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ARVA RICE
INTERIM CHAIR

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
First 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 Police Commissioner Shea; (iii) the retention cases under Provision Two of the April 2, 2012 Memorandum of Understanding (“MOU”); (iv) the dismissal of cases by the APU; (v) three (3) cases administratively closed by Police Commissioner Shea; (vi) the size of the APU's docket; and (vii) the length of time to serve Respondents.

I. Trial Verdicts Upheld by the Police Commissioner

In the first quarter of 2022, zero (0) CCRB verdicts for trials were conducted before an ADCT.

II. Treatment of APU Pleas

In the first quarter of 2022, the Department finalized one (1) plea. The APU makes penalty recommendations for all cases in which Charges and Specifications are substantiated by the Board. In addition to the New York City Police Department’s (“NYPD” or “the Department”) Disciplinary Matrix¹, 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

¹ https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/disciplinary-system-penalty-guidelines-effective-01-15-2021-competite-.pdf

Complainants, and precedent cases 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
1 st Quarter 2019	1	0	0	0
2 nd Quarter 2019	4	0	0	0
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
2 nd Quarter 2021	0	0	0	0
3 rd Quarter 2021	1	0	0	0
4 th Quarter 2021	0	0	0	0
1st Quarter 2022	1	0	0	0

As seen in the chart above, in the first quarter of 2022 there was one (1) case in which a guilty plea entered into by the CCRB was finalized by the NYPD.

Case One, Penalty Unmodified 201801900 SGT Joan Ferreira

This incident, which occurred in October 2017, at approximately 5:20 a.m. in Manhattan, involved Victims 1 and 2, both Hispanic males in their twenties, who co-owned a restaurant. Victim 1 rented out the restaurant for a private event. Plainclothes officers showed up at the establishment and knocked on the front door, which was locked. The party patrons began to exit the restaurant through the back door, which also had been locked. The plainclothes officers entered the restaurant from the now open back door, turned on the lights and unlocked the front door. Sergeant Joan Ferreira [the Respondent] and other officers entered the restaurant. Sgt. Ferreira told the patrons to leave. As the patrons complied with the directive, Sgt. Ferreira stopped and frisked Victim 1, and stopped, frisked, and searched the patrons as they left. Sgt. Ferreira entered the storage area of the restaurant — an area that was not publicly accessible — and encountered a locked office door, which he kicked open in order to enter the office. Sgt. Ferreira removed cases of liquor from the storage area. Sgt. Ferreira returned to the restaurant area and pulled down window coverings, causing damage to the window blind system. The incident was captured on the restaurant’s surveillance cameras.

On March 19, 2019, the Board substantiated nine (9) total allegations: nine (9) Abuse of Authority allegations against Sgt. Ferreira for entering the restaurant, searching the restaurant, stopping individuals, frisking individuals, searching individuals, stopping Victim 1, frisking

Victim 1, seizing property belonging to Victim 1 and Victim 2, and damaging property belonging to Victim 1 and Victim 2. On October 26, 2021, Sgt. Ferreira pled guilty to all nine counts and agreed to accept eighteen (18) days' vacation forfeiture. On February 2, 2022, Commissioner Sewell accepted the plea and did not modify the negotiated penalty.

III. Cases Retained by Police Commissioner

In the first quarter of 2022, the Police Commissioner retained zero (0) cases pursuant to Provision Two of the MOU between the CCRB and NYPD.

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.

IV. Dismissal of Cases by the APU

If, while investigating a case, the APU discovers new evidence that makes it improper to continue to prosecute misconduct against a MOS, the APU will dismiss the Charges against that Respondent. The APU did not dismiss any cases against an officer in the first quarter of 2022.

V. Cases Administratively Closed by the Police Commissioner

In the first quarter of 2022, the Police Commissioner administratively closed four (4) cases.

Case One, Administratively Closed 201908071 PO Christopher Peroni

In September 2019, at approximately 11:30 p.m. in Manhattan, Victim 1 and Victim 2, Black males in their late twenties, were stopped at a stoplight. Their vehicle was pulled over by an unmarked car. Police Officer Christopher Peroni [the Respondent], another officer, and a sergeant approached the vehicle. The incident was captured on BWC. PO Peroni approached the driver, Victim 1, and told him that he had been pulled over because one of the vehicle's taillights was out. PO Peroni asked Victim 1 for his license and registration, which Victim 1 provided. PO Peroni checked the documents and informed Victim 1 that his vehicle was unregistered and not on file. PO Peroni ordered Victim 1 out of the vehicle. Victim 1 stated that he was uncomfortable and tried to explain that the vehicle was recently purchased and that he had filed the required

paperwork. Victim 1 stepped out of the vehicle and PO Peroni patted down his ankles, legs, torso, and arms. PO Peroni then told Victim 2 to exit the vehicle. When Victim 2 asked why, PO Peroni told him “I’m going to bring you back to the precinct and you’re going to be arrested for OGA.” PO Peroni patted down Victim 2 in a similar manner to Victim 1 and also searched his pockets. PO Peroni then entered the vehicle through the front passenger door and searched the vehicle. PO Peroni exited the vehicle and went to the back of the vehicle where Victims 1 and 2 were standing with other officers. PO Peroni told Victim 1 “since you wanna be a fucking smartass...they both have the same fucking VIN number.”

PO Peroni then reentered the vehicle through the front passenger door leaning into the back seat area. He exited the vehicle, opened the driver side front door, and used a flashlight to search the vehicle. He then opened the driver side back door and searched the back seat. After both Victims were allowed to return to the vehicle, PO Peroni asked Victim 1 to open the trunk. Victim 1 asked why he should open the trunk and PO Peroni said that he had the car from “a to z.” Victim 1 asked what PO Peroni was looking for and PO Peroni responded that he did not have to tell him. Victim 1 repeatedly requested to speak to PO Peroni’s superiors. PO Peroni then pulled Victim 1 out of the vehicle and said to him “but now you’re gonna be assholes...you wanna run your fucking mouth.” PO Peroni placed Victim 1 in handcuffs, which prompted Victim 2 to ask why Victim 1 was being arrested. Victim 2 was brought out of the vehicle and PO Peroni began to restate the vehicle issue and told Victim 2 “but now you’re gonna be assholes” and “he wants to be an asshole, now I’m going to arrest him.”

On August 30, 2021, the Board substantiated seven (7) total allegations: five (5) Abuse of Authority allegations against PO Peroni for threatening to arrest Victim 2, frisking Victim 1, frisking Victim 2, searching Victim 2, searching Victim 1’s vehicle and two (2) Discourteous allegations for speaking discourteously to Victim 1 and Victim 2. The APU filed charges and was informed by the Department that PO Peroni retired from the Department before further action could be taken.

Case Two, Administratively Closed 202001676 PO Christopher Messina

In February 2020, at approximately 12:20 a.m. in Brooklyn, the Victim, a Black female in her mid-forties, was parked across the street from a police vehicle stop. She told the officers that they shouldn’t bully people and that the male officers should not search women. She also remarked that the officers get “hurt” because they abuse their authority. Police Officer Christopher Messina [the Respondent] issued the Victim a summons for parking at a hydrant and for not producing vehicle insurance. PO Messina also issued the Victim a disorderly conduct summons. He was captured on BWC saying ““I’m writing her a C [summons]. Forget that. I’m gonna write her this one, I’m writing her that, and the C [summons]. You’re not gonna yell that stuff out the window.”

On February 28, 2022, the Board substantiated one (1) total allegation: one (1) Abuse of Authority allegation against PO Messina for issuing a summons to the Victim. The APU filed charges and was informed by the Department that PO Messina retired from the Department before further action could be taken.

Case Three, Administratively Closed 201911001 PO Charles Ji

In December 2019, at approximately 7:45 p.m., in Brooklyn, the Victim, a Black male in his early twenties, was arrested and transported to the precinct by Police Officer Charles Ji [the Respondent]. The Victim complained about plastic being in his face as he sat on a bench waiting to be processed and as an officer went through his pockets. The Victim was agitated, repeatedly stating that officers had tried to kill him and arguing with the officer going through his pockets, when PO Ji yelled at the Victim that he needed to calm down, placed his hand on the front of the Victim’s throat and forcefully pushed him back onto the table until the Victim was on his back.

On February 28, 2022, the Board substantiated one (1) total allegation: one (1) Use of Force allegation against PO Ji for using a chokehold on the Victim. The APU filed charges and was informed by the Department that PO Ji retired from the Department before further action could be taken.

Case Four, Administratively Closed 201907293 PO Christopher Messina

In August 2019, at approximately 9:00 p.m. in Brooklyn, the Victim, a Black male in his mid-forties, was working on his friend’s truck that was parked on the side of a road. They were approached by Police Officer Christopher Messina [the Respondent] and another officer. The Victim was asked to identify himself and he gave his name and date of birth. He was told by the officers to put his hands behind his back. The Victim asked if he did anything wrong and neither officer answered him. the Victim’s friend told him to listen to the officers and comply with their orders. The Victim kept his arms tense and tight and yelled profanities at the officers. PO Messina then punched the Victim in the side of his head. He was handcuffed and PO Messina grabbed his foot and lifted it off the ground. The action caused the Victim to lose his balance and he fell to the ground on his back. The incident was captured on BWC.

On May 17, 2021, the Board substantiated two (2) total allegations: two (2) Use of Force allegations against PO Messina for using physical force against the Victim twice. The APU filed charges and was informed by the Department that PO Messina retired from the Department before further action could be taken.

VI. The APU’s Docket

As seen in the following table, the APU’s docket had significant growth in the first quarter of 2022 compared to the first 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 Docket²					
Period	Start of Quarter	Received During Quarter	Closed During Quarter	End of Quarter	Growth

² 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.

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%
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%
1 st Quarter 2021	115	4	7	112	-2.6%
2 nd Quarter 2021	113	50	3	159	40.7%
3 rd Quarter 2021	151	65	14	198	31.1%
4 th Quarter 2021	193	51	19	223	15.5%
1st Quarter 2022	223	133	4	352	57.8%

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 fourth quarter of 2021 and the first quarter of 2022. As of March 31, 2022, there were sixty (60) Respondents who had not been served with Charges. The average wait time for Respondents to be served charges between the fourth quarter of 2021 and the first quarter of 2022 reduced by thirteen (13) days.

Time to Serve Respondents			
Period	Number of Respondents Served	Average Length to Serve Respondents	Average Length to Serve Respondents (Business Days)
1 st Quarter 2019	24	115	82
2 nd Quarter 2019	11	76	54
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
1st Quarter 2022	39	27	19

We hope that the Commissioner will continue to uphold negotiate 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