



BILL DE BLASIO
MAYOR

CIVILIAN COMPLAINT REVIEW BOARD
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RICHARD D. EMERY, ESQ.
CHAIR
TRACY CATAPANO-FOX, ESQ.
EXECUTIVE DIRECTOR

September 9, 2014

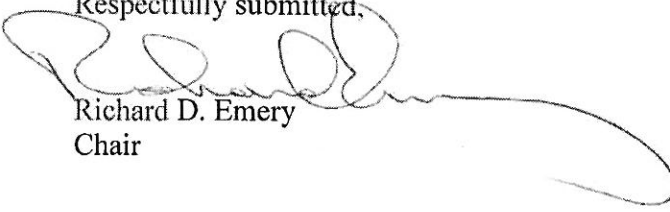
Police Commissioner William Bratton
New York City Police Department
One Police Plaza
New York, NY 10006

Dear Police Commissioner Bratton:

Pursuant to the Memorandum of Understanding between the CCRB and the NYPD, enclosed is the Administrative Prosecution Unit's quarterly report for the second quarter of 2014. This report highlights the APU operations for the second quarter of this year.

Please review and provide any comments. It is our intention to discuss this report at the September board meeting and provide it to the public.

Respectfully submitted,


Richard D. Emery
Chair

Cc: Rosemarie Maldonado, Deputy Commissioner of Trials
Kevin Richardson, Deputy Commissioner of Department Advocate's Office

2014 SECOND QUARTER STATISTICS

During the Second Quarter of 2014 (Q2 2014), the CCRB's Administrative Prosecution Unit (APU) received 37 cases from the Board (see Appendix, page i). In 12 of these cases charges were served, in 3 cases charges were filed but are awaiting service and in 22 cases charges were not yet filed. During Q2 2014, the APU negotiated pleas in 14 cases with 16 members of service. All 14 of these pleas are awaiting the Police Commissioner's review.

The APU completed 12 trials and commenced five others during Q2 2014. We are awaiting draft decisions from the Deputy Commissioner of Trials in all 12 of the completed trials.

In Q2 2014, the Police Department reported the final disposition of four APU trials involving four MOS (see Appendix, pages ii and iii). In two cases, the Assistant Deputy Trial Commissioner (ADTC) presiding over the trial found the MOS not guilty. In one case, the ADTC found the Member of Service (MOS) guilty on one charge and not guilty on a second charge. In the remaining case, the ADTC found the MOS guilty of the sole charge. The Police Commissioner approved the verdicts in all four cases, as well as the penalties recommended by the respective ADTC in the two cases with guilty findings.

Of cases received in Q2 2014, 42.1% occurred in Brooklyn, 26.3% in the Bronx, 10.5% in Manhattan, 15.8% in Queens and 5.3% in Staten Island (see Appendix, page iv). As a percentage of the APU's entire open docket, 41.1% of cases occurred in Brooklyn, 24.6% in the Bronx, 15.9% in Manhattan, 12.1% in Queens and 6.3% in Staten Island (see Appendix, page iv and x).

The precincts with the two highest percentages of cases sent to the APU in Q2 2014 are the 75th Precinct with 18.4% and the 40th Precinct with 7.9% (see Appendix, page v). Five other precincts each accounted for 5.3% of the cases sent to the APU in Q2 2014.¹ When the entire APU docket is considered, the precincts with the highest percentage of cases are the 75th Precinct with 10.1%, the 40th Precinct with 4.8%, and the 73rd Precinct with 4.3% (see Appendix, pages v and xii).

Among cases received in Q2 2014, the types of allegations with the largest number of charges filed are 22.9% for stop of a person, 22.9% for wrongful summons² and 10.4% for search of a person (see Appendix, page vi). As a percentage of all open APU charges, the largest categories are 20.2% for stop of a person, 14.7% for frisk of a person and 10.6% for search of a person (see Appendix, page xi).

If the number of charges are aggregated for stop of a person, frisk of a person, frisk of personal property, search of a person and search of personal property, the precinct with the highest percentage of charges filed in cases received by the APU in Q2 2014 was the 75th Precinct with 18.8% (see Appendix, page vii). The 44th, 79th, and 120th Precincts had the next highest percentage with 12.5% each. As a percentage of all open APU charges, the precincts with the highest percentage of aggregated stop,

¹ The five precincts are the 10th, 41st, 44th, 79th, and 120th.

² 10 of the 11 wrongful summons charges stem from one case involving two MOS.

question and frisk charges are the 75th Precinct with 9.9%, the 46th Precinct with 6.0% and the 79th Precinct with 5.6%.

APU CASES RETAINED BY THE POLICE COMMISSIONER PURSUANT TO THE MOU

In Q2 2014, the Police Commissioner retained two cases pursuant to Paragraph 2 of the MOU signed by our respective agencies on April 2, 2012 (see Appendix, page viii). In the first retained case, the reasons provided by the Police Department for retaining the case were that both MOS against whom allegations were substantiated had no disciplinary history and no prior CCRB complaints. The Police Department notified the CCRB that it intended to provide both MOS with “formalized training” to address their actions.

In the second retained case, the reasons the Police Department provided for retaining the case were that the MOS against whom allegations were substantiated had no disciplinary history and no prior substantiated CCRB complaints. The Police Department offered the MOS a Schedule B Command Discipline accompanied by the forfeiture of five vacation days. The MOS rejected the Command Discipline as a means of resolving the substantiated complaint. Accordingly, the Police Department returned the case to the APU for prosecution.

We are concerned that the treatment of these two cases may presage a routine retention of APU cases going forward. Such a course of action would defeat the twin goals of increasing transparency and strengthening public confidence in the disciplinary process which animated the creation of the APU.

APU PLEAS DISAPPROVED BY THE POLICE COMMISSIONER

In two cases from Q2 2014, the Police Commissioner disapproved the penalty negotiated as part of plea agreements reached by the APU and the MOS with the advice of counsel (see Appendix, page ix). As is the practice in the Department’s Trial Room, the plea agreements were memorialized in writing and signed by the MOS, his lawyer, the APU prosecutor and an APU supervisor. In both cases, the MOS had the opportunity to review discovery materials related to the case and discuss his legal options with his attorney before agreeing to the terms of the plea agreement. Each MOS accepted the plea in court, on the record, before the NYPD Deputy Commissioner for Trials, with his counsel present and only after the APU prosecutor recited the facts of the case for the record. The Deputy Commissioner of Trials recommend the Police Commissioner approve both pleas.

In the first case, the MOS agreed to plead *Nolo contendere* to the charge of an unlawful stop and accepted a penalty of ten forfeited vacation days. Pursuant to Paragraph 6 of the MOU, the Department notified the CCRB that the Police Commissioner had reduced the previously agreed upon penalty to Instructions regarding Patrol Guide Section 212-11 (Stop, Question & Frisk) to be administered by the Police Academy . The reasons provided by the Police Department for disapproval of the plea were as follows: this was the only substantiated CCRB allegation in the MOS’s 20 years of service; he has served

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² 10 of the 11 wrongful summons charges stem from one case involving two MOS.

in the Narcotics Division since 1998; the number of arrests he has made; he has no disciplinary history since 2001 and no prior allegations of misconduct relating to Stop, Question and Frisk³. It is important to note that Instructions were imposed even though the MOS had notified the Department that he intended to retire.

In the second case, the MOS admitted he was guilty of an unlawful vehicle search and of speaking discourteously to a civilian. The Police Commissioner disapproved the previously negotiated penalty of five forfeited vacation days and instead imposed Instructions to be administered at the Police Academy regarding vehicle searches and Courtesy, Professionalism and Respect. The reasons the Department provided for disapproval of the penalty was that this was the only substantiated allegation against the MOS during his twelve years of service, the number of arrests he has made and that he has no disciplinary history other than a Command Discipline he received for other misconduct in this same case.

While recognizing the Police Commissioner's authority to reject guilty pleas and negotiated penalties, we urge the NYPD to consider the detrimental impact this has on the disciplinary process. The reduction of a penalty agreed to by MOS pursuant to plea negotiations seriously undermines the ability of the APU to negotiate plea agreements in the future, thereby depriving the parties of the opportunity to resolve a case short of trial.

FUTURE PLANS FOR THE APU

At the August public board meeting, the Board passed a resolution authorizing APU prosecutors to plead cases to any level of discipline, with the understanding that this plea would be sustained by the Police Commissioner without further review. The resolution envisions a process by which the APU would consult with the Executive Director, who would forward the proposed plea disposition to the Chair and designated committee for review and approval, while simultaneously the Deputy Commissioner for DAO would forward the proposed plea disposition to the First Deputy Police Commissioner and Police Commissioner for review and approval. Once there has been approval by both parties, the APU prosecutors will present the negotiated plea to the Deputy Commissioner of Trials for final disposition, without further review. This process will ensure an expedient and fair review of pleas and provide APU prosecutors with the proper authority inherent in their positions.

Further, beginning in September, a joint committee of the Chair with designated board members and staff will be meeting with designees of the Police Commissioner to analyze possible redesign of the disciplinary process to ensure a rational, predictable and fair disposition of cases.

³ The MOS was the subject of six complaints prior to the case sent to the APU and one case subsequent to that time.

APU QUARTERLY REPORT
Q2 2014

APPENDIX

Open APU Docket as of 6/30/2014

Stage	Cases Received in Second Quarter of 2014	All Open Cases
Plea modified by Police Commissioner, awaiting formal closure	0	2
Guilty plea entered, awaiting approval by Police Commissioner	0	20
Trial verdict rendered, awaiting approval by Police Commissioner	0	1
Trial completed, awaiting verdict	0	21
Trial commenced, but not completed	0	8
Trial scheduled	0	41
Calendared for court appearance	0	30
Charges served, awaiting initial appearance	12	53
Charges filed, awaiting service	3	3
Awaiting filing of charges	22	28
	37	207

APU Cases Closed*

	Number of Officers	
	Q2 2014	YTD 2014
Final Disposition		
Guilty after trial	2	2
Resolved by plea	1	1
Command Discipline***	0	0
Instructions***	0	0
Previously adjudicated with disciplinary action	0	0
Retained by NYPD with disciplinary action	0	1
Subtotal: Disciplinary Action	3	4
Not guilty after trial	2	2
Charges dismissed		
Pre-Trial	1	1
Post-Trial	0	0
Charges not filed	0	0
Statute of limitations expired	0	0
Previously adjudicated with no disciplinary action	0	0
Retained by NYPD with no disciplinary action	0	0
Subtotal: No Disciplinary Action	3	3
Filed**	0	0
Total Closed Cases	6	7
Discipline rate	50.0%	57.1%

* Cases closed in a particular year often stem from CCRB complaints made in previous years.

** "Filed" is a term used by the Police Department when charges are served but not adjudicated before the respondent leaves the NYPD. The charges become part of the respondent's permanent record and will be adjudicated if the respondent returns to the NYPD.

***The APU does not currently have the ability to resolve a case through the issuance of a Command Discipline.

Police Department Disciplinary Penalties for APU Cases by Date of NYPD Closure*

	Number of Officers	
	Q2 2014	YTD 2014
Penalty**		
Terminated	0	0
Suspension for or loss of vacation time of 31 or more days and/or Dismissal Probation	0	0
Suspension for or loss of vacation time of 21 to 30 days and/or Dismissal Probation	0	0
Suspension for or loss of vacation time of 11 to 20 days	0	0
Suspension for or loss of vacation time of 1 to 10 days	3	3
Command Discipline A***	0	1†
Command Discipline B***	0	0
Formalized Training††	0	0
Instructions††	0	0
Warned and admonished	0	0
Total	3	4

* Cases closed in a particular year often stem from CCRB complaints made in previous years.

** Where the penalty imposed would fall into more than one of the categories above, it is reported under the more serious category.

*** The APU does not currently have the ability to resolve a case through the issuance of a Command Discipline.

† Previously adjudicated

†† Formalized training is conducted by the Police Academy, the NYPD Legal Bureau, or other NYPD unit.

††† Instructions are conducted at the command level.

Details of Closed APU Cases as of 6/30/2014

From April 1, 2014 through June 30, 2014, the Police Department reported a disposition in four APU trials involving four respondents.

Case #	Officer ID	Command	Allegation	APU Recommendation	Trial Commissioner's Recommendation	Police Commissioner's Determination	Date of Police Commissioner's Determination
20140601	2014060101	77	A - Question	Forfeit 15 vacation days	Not Guilty	Approved trial commissioner's recommendation for all counts	6/17/14
			A - Frisk				
			A - Search				
20140602	2014060201	113	A - Stop	Forfeit 7 vacation days	Not Guilty	Approved trial commissioner's recommendation	6/17/14
20140603	2014060301	107	D - Discourtesy	Forfeit 10 vacation days	Guilty - Forfeit 5 vacation days	Approved trial commissioner's recommendation for both counts	6/17/14
			D - Discourtesy				
20140401	2014040101	83	A - Frisk	Forfeit 10 vacation days	Not Guilty	Approved both counts	4/3/14
			A - Search				

From April 1, 2014 through June 30, 2014, the Police Department dismissed one APU case involving one respondent.

Case #	Officer ID	Command	Allegation	APU Recommendation	Trial Commissioner's Recommendation	Police Commissioner's Determination	Date of Police Commissioner's Determination
20140604	2014060401	63	A - Entry	Dismissal	Dismissal	Approved	6/17/14

From April 1, 2014 through June 30, 2014, the Police Department finalized a plea in one APU case involving one respondent.

Case #	Officer ID	Command	Allegation	APU Recommendation	Trial Commissioner's Recommendation	Police Commissioner's Determination	Date of Police Commissioner's Determination
20140501	2014050101	120	A - Vehicle Search	Forfeit 8 vacation days	Forfeit 8 vacation days	Reduced penalty to instructions	5/20/14
			D - Discourtesy				

APU Cases By Borough as of 6/30/2014

Borough	Cases Received in Second Quarter of 2014		All Open APU Cases	
	Number	% Total	Number	% Total
Brooklyn	16	42.1%	85	41.1%
Bronx	10	26.3%	51	24.6%
Manhattan	4	10.5%	33	15.9%
Queens	6	15.8%	25	12.1%
Staten Island	2	5.3%	13	6.3%
	38	100.0%	207	100.0%

APU Cases By Precinct of Occurrence as of 6/30/2014

Precinct*	Cases Received in 2Q 2014		All Open APU Cases	
	Number	% Total	Number	% Total
1	0	0.0%	1	0.5%
7	1	2.6%	3	1.4%
9	1	2.6%	2	1.0%
10	2	5.3%	3	1.4%
13	0	0.0%	1	0.5%
14	0	0.0%	2	1.0%
18	0	0.0%	3	1.4%
19	0	0.0%	1	0.5%
23	0	0.0%	6	2.9%
24	0	0.0%	2	1.0%
25	0	0.0%	2	1.0%
28	0	0.0%	2	1.0%
30	0	0.0%	2	1.0%
32	0	0.0%	1	0.5%
34	0	0.0%	2	1.0%
40	3	7.9%	10	4.8%
41	2	5.3%	7	3.4%
42	0	0.0%	3	1.4%
43	1	2.6%	3	1.4%
44	2	5.3%	8	3.9%
46	1	2.6%	8	3.9%
47	0	0.0%	2	1.0%
48	0	0.0%	1	0.5%
49	1	2.6%	1	0.5%
50	0	0.0%	2	1.0%
52	0	0.0%	6	2.9%
60	0	0.0%	3	1.4%
61	1	2.6%	2	1.0%
62	0	0.0%	1	0.5%
63	0	0.0%	1	0.5%
66	1	2.6%	2	1.0%
67	0	0.0%	6	2.9%
69	1	2.6%	5	2.4%
70	1	2.6%	3	1.4%
72	0	0.0%	2	1.0%
73	1	2.6%	9	4.3%
75	7	18.4%	21	10.1%
76	0	0.0%	5	2.4%
77	0	0.0%	5	2.4%
79	2	5.3%	8	3.9%
81	0	0.0%	2	1.0%
83	0	0.0%	2	1.0%
84	1	2.6%	3	1.4%
88	0	0.0%	2	1.0%
90	0	0.0%	1	0.5%
94	1	2.6%	2	1.0%
101	1	2.6%	1	0.5%
102	0	0.0%	1	0.5%
103	0	0.0%	3	1.4%
104	1	2.6%	1	0.5%
105	1	2.6%	2	1.0%
106	0	0.0%	2	1.0%
107	1	2.6%	2	1.0%
109	0	0.0%	3	1.4%
110	1	2.6%	3	1.4%
111	0	0.0%	1	0.5%
113	1	2.6%	4	1.9%
114	0	0.0%	2	1.0%
120	2	5.3%	7	3.4%
122	0	0.0%	4	1.9%
123	0	0.0%	2	1.0%
	38	100.0%	207	100.0%

**A precinct is listed only if the APU has at least one open case that occurred within it.

Open Charges by Type as of 6/30/2014

Type	Cases Received in 2Q 2014		All Open Charges	
	Number	% of Total	Number	% of Total
Advised another officer not to provide name and shield	0	0.0%	1	0.2%
Discourtesy	3	6.3%	40	8.5%
Excessive force	2	4.2%	38	8.1%
Failure to obtain medical attention for a prisoner	1	2.1%	3	0.6%
Failure to process civilian complaint	0	0.0%	1	0.2%
Failure to provide name & shield	1	2.1%	11	2.3%
Frisk of person	4	8.3%	69	14.7%
Frisk of personal property	0	0.0%	2	0.4%
Improper strip search	0	0.0%	5	1.1%
Offensive language	0	0.0%	7	1.5%
Search of person	5	10.4%	50	10.6%
Search of personal property	0	0.0%	4	0.9%
Search of premises	0	0.0%	15	3.2%
Search of vehicle	2	4.2%	30	6.4%
Seizure of property	2	4.2%	4	0.9%
Stop of person	11	22.9%	95	20.2%
Stop of vehicle	0	0.0%	6	1.3%
Threat of arrest	2	4.2%	6	1.3%
Threat of force	1	2.1%	6	1.3%
Unlawful detention	0	0.0%	4	0.9%
Wrongful arrest	0	0.0%	8	1.7%
Wrongful entry of premises	3	6.3%	37	7.9%
Wrongful summons	11	22.9%	28	6.0%
	48	100%	470	100%

Stop, Question & Frisk Charges By Precinct of Occurrence as of 6/30/2014*

Precinct**	From Cases Received in 2Q 2014		All Open APU Charges	
	Number	% Total	Number	% Total
1	0	0.0%	5	2.2%
6	0	0.0%	0	0.0%
7	1	6.3%	3	1.3%
9	0	0.0%	5	2.2%
10	0	0.0%	0	0.0%
13	1	6.3%	1	0.4%
14	0	0.0%	0	0.0%
18	0	0.0%	0	0.0%
19	0	0.0%	6	2.6%
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25	0	0.0%	1	0.4%
28	0	0.0%	0	0.0%
30	0	0.0%	4	1.7%
32	0	0.0%	3	1.3%
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63	0	0.0%	0	0.0%
66	0	0.0%	0	0.0%
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72	0	0.0%	4	1.7%
73	0	0.0%	10	4.3%
75	3	18.8%	23	9.9%
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122	0	0.0%	2	0.9%
123	0	0.0%	8	3.4%
	16		232	

*Includes the following charges: frisk of person, frisk of personal property, search of person, search of personal property, and stop of person.

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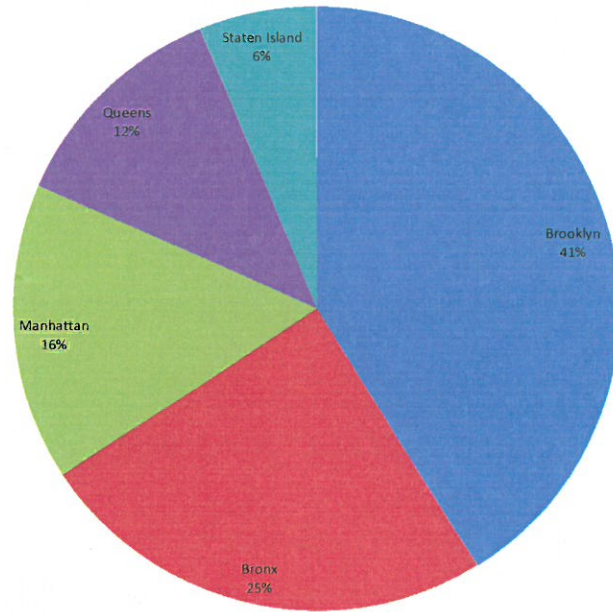
APU Cases Retained By the Police Commissioner In Q2 2014

CCRB Case #	Officer ID	CMD	Allegation	Date Retained	Disposition
20140605	2014060501	75	A - Search of vehicle	6/5/2014	Police Commissioner retained case and imposed "formalized training" on both respondents.
	2014060502		A - Search of vehicle		
20140706	2014070601	66	D - Discourteous action	6/27/2014	Police Commissioner retained case and offered respondent a Schedule B Command Discipline with a penalty of the forfeiture of 5 vacation days. The respondent exercised his right to refuse the Command Discipline and requested a departmental trial. The case has been returned to the APU for prosecution.
			A - Seizure of property		

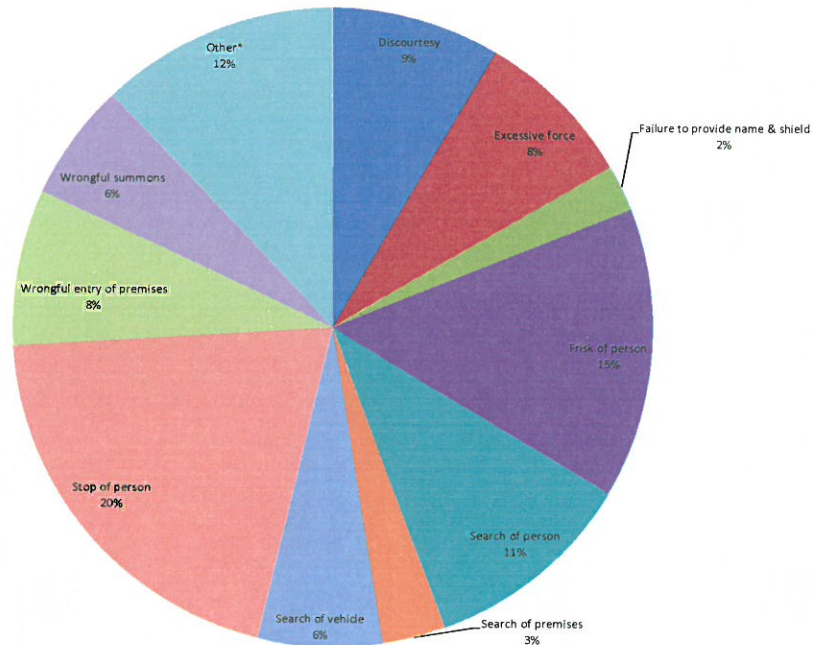
APU Pleas Disapproved By Police Commissioner In Q2 2014

CCRB Case #	Officer ID	CMD	Allegation	Original Plea	Plea After Modification By Police Commissioner	Date Modified
20140501	2014050101	120	A - Search of vehicle	Guilty with a forfeiture of 8 vacation days	Guilty with instructions	3/2/2014
			D - Verbal discourtesy			
20140703	2014070301	NBBX	A - Stop of vehicle	Nolo contendere with a forfeiture of 10 vacation days	Nolo contendere with instructions	2/10/2014
20140701	2014070101	66	D - Verbal discourtesy	Guilty with a forfeiture of 8 vacation days	Guilty with a forfeiture of 10 vacation days	3/21/2014

All Open APU Cases By Borough as of 6/30/2014



All Open APU Charges by Type as of 6/30/2014



*Each of the following categories comprise 2% or less of the Open APU Docket: advised another officer not to provide name and shield, failure to process civilian complaints, failure to obtain medical attention for a prisoner, frisk of personal property, seizure of property, search of personal property, threat of arrest, unlawful detention, stop of vehicle, improper strip search, threat of force, offensive language, and wrongful arrest.

All Open APU Stop, Question & Frisk Charges By Precinct of Occurrence as of 6/30/2014

