placed his hand on the Victim's chest and the Victim told him not to touch him. PO Sher grabbed the Victim's face mask and pulled it down so that the Victim's whole face was exposed. PO Sher then pepper sprayed the Victim directly in his face. PO Sher walked off and did not request medical attention for the Victim. The incident was captured on cellphone video and BWC.

On November 1, 2021, the Board substantiated three (3) total allegations: one (1) Discourtesy allegation against PO Sher for acting discourteously toward the Victim⁵⁹, one (1) Use of Force allegation for using pepper spray against the Victim⁶⁰, and one (1) Abuse of Authority allegation for not obtaining medical treatment for the Victim⁶¹.

The NYPD Department Advocate Office pursued its own charges against PO Sher, and he was found guilty. The presiding judge, ADCT Josh Kleiman issued a penalty recommendation of ten (10) vacation days forfeiture and on July 14, 2022, the Police Commissioner upheld the recommended penalty without modification.

VI. The APU's Docket

As seen in the following table, the APU's docket had significant growth in the third quarter of 2022 compared to the third quarter of 2021. This can be attributed to the substantiation of Charges and Specifications of allegations arising from complaints filed during the summer protests of 2020, use of the Disciplinary matrix, and staffing shortages.

Cases in Open Docket⁶²					
Period	Start of Quarter	Received During Quarter	Closed During Quarter	End of Quarter	Growth
3 rd Quarter 2019	122	11	10	123	0.8%
4 th Quarter 2019	123	23	20	126	2.4%
1 st Quarter 2020	122	5	8	119	-2.5%
2 nd Quarter 2020	119	21	23	117	-1.7%
3 rd Quarter 2020	115	3	6	114	-0.9%
4 th Quarter 2020	114	6	3	117	2.6%

⁵⁹ Per Disciplinary matrix – courtesy has a mitigated penalty of 1 vacation day forfeiture, a presumptive penalty of 5 vacation days' forfeiture, and an aggravated penalty of 10 vacation days' forfeiture.

⁶⁰ Per Disciplinary matrix – less lethal force/device against another that results no injury has a mitigated penalty of 10 vacation days' forfeiture, a presumptive penalty of 20 vacation days' forfeiture, and an aggravated penalty of termination

⁶¹ Per Disciplinary matrix – intentional/reckless failure to obtain medical attention in the face of apparent or visible injury/illness has a mitigated penalty of 20 vacation days' forfeiture, a presumptive penalty of 30 vacation days' forfeiture + one (1) year dismissal probation, and an aggravated penalty of termination.

⁶² 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.

1st Quarter 2021	115	4	7	112	-2.6%
2nd Quarter 2021	113	50	3	159	40.7%
3rd Quarter 2021	151	65	14	198	31.1%
4th Quarter 2021	193	51	19	223	15.5%
1st Quarter 2022	223	133	4	352	57.8%
2nd Quarter 2022	348	215	22	541	55.5%
3rd Quarter 2022	540	102	15	628	16.8%

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 with the Charges Unit decreased between the second and third quarters of 2022. As of September 30, 2022, there were one hundred fifty-seven (157) Respondents who had not been served with Charges. The average wait time for Respondents to be served charges between the second and third quarters in 2022 has decreased by fourteen (14) days.

Time to Serve Respondents			
Period	Number of Respondents Served	Average Length to Serve Respondents	Average Length to Serve Respondents (Business Days)
3 rd Quarter 2019	17	67	48
4 th Quarter 2019	7	68	48
1 st Quarter 2020	10	129	92
2 nd Quarter 2020	18	62	44
3 rd Quarter 2020	16	88	63
4 th Quarter 2020	6	71	51
1 st Quarter 2021	2	66	47
2 nd Quarter 2021	13	20	14
3 rd Quarter 2021	46	22	15
4 th Quarter 2021	40	40	28
1 st Quarter 2022	39	27	19
2 nd Quarter 2022	134	38	27
3rd Quarter 2022	67	24	17

We hope that the Commissioner will continue to uphold negotiated plea agreements without modification.

Thank you for your consideration.

Sincerely,

Jonathan Darche
Executive Director

Cc: CCRB Acting Chair Arva Rice
Deputy Commissioner Rosemarie Maldonado
Department Advocate Chief Amy Litwin