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December 28, 2015

The Honorable William J. Bratton
Police Commissioner of the City of New York
New York City Police Department
One Police Plaza
New York, New York 10038

**Re: Omnibus Quarterly Report on the Administrative Prosecution Unit:
Third Quarter 2014 through Third Quarter 2015**

Dear Commissioner Bratton:

The last year has brought many changes for the Civilian Complaint Review Board's Administrative Prosecution Unit ("APU"). It has grown from a fledgling, innovative idea in 2012 into an important partner in the New York City Police Department's ("the Department") disciplinary process, and has evolved into the full-functioning prosecutorial arm of the CCRB. While there is much progress to report, many challenges still remain. This report will focus on the following areas: (1) the growth of the APU's docket; (2) the retention of cases under Section 2 of the April 2, 2012 Memorandum of Understanding ("MOU"); (3) the treatment of APU pleas by the Police Commissioner; (4) the relationship with the Office of the Deputy Commissioner of Trials ("DCT"); (5) the relationship with the Department Advocate's Office ("DAO"); (6) the integration of the APU into the CCRB's investigative process; and (7) the enhancement of the capabilities of the APU.

The Growth of the Docket

As seen in the following table, the growth of the APU's docket has stabilized during the year covered by this report.

Cases in Open Docket¹					
Period	Start of Quarter	Received During Quarter	Closed During Quarter	End of Quarter	Growth
3 rd Quarter 2014 (3Q14)	304	86	42	348	14.5%
4 th Quarter 2014 (4Q14)	348	49	53	344	-1.1%
1 st Quarter 2015 (1Q15)	344	42	52	334	-2.9%
2 nd Quarter 2015 (2Q15)	334	63	48	349	4.5%
3 rd Quarter 2015 (3Q15)	349	52	46	355	1.7%

During the year preceding 3Q14, the APU received 239 cases and only closed 23 cases. Between the start of 4Q14 and the end of 3Q15, the APU received 206 cases and closed 199 cases.

As the foregoing statistics indicate, the growth of the APU's docket has steadied, aided by the increased rate of closing cases. This change is attributable to many factors: (1) the leadership of the new administration at both the CCRB and the Department; (2) the implementation of the new plea process; and (3) the acceptance by the police unions that the APU is now a part of the disciplinary process.

The Retention of Cases Under Section 2 of the MOU

The Department exercised its rights under Section 2 of the MOU twice during the Second Quarter of 2014 (2Q14). These were the first APU eligible cases that the Department retained. As demonstrated in the chart below, the Department exercised its rights under Section 2 in a total of 34 cases during 3Q14 and 4Q14; however, it did not retain any cases in the first three quarters of 2015.

APU Cases Retained Under Section 2 of the MOU			
Period	Retained With Discipline	Retained Without Discipline	Total
3Q14	10	9	19
4Q14	11	4	15
1Q15	0	0	0
2Q15	0	0	0
3Q15	0	0	0
Total	21	13	34

It is the Agency's theory that the Department has opted not to retain cases due to the implementation and success of the current reconsideration policy.

¹Each APU case involves a single respondent.

Treatment of APU Pleas

During the period covered by this report, the Department finalized 64 cases in which the APU reached a plea agreement with the respondent. As seen in the chart below, the Police Commissioner approved the plea agreement between the APU and the respondent in 40 of those cases (62.5%) without any modifications to the plea.

Plea Agreements Reached By APU							
Period	Approved By Police Commissioner Without Change	Plea Penalty Reduced by Police Commissioner	Plea Set Aside, Command Discipline Issued to Respondent	Plea Set Aside, Formalized Training Given to Respondent	Plea Set Aside, Instructions Given to Respondent	Plea Set Aside, No Discipline Imposed	Total
3Q14	0	3	10	2	0	3	18
4Q14	10	0	2	0	1	0	13
1Q15	11	0	0	0	3	0	14
2Q15	10	0	0	0	0	0	10
3Q15	9	0	0	0	0	0	9
Total	40	3	12	2	4	3	64

Notably, in three (3) of these cases, approximately 4.7%, the Police Commissioner decided to impose no discipline at all. It is also important to note that during the first three quarters of 2015, the Police Commissioner modified three plea agreements between the APU and the respondents.² This signifies that the new system for allowing the DAO to review pleas prior to entering into them is effective.

Dismissal of Cases By the APU

During the course of investigating a case, the APU will dismiss charges against a respondent in the interests of justice if the APU discovers new evidence that makes it improper to continue the prosecution. The 13 cases dismissed between July 1, 2014, and September 30, 2015, constitute slightly more than 5% of all cases closed by the APU during that period. The fact that so few cases are dismissed is a testament to the quality of the investigative work being done by the Investigations Division.

Number of Cases Dismissed by the APU	
Period	# of Cases
3Q14	2
4Q14	1
1Q15	6
2Q15	2
3Q15	1
Total	13

²So far in the 4th Quarter of 2015, the Police Commissioner set aside one plea and imposed instructions.

The APU's Relationship with DCT

During the year preceding 3Q14, the APU conducted 43 trials in the trial rooms at One Police Plaza. During 3Q14, the APU conducted 20 trials. During 4Q14, the APU conducted 32 trials. During 1Q15, the APU conducted 17 trials. Finally, the APU conducted 49 and 33 trials during 2Q15 and 3Q2015, respectively.

One of my focuses has been to improve the resolution time of cases handled by the APU. The implementation of a pilot program by DCT to change the way cases were initially put on the calendar resulted in a temporary reduction of cases placed on the trial calendar. Since the conclusion of the pilot program, the number of trials has increased significantly. This was due to the great efforts of the APU's prosecutors and investigators, as well as the determination of DCT Rosemarie Maldonado to encourage all parties to resolve their cases or go to trial quickly. DCT Maldonado has even used conference rooms and offices as courtrooms in an effort to increase the number of trials conducted.

Commendably, DCT has proven to be open to innovation. The APU has conducted two trials at 100 Church Street rather than at One Police Plaza so that civilian witnesses could testify via video-conference. This enabled civilians to participate in the trial, and allowed the defense to conduct meaningful cross-examination of witnesses, a benefit for both sides.

One area of concern is the treatment of hearsay testimony by Assistant Deputy Commissioners. It is well-known and an accepted legal tenet that hearsay is admissible in administrative trials. While the APU makes every effort to produce witnesses at trial, it is sometimes necessary to use audio recordings of witness statements at trial. At times, such hearsay testimony is disregarded outright by the fact-finder at trial. The findings in hearsay cases versus non-hearsay cases is an area that will be studied by the CCRB's new Policy Unit in the upcoming year.

The APU's Relationship with DAO

It is imperative for both the Department and the CCRB that DAO has a good working relationship with the APU. Currently, DAO serves charges on respondents for the APU and notifies police witnesses to appear for the APU. It also allows the APU to use its space to prepare witnesses for trial. Furthermore, DAO has also been instrumental in implementing the new plea policy.

As demonstrated in the following chart, however, one area that needs improvement is the length of time that DAO takes to serve respondents after the APU files its charges with the Charges Unit. At the close of 3Q15, there were 64 respondents who had not yet been served with charges, and the average length of time that those cases had been waiting for service was 60 days.³

³As of November 30, 2015, 32 of the 64 respondents had been served with Charges & Specifications.

Time To Serve Respondents		
Period	Number of Respondent's Served	Average Length of Time to Serve Respondent
3Q14	8	17
4Q14	41	27
1Q15	39	55
2Q15	35	79
3Q15	54	51
Total	212	50

The Integration of the APU into the CCRB's Investigative Process

When the APU first came into existence, it was completely segregated from the Investigations Division and its processes. Chair Richard Emery saw this as opportunity to enhance the quality of CCRB's investigations and immediately called for the use of APU prosecutors to give advice and counsel in current investigations. After the December 2014 reorganization of the Investigations Division into *Squads*, members of the APU began consulting with investigators on cases involving the following allegations where the investigator believed substantiation would be recommended: (1) force that resulted in serious injury; (2) chokeholds; (3) improper home entries; (4) offensive language; and (5) strip searches. Recently, the Agency expanded this protocol to include all force cases.

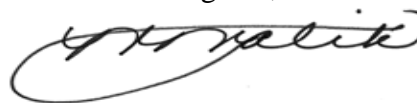
Consulting with seasoned prosecutors early in the investigative phase enhances the quality of the investigations conducted by the CCRB, and the increased cooperation between the two divisions of the Agency will benefit all involved in the process.

Enhancement of APU Technical Capabilities

One of the reasons that this report was delayed was due to the lack of a true and functional Case Tracking System for the APU. This deficiency significantly impacted the Agency's ability to monitor APU cases in a meaningful way. Now that this deficiency has been remedied, the APU will be able to report regularly on its efforts. Furthermore, the APU Case Tracking System will enable the CCRB's Policy Unit to further assess the APU's work, which will allow it to make recommendations about the prosecution process, civilian oversight, police misconduct, and policing in general.

I thank you for your consideration and look forward to working with you and your staff further in the future.

Kind regards,



Mina Malik, Esq.
Executive Director

cc: Deputy Commissioner Rosemarie Maldonado
Deputy Commissioner Kevin Richardson