



BILL DE BLASIO
MAYOR

CIVILIAN COMPLAINT REVIEW BOARD
100 CHURCH STREET 10th FLOOR
NEW YORK, NEW YORK 10007 ♦ TELEPHONE (212) 912-7235
www.nyc.gov/ccrb



FREDERICK DAVIE
CHAIR

June 29, 2018

The Honorable James P. O’Neill
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 2016 – Fourth Quarter 2017**

Dear Commissioner O’Neill:

This report will address the following matters: (1) the decision to overturn six Guilty verdicts issued by an Assistant Deputy Commissioner of Trials (“ADCT”); (2) the retention of cases under Provision Two of the April 2, 2012 Memorandum of Understanding (“MOU”) and otherwise; (3) the treatment of APU pleas by the Police Commissioner; (4) the dismissal of cases by the APU; (5) the size of the APU’s docket; and (6) the length of time to serve Respondents.

Reversing the Guilty Verdict Issued by an Assistant Deputy Commissioner of Trials

In the period from 3Q16 to 4Q17, one hundred and twenty-five (125) CCRB cases went to trial before the Deputy Commissioner of Trials (“DCT”). The APU treats each officer against whom an allegation is substantiated as a separate case.¹ Forty-three (43) cases resulted in Guilty verdicts. Of those cases, the Police Commissioner downgraded the sought penalty against six (6) officers², and reversed Guilty verdicts against another six (6) officers who had been found Guilty of misconduct, finding the officers Not Guilty. As the final arbiter of discipline, the Police Commissioner may accept, reject, or modify any trial verdict or plea.³ Below are synopses of the six (6) cases where the Police Commissioner reversed a Guilty verdict:

¹ Because the APU treats each officer as a separate “case,” 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.”

² This category includes cases in which the officer was found Not Guilty of some (but not all) allegations, leading to the overall reduction of penalty

³ See NY CLS Civ S § 75; NYC Administrative Code 14-115; NYC Charter 434; NYC Charter 440; 38 RCNY 15-12; 38 RCNY 15-17; 38 RCNY 1-46.

Case One – Guilty Verdict Reversed

The Complainant reported that he was stopped by officers and choked twice while in a struggle with the officers effectuating arrest. The Respondent stated that prior to this incident he observed the Complainant and other individuals sitting on a stoop and smelled the odor of marijuana emanating from the area where they were sitting. As the Respondent approached the stoop to further investigate, he observed the Complainant stand up, adjust a bulge near his crotch area, and take off running. The Respondent pursued the Complainant, believing he was concealing drugs or a weapon and grabbed him by his chest and arms, taking him to the ground. A crowd formed during the struggle, and the video obtained during investigation shows the Respondent's hands making contact with the Complainant's chest and throat. After the Complainant was arrested, another officer retrieved a firearm and drugs to vouch as arrest evidence. The Board substantiated two allegations against the Respondent, both for the improper use of force in the use of a chokehold. The Trial Court found that the second chokehold, a dual restraint by the Respondent who put his forearm around the complainant's throat and placed his right forearm on the back of the Complainant's neck, "was more than an incidental touching, and putting pressure on [the Complainant's] throat, which may have hindered breathing." The Court found that there was no doubt that significant force was justified to gain control of the Complainant; however, the Patrol Guide rules out chokeholds as a sanctioned option. Therefore, the Court ruled this to be a prohibited chokehold as defined by the Patrol Guide.⁴

The CCRB recommended a forfeiture of fifteen (15) vacation days, and the DCT recommended three (3) vacation days. The Police Commissioner⁵ reversed the decision of the Trial Court on the basis that the Respondent faced extreme danger in a lengthy struggle with an individual and believed that the Respondent used the actions necessary under the totality of the circumstances, thus finding the Respondent Not Guilty.

Case Two – Guilty Verdict Reversed

The Complainant was sitting in the driver's seat of his van as two other civilians stood outside speaking to him about the engine noise. The Respondent, a lieutenant, and his partners, all in plainclothes approached the Complainant and asked him for his license. The Respondent checked the registration, inspection, and license plate, and as he was walking back to the police car, one of the civilians followed him asking for the officers' names and shield numbers. The Respondent grabbed the civilian by the shirt and brought him to the ground where he was handcuffed and arrested. As the civilian was on the ground, another civilian asked why he was being arrested. The Respondent approached the Victim and pushed him three times in his chest and once in his back while the Victim was walking away. The Victim never pushed the Respondent back. The Board substantiated one allegation against the Respondent for improper use of force, in that he pushed the Complainant without police necessity. There was video footage of this incident.

The ADCT found that the third and last push "was not an unavoidable push..." because the civilian was several steps ahead of the Respondent and was leaving the scene when the

⁴ Under the 2015 Patrol Guide, Members of the New York City Police Department were prohibited from using chokeholds. In the 2016 Patrol Guide, a note was added to the section of the Patrol Guide stating that chokeholds and other force prohibitions "may be reviewed on a case-by-case basis by the Use of Force Review Board to determine, whether, under the circumstance, the actions were reasonable and justified. The review may find that, under exigent or exceptional circumstances, the use of the prohibited action may have been justified within guidelines."

⁵ William Bratton was Police Commissioner of the NYPD at this time.

Respondent reached out and pushed the Complainant in the back. The Court found the final push constituted a level of force that was neither necessary nor reasonable to achieve the legitimate police goal of preventing a bystander from interfering in an arrest or jeopardizing the safety of arresting officers and found the Respondent Guilty.

The CCRB recommended a forfeiture of ten (10) vacation days, and the ADCT recommended a forfeiture of two (2) vacation days. The Police Commissioner⁶ reversed the Guilty finding, finding the Respondent Not Guilty without explanation.

Case Three – Guilty Verdict Reversed

The Respondent went to a facility for young people with mental illness or who are homeless to arrest the Complainant for aggravated harassment. After handcuffing the Complainant, the Respondent entered an elevator with his partner, the Complainant, and two social workers. Inside the elevator, the Complainant threatened to spit at the detectives, at which point the Respondent wrapped his arm around the Complainant's mouth with a piece of clothing to prevent him from spitting. The Complainant moved his head around, at which point the Respondent put his arm around the Complainant's neck. The incident is captured on video and was observed by one of the social workers. The Board substantiated one allegation against the Respondent for the improper use of force in the use of a chokehold.

The ADCT found that it was, “evident from the video” that the Respondent used a chokehold. The CCRB recommended a forfeiture of ten (10) vacation days, and the ADCT agreed with the CCRB’s recommendation of ten (10) vacation days. The Police Commissioner overturned the Guilty verdict because he found that the Respondent protected himself using “tactics while escorting a prisoner who was attempting to spit.” The Police Commissioner did not believe that what the video showed constituted an “actionable chokehold” and found the Respondent’s behavior reasonable and necessary under the totality of the circumstances.

Cases Four, Five, and Six – Guilty Verdicts Reversed

The Complainant was in her apartment when she heard the front exterior door of her brownstone open. Thinking it was her husband, the Complainant opened her apartment door and saw the three Respondents in the foyer of the building. The Respondents showed the Complainant a photo of her former tenant and she told them he no longer lived in the building, but gave the officers his contact information. She then escorted the Respondents toward the entry and asked them how they got in. The Respondents responded the door was open. On their way out, one of the Respondents rifled through an open box of papers, picking up two envelopes and examining them. Surveillance footage provided by the Complainant and shows the Complainant’s husband leaving the building and closing the door behind him. It then shows light flashing through the window of the inner door, a loud popping sound is heard, then the officers enter. It also shows the third Respondent rifle through and pick up mail before leaving. The Board substantiated one allegation of entering a premises without sufficient legal authority against two of the Respondents and substantiated two allegations, one for entering a premises without sufficient legal authority and one for searching a premises without sufficient legal authority against the third Respondent.

The CCRB recommended all three of the Respondents forfeit thirty (30) vacation days. The ADCT found the Respondents Guilty of having entered premises without sufficient legal authority and recommended a penalty of three (3) vacation days. The ADCT dismissed the

⁶ William Bratton was Police Commissioner of the NYPD at this time.

specification for conducting an improper search *sua sponte*, without the third Respondent's counsel filing a motion to dismiss or arguing for dismissal of that charge. The Court did not provide a legal explanation for dismissing the charge that had been litigated at trial and resolved with a verdict of Guilty. Instead, the Court, in its amended decision, held that there was no need to conduct a legal analysis as to whether the Respondent minimal action of reaching into an open basket and pulling out mail constituted a search of property. The Police Commissioner disapproved the Guilty findings and determined that the entry into the premises was justified.

Cases Retained by The Police Commissioner

The Department retained nine (9) cases pursuant to Provision Two of the MOU in the period 3Q16- 4Q17: four (4) were retained without discipline and five (5) were retained with discipline. In addition, the Police Commissioner administratively closed one (1) case, arguing that it was not under the CCRB's jurisdiction.⁷ Below are synopses of those ten (10) cases:

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 interest of justice would not be served."

Case One - Retained, Without Discipline

Two officers were monitoring a parade route and blocking pedestrian traffic from entering a strip of businesses. The Complainant asked the Respondent if he could pass to go into a store, the Respondent responded by pushing him in the chest. The Complainant then pushed the Respondent back and punched him in the face. The Respondent responded by punching and kicking the Complainant 10 to 20 times. The Respondent and four to five unidentified officers then took the Complainant to the ground and handcuffed him. The Board substantiated one allegation against the Respondent for improper use of force, in that he punched the Complainant without police necessity. A member of service corroborated the Complainant's allegation.

The Police Commissioner maintained that it would be detrimental to the Police Department's disciplinary process to allow CCRB to pursue Charges and Specifications against the Respondent, and retained the matter in the interest of justice with no disciplinary action.

Case Two - Retained Without Discipline

The Respondent approached the Victim, an 11-year-old female, to inquire about an allegedly stolen cell phone. During the questioning, the Respondent pushed the Victim, at which point she pulled away from the Respondent and walked toward a barbershop where her close family friend worked. The Respondent pursued her, grabbed her arm and swung her face down to the ground by her neck. The Respondent then placed her in handcuffs. There was video footage of the interaction where the Respondent can be seen using a chokehold. The Board substantiated one allegation against the Respondent for the improper use of force in the use of chokehold. The Respondent was also found to have provided a False Official Statement to the Family Court regarding this incident, which was noted as other misconduct.

⁷ The CCRB maintains the Respondent's conduct was under the CCRB's jurisdiction.

The Police Commissioner dismissed the Charges against the Respondent and took no disciplinary action, indicating that it would be detrimental to the Police Department's disciplinary process to allow CCRB to continue to pursue Charges and Specifications, because the Respondent had no disciplinary history and no prior substantiated complaints.

Case Three - Retained Without Discipline

The Respondent stopped a male and a female in a subway station. When the male stated that he did not have his identification, the Respondent attempted to place the male in handcuffs, pepper-sprayed him, and then struck him in the leg and face with an asp. There was video of the incident. The Board substantiated one allegation against the Respondent for the improper use of force, in that he struck the Complainant with an asp without police necessity.

The Police Commissioner dismissed the Charges and declined to take disciplinary action against the Respondent. The Police Commissioner determined it would be detrimental to the Police Department's disciplinary process if the CCRB continued its prosecution when the Kings County District Attorney's Office declined to bring criminal charges against the Respondent. Furthermore, the Respondent had no prior substantiated CCRB complaints and no disciplinary history.

Case Four - Retained Without Discipline

The Complainant, an 18-year-old female student standing at 5'2" and weighing 120 pounds, was in a car with her brother and two friends when they were stopped by an officer and the Respondent for a traffic infraction. The driver and passengers then were asked to step out of the vehicle. The Complainant then witnessed the Respondent grab her brother, the driver, by the back of the neck and slam him against the hood of the police vehicle. The Complainant asked why they were hurting her brother, and touched the Respondent's shoulder. The Respondent responded by turning around and punching her in the face twice. The Respondent held the rank of Detective, stood at 5'7" and weighed 170 pounds. The Complainant fell to the ground and placed her hands on her face, at which point the Respondent pepper-sprayed her. The Board substantiated two allegations against the Respondent for the improper use of force: one for the unnecessary use of pepper spray against the Complainant, and second for wrongfully striking the Complainant in the face.

The Police Commissioner determined that it would be detrimental to the Police Department's disciplinary process to allow the CCRB to pursue Charges and Specifications, and no disciplinary action was taken against the Respondent. The matter was investigated by the District Attorney's Office and the decision was made to not prosecute the Respondent. In addition, the Internal Affairs Bureau ("IAB") investigated the matter and exonerated the Respondent.

Case Five - Retained With Discipline

The Respondent and his partner conducted a vehicle stop of a car occupied by two men. The Respondent purported to have observed a hard object inside of the Complainant's front pants pocket, which he believed could have been a knife. He approached the vehicle and ordered the Complainant to step out. The Respondent claims that while he was frisking the front of the Complainant's body, he touched the object and the Complainant pushed his hands away. The Complainant alleged that the Respondent attempted to search his pockets immediately after he exited his vehicle, to which he did not consent. The Respondent alleged that he first placed the Complainant under arrest and then searched his pocket, at which point he found a box cutter. The

Respondent returned the box cutter to the Complainant after deeming it to be legal, then proceeded to search the Complainant's car. The Respondent then issued the Complainant a summons for disorderly conduct and released him. The Board substantiated three allegations against the Respondent: first, for abusing his authority in frisking the Complainant without legal authority; second, for abusing his authority in searching the vehicle without sufficient legal authority; and, third, for issuing a summons to the Complainant without sufficient legal authority.

The Police Commissioner determined that it would be detrimental to the Police Department's disciplinary process to allow the CCRB to pursue Charges and Specifications. The Respondent received Formalized Training to address the allegations substantiated by the CCRB.

Case Six - Retained With Discipline

An Assistant District Attorney ("ADA") observed a civilian pass between train cars, get stopped by the Respondent and another officer and removed from the train. While on the platform and prior to being handcuffed, the ADA observed the Respondent punch the Victim several times in the stomach and chest. The Board substantiated one allegation against the Respondent for the improper use of force, in that he punched the Victim in the chest multiple times without police necessity.

The Police Commissioner maintained that it would be detrimental to the Police Department's disciplinary process to allow CCRB to pursue Charges and Specifications. The Police Commissioner stated that the Respondent has no prior disciplinary history and no prior substantiated CCRB complaints, and issued Formalized Training.

Case Seven - Retained With Discipline

A 20-year-old Black male was stopped by the Respondent while leaving a public park. The Complainant was stopped for what the Respondent alleged was suspicion of a robbery pattern. When questioned by a CCRB investigator, the Respondent did not provide a detailed description of the robbery suspect, but stated he was looking for Black males wearing hoodies. During the course of the interaction, the Respondent frisked the Complainant's waistband and torso, then proceeded to search his jacket pocket. The Respondent did not indicate that he suspected the Complainant of weapon possession or that he felt the Complainant posed any physical threat. In fact, the Respondent admitted that the only reason he searched the Complainant was because, during the frisk, he felt a rectangular object that, in his own words, "could be anything." The Board substantiated three allegations against the Respondent: first, for abusing his authority in stopping the Complainant without legal authority; second, for abusing his authority in frisking the Complainant without sufficient legal authority; and, third, for searching the Complainant without sufficient legal authority.

The Police Commissioner decided to retain the matter and provide the Respondent with Formalized Training, because he believed pursuing charges would be detrimental to the disciplinary process, as the Respondent had no disciplinary record and no history of substantiated claims prior to this matter.

Cases Eight and Nine - Retained With Discipline

An independent Complainant-Witness filed this complaint on behalf of three Victims. Three individuals were dancing to music and collecting money on the subway without a permit when the two Respondents boarded the train. The first Respondent apprehended one of the Victims, while the second Respondent chased the two other Victims off the train. The first

Respondent drew his firearm and ordered the first Victim to “get off the fucking train” and “get on the fucking ground.” He handcuffed the Victim and escorted him to the mezzanine. The second Respondent chased the two other Victims off the train, caught one and asked him for his identification. The third Victim, who had left the station, returned to the mezzanine to retrieve his cell phone from the arrestee. The second Respondent requested the third Victim’s identification, although he admitted to CCRB that he had not observed the civilian dancing on the subway and did not suspect the civilian committed a crime. The Board substantiated two allegations against the first Respondent: the first for being discourteous without sufficient legal authority and the second for the wrongful use of force, in that he pointed his gun at the Victim without police necessity. The Board substantiated one allegation against the second Respondent, for abusing his authority in stopping the Complainant without legal authority.

The Police Commissioner stated it would be detrimental to the disciplinary process to pursue charges and dropped the Charges and Specifications on the Respondents because they had no disciplinary history and no prior substantiated CCRB complaints. The Police Commissioner imposed Formalized Training on the two Respondents.

Case Ten – Administratively Closed Without Discipline⁸

The Complainant was driving when he observed the Respondent driving very close to his bumper, while honking his horn and flashing his high beam lights. The Respondent was an off-duty Sergeant in his personal vehicle. The Complainant became alarmed by the Respondent’s actions and sped up to change lanes; the Respondent continued to follow. The Respondent threw approximately five or six bottles, some of which were made of glass, at the Complainant. The Complainant exited the highway and stopped his vehicle on the street near a marked patrol vehicle to complain of the Respondent’s actions. Seconds later, the Respondent stopped his vehicle at the same location and approached the Complainant. The Respondent later gave the Complainant a summons for reckless driving. An independent witness observed that the Respondent appeared to be a drunk driver and drove in an erratic manner by swerving side to side and nearly caused several other drivers to crash. The Board substantiated one allegation against the Respondent for abusing his authority in conducting a vehicle pursuit of a vehicle without sufficient legal authority.

The Police Commissioner determined that the CCRB did not have jurisdiction over the matter because it involved a vehicle pursuit and took no disciplinary action against the Respondent.

Treatment of APU Pleas

In the period 3Q16–4Q17, the Department finalized eighty-four (84) pleas. APU makes penalty recommendations for all cases in which Charges and Specifications are substantiated by the Board. The APU uses a number of factors to determine these recommendations to the Deputy Commissioner of Trials (DCT), including, but not limited to: a Member of Service’s length of service; a Member of Service’s rank; a Member of Service’s disciplinary history; the facts of the instant case; the strength of the instant case; the vulnerability of the victim; the extent of injury if any, the number of Complainants, and DCT precedent of analogous charges. APU penalty recommendations tend to be consistent for Members of Service who are similarly situated.

⁸ The CCRB maintains the Respondent’s conduct was under the CCRB’s jurisdiction. The CCRB does not have jurisdiction over an off-duty officer unless the officer invokes their authority.

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
Current Report	3 rd Quarter 2016 (3Q16)	22	0	4	2
	4 th Quarter 2016 (4Q16)	17	1	2	0
	1 st Quarter 2017 (1Q17)	13	0	1	0
	2 nd Quarter 2017 (2Q17)	5	0	0	0
	3 rd Quarter 2017 (3Q17)	3	1	1	3
	4 th Quarter 2017 (4Q17)	2	4	3	0
	Total	62		22	

As seen in the chart above, the Police Commissioner imposed a penalty below that agreed to by the CCRB in twenty-two (22) cases. In eleven (11) cases, the Police Commissioner set the plea aside and imposed other discipline; in five (5) cases, the Police Commissioner set the plea aside and imposed no discipline; and in six (6) cases, the Police Commissioner reduced the plea penalty. Below are synopses of those twenty-two (22) cases:

Case One – Plea Set Aside, Discipline Imposed

The Complainant overheard an officer use profanity toward a woman during a vehicle stop and was offended by the officer’s language. He approached the officer and asked for his name and shield number, which the officer refused to provide. The officer then asked the Complainant for his identification, which he provided. He told the officer that he had a clean record, to which the officer responded, “You won’t anymore, because you’re getting arrested.” The Complainant was handcuffed and transported to the precinct where he was issued a summons. At the precinct, he informed the officers that he wanted to file a complaint. He approached a Sergeant at the desk, the Respondent, and asked him how to file. The Respondent repeatedly ignored him, refusing to acknowledge his request to file a complaint several times. The Board substantiated one allegation against the Respondent for abusing his authority in failing to process the complaint.

The Respondent pled Guilty and agreed to a penalty of forfeiture of three (3) vacation days. The Police Commissioner⁹ set the plea aside, dismissed Charges and Specifications, and imposed a Command Discipline “A”, as well as Formalized Training.

Case Two – Plea Set Aside, Discipline Imposed

The Victim was driving with his girlfriend, the Complainant, when they were pulled over by three officers. One of the officers asked to see the Victim’s license and registration and would not respond to questions about why they were being pulled over. The officer ran the Victim’s license and registration. Upon returning and handing back the identification, the officer demanded that the Victim exit his vehicle, grabbed his left arm, pulled him out of his vehicle, and pushed him against the door. The Respondent opened the passenger-side door and pulled the Complainant out of the vehicle. The Respondent asked the Complainant if she had any weapons,

⁹ William Bratton was Police Commissioner of the NYPD at this time.

and the Complainant replied that she did not. The Respondent frisked the Complainant, but later admitted to CCRB that she frisked the Complainant because she saw that her partner had removed the driver from the vehicle even though the Complainant did not act in a manner to make the officer fear for her safety. The Board substantiated one allegation against the Respondent for abusing her authority in frisking the Complainant without sufficient legal authority.

The Respondent pled Guilty and agreed to the penalty of a Reprimand. The Police Commissioner¹⁰ dismissed the Charges and Specifications and imposed Formalized Training from the Police Academy.

Case Three – Plea Set Aside, Discipline Imposed

The Complainant was riding his bicycle and veered to let an emergency vehicle pass. Minutes later, the Complainant was pulled over by the Respondent. The Respondent placed the Complainant against the hood of his car, frisked him, and searched his backpack. The Respondent acknowledged the frisk and search and stated it was because he was concerned about weapons when he saw the Complainant had his hands in his jacket pocket after being stopped. The Board substantiated two allegations against the Respondent for abusing his authority in frisking the Complainant without sufficient legal authority and for searching the Complainant without sufficient legal authority.

The Respondent pled Guilty and agreed to the penalty of a Reprimand. The Police Commissioner dismissed the Charges and Specifications and imposed Formalized Training.

Case Four – Plea Set Aside, Discipline Imposed

The Complainants were standing on the sidewalk when they were stopped by six plainclothes officers who arrived in three unmarked cars. The Respondent, the supervising Sergeant, and other officers approached the Complainants and ordered them to turn around and put their hands against a fence. The officers proceeded to frisk and search the Complainants. The officers told the Complainants that they were looking for some Black men that hang out in the parking lot nearby and they were stopped because they matched the description of two men who were selling drugs. After a minute, one of the Complainants heard the Respondent tell another officer, “No, this is not the guy,” and then the officers left. The Respondent, who supervised the stop, told the CCRB he had no recollection of the incident and could not articulate why they suspected the Complainants were in possession of a controlled substance. As the only articulated reason for the stop was criminal possession of a controlled substance, the CCRB substantiated the failure to properly supervise the stop against the Respondent. The Board substantiated two allegations against the Respondent for abusing his authority in stopping each of the two Complainants without sufficient legal authority.

The Respondent pled Guilty to participating in two stops and agreed to the penalty of a Reprimand. The Police Commissioner dismissed the Charges and Specifications and imposed Training.

Case Five – Plea Set Aside, Discipline Imposed

The Complainant was walking down the street carrying his iPod and another object in his hand and then placed them into his pockets. He was stopped by the Respondent and two other officers. The Respondent frisked the Complainant three times before reaching into all of the

¹⁰ William Bratton was Police Commissioner of the NYPD at this time.

pockets of his pants. The Respondent removed all the items from the Complainant's pockets, returned them, and patted him down for a fourth time. The Respondent removed all the items from the pockets again and examined them under a flashlight. The Respondent patted down the Complainant's rear pocket for a fifth and final time, removing the Complainant's wallet and further removing his ID from the wallet.

The Respondent admitted in his CCRB interview that he did not have any reason to suspect the Complainant may have been armed, and after frisking him, had no reason to believe any of the objects he felt in the Complainant's pockets were weapons. The Respondent explained the reason he reached into the pocket was that he wanted to know what the object he had previously seen the Complainant put in his pocket was. The Respondent recovered a small plastic bag with marijuana and proceeded to handcuff the Complainant and place him in the vehicle. The Complainant was charged with possession of marijuana. The Board substantiated three allegations against the Respondent: first, for abusing his authority in stopping the Complainant without legal authority; second, for abusing his authority in frisking the Complainant without sufficient legal authority; and, third, for searching the Complainant without sufficient legal authority.

The Respondent pled Guilty and agreed to the penalty of a Reprimand. The Police Commissioner disapproved the plea, dismissed the Charges and Specifications, and imposed Training to be administered at the Police Academy.

Case Six – Plea Set Aside, Discipline Imposed

The Complainant was in a park taking pictures when he was approached by two officers who asked about the contents of a bottle in a brown paper bag he had previously picked up to move. The only items in the Complainant's hands were a nicotine vaporizer and his phone. When asked, the Complainant refused to answer the officers' questions and refused to provide them with his identification. The officers told him that having a glass bottle in the park was a violation of the park's rules and that they were going to take him to the stationhouse to verify his identity and summon him. One of the officers removed the Complainant's phone from his hand and set it on a table, while the other officer looked inside the bag and discovered that the bottle did not contain an alcoholic beverage.

Two other officers drove into the park. The Complainant asked the driver, the Respondent, for his name and shield number, to which the Respondent replied that he could read it off of his shield. The Complainant requested his name and shield again, saying that the Patrol Guide requires that officers state their name and shield numbers to civilians. The Respondent then told the Complainant that he was not a civilian, but a prisoner, as he was in handcuffs and that he could look at his shield. The Complainant asked again, and was eventually able to glean the Respondent's name from his name plate on his shield by turning around to look at it, but was not able to obtain the shield number. The Board substantiated one allegation against the Respondent for abusing his authority in refusing to provide his name and shield to the Complainant when requested to do so.

The Respondent pled Guilty and agreed to the penalty of a Reprimand. The Police Commissioner dismissed the Charges and imposed Instructions from his Commanding Officer.

Case Seven – Plea Set Aside, Discipline Imposed

An officer filed a complaint on behalf of a civilian who was stopped and arrested. The Victim was walking down the street and shook hands with another civilian. Fifteen seconds later, an unmarked car pulled up and two plainclothes officers ran towards the Victim. The Respondent stopped and arrested the Victim, then transported him to the precinct where he was fingerprinted

and processed. The Respondent charged the Complainant with disorderly conduct and possession of marijuana; however, no marijuana was found on the scene. The Board substantiated one allegation against the Respondent for abusing his authority in stopping the Victim without sufficient legal authority.

The Respondent pled Guilty and agreed to the penalty of a Reprimand. The Police Commissioner dismissed the charges and imposed Training from the Police Academy.

Case Eight - Plea Set Aside, Discipline Imposed

The Respondent and his partners improperly stopped, frisked, and searched a group of four men exiting a bodega. The Respondent had no individualized suspicion of the individuals and only stopped them because they were in a “high crime” area and one of the officers believed one of the civilians to be a known drug dealer. There were no drugs recovered on the scene and the Respondent observed no exchange during the incident. There is video footage showing the Respondent searching the Complainant after having stopped him. The Board substantiated three allegations against the Respondent: first, for abusing his authority in stopping the Complainant without legal authority; second, for abusing his authority in frisking the Complainant without sufficient legal authority; and, third, for searching the Complainant without sufficient legal authority.

The Respondent pled Guilty, and agreed to the penalty of a forfeiture of five (5) vacation days. The Police Commissioner dismissed the Charges and imposed Formalized Training from the Police Academy because the Respondent did not have prior disciplinary history and was a highly-rated officer.

Case Nine - Plea Set Aside, Discipline Imposed

The Respondent and his partners stopped a vehicle after the driver allegedly made a left turn without signaling and blocked the intersection. The Respondent could not recall why they did not issue the driver a summons. The Respondent frisked the Victim, who was a passenger in the car, because he witnessed furtive movements. The Respondent did not observe any bulges on the Victim’s clothing and did not give another reason as to why he believed the Victim was armed.

The Board substantiated one allegation against the Respondent for abusing his authority in frisking the Victim without sufficient legal authority.

The Respondent pled Guilty and agreed to the penalty of a Reprimand. The Police Commissioner dismissed the Charges and imposed a Reprimand and Formalized Training from the Police Academy because the Respondent did not have prior disciplinary history and was a highly-rated officer.

Case Ten - Plea Set Aside, Discipline Imposed

The Complainant was handcuffed and brought into the Transit District Bureau by an officer who mistook his Fitbit for a weapon. Inside the Bureau, the Respondent, a Sergeant, examined the Fitbit and approved the arrest for possession of a weapon. The Board substantiated one allegation against the Respondent for abusing his authority in participating in the unlawful detention of the Complainant.

The Respondent pled Guilty and agreed to the penalty of a Reprimand. The Police Commissioner dismissed the charges in the interest of justice and imposed the issuance of a Reprimand.¹¹

Case Eleven – Plea Set Aside, Discipline Imposed

An autistic male was collecting cans when he was stopped by two officers who suspected him of drinking alcohol. The interaction evolved into a physical altercation. After the altercation commenced, the Respondent, a Captain, drove by and noticed the ongoing incident, exited his vehicle, approached, pepper-sprayed the Victim while he was on the ground and being restrained by the two officers, and followed up by striking the Victim three times. The Victim was taken to the hospital where he was treated for pepper spray and pain in his forearm, back of his neck, and upper arm. There was video footage of the incident captured on three surveillance cameras. The Board substantiated two allegations against the Respondent for improper use of force, in that he struck the Complainant multiple times in the upper body without police necessity and used pepper spray against the Complainant without police necessity.

The Respondent pled Guilty and agreed to a penalty of forfeiture of ten (10) vacation days. The Police Commissioner set aside the plea, dismissed the charges, and imposed Training from the Police Academy for the use of pepper spray.

Cases Twelve and Thirteen – Plea Set Aside, No Discipline Imposed

The Complainant was riding his bicycle on the sidewalk and wearing a loose sweatshirt, sweat pants, and a pouch. While stopped at an intersection, four plainclothes officers, including Respondent One, a Sergeant, and Respondent Two, a Police Officer, exited their vehicle and instructed the Complainant to dismount his bicycle. Respondent Two frisked and searched the Complainant. Respondent One unzipped the Complainant's pouch and removed documents from it. When the Complainant asked why he was being searched, Respondent One responded that it was illegal to ride his bicycle on the sidewalk. The Complainant again protested to the search and was told to shut up. Respondent One then instructed the officers to handcuff the Complainant, and he was taken to the stationhouse. The Board substantiated one allegation against Respondent One for abusing his authority in searching the Complainant without sufficient legal authority and two allegations against Respondent Two, one for abusing his authority in frisking the Complainant and one for abusing his authority in searching the Complainant.

Each Respondent pled Guilty and agreed to the penalty of forfeiture of two (2) vacation days. The Police Commissioner dismissed the charges and imposed no discipline on either Respondent.

Cases Fourteen and Fifteen– Pleas Set Aside, No Discipline Imposed

The Respondents went to an address based on a conversation with a confidential informant about drugs being sold out of an abandoned home. The Victim and his two friends occupied the second-floor apartment inside the home. The two Respondents arrived at the location and knocked. The Victim heard the knocks, opened the door, and when the Victim encountered the Respondents, ran back into the house. The Respondents acknowledged that they did not have a warrant or consent to enter, but claimed that they entered the home because they

¹¹ The CCRB is awaiting clarification from the Police Department on how a member can be issued a reprimand without being issued formal discipline.

saw the Victim throw a bag of what they believed to be crack cocaine while he ran back inside. They recovered the drugs on the floor in the vestibule and arrested the Victim. The Complainant, who was on the second floor, could not see what was happening while the Victim was being arrested. When the Respondents came up to the second floor, the Complainant observed them look behind the television and walk around the second floor. The Respondents eventually recovered marijuana that belonged to the Complainant, and he was arrested for possession.

The Board substantiated one allegation against both Respondents for abusing their authority in that they entered a location without sufficient legal authority, and substantiated an additional allegation against Respondent One for searching that location without sufficient legal authority. The Respondents both pled Guilty, and Respondent One agreed to a penalty of a forfeiture of five (5) vacation days while Respondent Two agreed to a penalty of a forfeiture of three (3) vacation days. The Police Commissioner dismissed the Charges and Specifications in the interest of justice and decided to take no disciplinary action against either Respondent.

Case Sixteen - Plea Set Aside, No Discipline Imposed

The Complainant was in his basement with seven of his friends playing video games when two other friends returned after being outside. Five to ten minutes later, they heard a knock and opened the door; the officers then pushed their way inside. The Respondent told CCRB that he and a Detective were inside his vehicle when the Detective observed a hand-to-hand transaction between an individual on the street and an individual in a car, from approximately thirty feet away. The Respondent, who had not observed the hand-to-hand transaction, followed the individual in the car and placed him under arrest a short distance away. Thereafter, the Respondent and the Detective drove around the block to find the pedestrian, whom they saw entering the basement. The Respondent and the Detective ran after the pedestrian and followed him into the basement apartment in purported “hot pursuit.” The pedestrian was arrested for a misdemeanor crime. Generally, the doctrine of “hot pursuit” does not apply to misdemeanor crimes. The Board substantiated one allegation against the Respondent for abusing his authority in entering the apartment without sufficient legal authority.

The Respondent pled Guilty and agreed to the penalty of a forfeiture of six (6) vacation days. The Police Commissioner dismissed the Charges and Specifications in the interest of justice and decided to take no disciplinary action against the Respondent.

Case Seventeen – Plea Penalty Reduced

The Complainant was visiting his friend’s apartment and was stopped by four plainclothes officers in the lobby while attempting to exit the building. The officers asked if the Complainant lived in the building. The Complainant responded that he did not and continued to keep walking. The Respondent followed him out and asked him where he was going, removed his badge from around his neck, and identified himself as a police officer. The Complainant removed his wallet from his pant pocket and handed the Respondent his Patrolmen’s Benevolent Association (PBA) card, to which the Respondent replied, “I don’t give a fuck about your PBA card” threw it to the ground, grabbed the Complainant, and punched him in the face. The officers pushed the Complainant against a wall, handcuffed him, and charged him with resisting arrest. The incident was captured on the building’s surveillance camera. The Board substantiated one allegation against the Respondent for the wrongful use of force, in that he struck the Complainant in the face.

The Respondent pled Guilty to the charge and agreed to the penalty of a forfeiture of thirty (30) vacation days. The Police Commissioner reduced the penalty to a forfeiture of twenty (20) vacation days, saying it was more consistent with prior penalties.

Case Eighteen– Plea Penalty Reduced

The Respondent, a supervisor assigned to a Narcotics Unit, entered and searched an apartment. The Respondent used the “Kelly Tool” to force an apartment door open, and caused damage to the apartment door in the process. The damage was verified through photos. The Board substantiated three allegations against the Respondent: first, for abusing his authority in entering the location without legal authority; second, for abusing his authority in searching the location without sufficient legal authority; and, third, for damaging the door to the location without sufficient legal authority.

The Respondent pled Guilty and agreed to a penalty of a forfeiture of twenty (20) vacation days. The Police Commissioner reduced the penalty to a forfeiture of ten (10) vacation days in order to be more consistent with the penalties for prior similar misconduct.

Case Nineteen – Plea Penalty Reduced

The Complainant was asleep in his home when he heard people screaming in the hallway and commotion near his rear door. He collected his papers from housing court and opened the door to ask who it was. A number of plainclothes officers yelled “Police,” pushed his door open, and ordered him to exit his apartment. He was then frisked and handcuffed. The Respondent entered his apartment several times and returned to question the Complainant. The Respondent then un-cuffed the Complainant, and asked him to sign a paper that would authorize the officers to search the apartment. The Complainant refused to sign the paper, given that the officers had already searched his apartment. The officers arrested the Complainant after they took two walkie-talkies from his closet. Corroborating video evidence was reviewed during this case. The Board substantiated two allegations against the Respondent: first, for abusing his authority in entering the premises without legal authority, and second, for abusing his authority in searching the premises without sufficient legal authority.

The Respondent pled Guilty and agreed to a penalty of a forfeiture of eight (8) vacation days. The Police Commissioner reduced the penalty to a forfeiture of five (5) vacation days in the interest of justice.

Case Twenty – Plea Penalty Reduced

The Complainants were outside their home when the Respondent and three officers approached the Complainants and said “Hey, turn around.” The Complainants tried to run into their yard but the officers caught, frisked, and searched them. In his attempt to apprehend one of the Complainants, the Respondent improperly entered their private property. There was video footage of the incident. The Board substantiated four allegations against the Respondent: first, for abusing his authority in stopping both Complainants without legal authority; second, for abusing his authority in frisking both Complainants without sufficient legal authority; third, for searching one of the Complainants without sufficient legal authority; and fourth, for abusing his authority in entering the home without sufficient legal authority.

The Respondent pled Guilty and agreed to a penalty of forfeiture of nine (9) vacation days. The Police Commissioner reduced the penalty to a forfeiture of three (3) vacation days in the interest of justice.

Case Twenty-One – Plea Penalty Reduced

Plainclothes officers in an unmarked car stopped the Victim after he picked up his wife from a methadone clinic. The officers instructed them to get out of the car and go to the rear of the vehicle, at which point the Respondent, a Sergeant, pushed the Victim. The Respondent then searched the Complainant and the vehicle, both without developing probable cause.

Video reviewed during the investigation showed the Respondent approach the car and immediately ask the Victim and his wife to get out of the vehicle. It also shows the Respondent put his upper body fully inside the car three times for a total of over two minutes. The Victim asked for the Respondent's name and shield, but was handcuffed without receiving a response. The Respondent caused damage to the interior of the Victim's car including damage to the HVAC vents, cup holders, and center console. The Complainant provided photographic evidence of the damage. The Complainant saw the Respondent a couple of days after the incident and asked for his name and shield number. The Respondent provided the wrong name, and his previous shield number, which he held before his promotion four and a half years before the incident. The Board substantiated six allegations against the Respondent: the first, for use of force, in that he pushed the Victim without police necessity; second, for abusing his authority in searching the Victim without sufficient legal authority; the third, for abusing his authority in searching the vehicle in which the Victim was an occupant without sufficient legal authority; the fourth and fifth Charges for refusing to provide the Complainant and the Victim with his name and shield number without sufficient legal authority; and, finally, for abusing his authority in damaging the Victim's property without sufficient legal authority.

The Respondent pled Guilty with an agreed penalty of a forfeiture of eighteen (18) vacation days to cover the misconduct in Cases Twenty-One and Twenty-Two. The Police Commissioner reduced the penalty to a forfeiture of ten (10) vacation days because it was more consistent with prior penalties, and the Respondent was a highly-rated officer.

Case Twenty-Two – Plea Penalty Reduced

This case is against the same officer named as the Respondent in Case Twenty-One. The Complainant was on the sidewalk smoking what the officers believed to be a marijuana cigarette when an unmarked car with four plainclothes officers pulled up beside him. The Complainant ran away and the officers pursued him on foot. Video footage showed that within two seconds of catching the Complainant, the Respondent punched him in the face. The Complainant was arrested and charged with criminal possession of marijuana, resisting arrest, obstruction, and criminal possession of a weapon. The Respondent called IAB and reported that he "threw a punch" to affect an arrest. The Respondent maintained, however, that he never intentionally punched the Complainant and that the punch was inadvertent. The video footage shows that the Complainant was punched in the face deliberately. Furthermore, another officer on the scene said the Respondent did not have to punch the Complainant in order to effectuate the arrest because he was able to just grab the Complainant. The Board substantiated one allegation against the Respondent for use of force, in that he punched the Complainant in the face without police necessity.

The Respondent pled Guilty with an agreed penalty of a forfeiture of eighteen (18) vacation days to cover the misconduct in Cases Twenty-One and Twenty-Two. The Police Commissioner reduced the penalty to a forfeiture of ten (10) vacation days because it was more consistent with prior penalties, and the Respondent was a highly-rated officer.

Dismissal of Cases by the APU

When in the course of investigating a case, the APU discovers new evidence that makes it improper to continue to prosecute misconduct against a member of the NYPD, the APU dismisses the charges against that Respondent. The APU dismissed one (1) case against an officer in the period 3Q16-4Q17.

The Complainant was driving home from the airport with his friend when he was pulled over. A Sergeant and the Respondent approached his vehicle. The Sergeant asked for the Complainant's information, instructed him to turn off the vehicle and hand him the car keys. Both officers returned to their vehicle to run the Complainant's credentials and called for backup. Two anti-crime officers in an unmarked police vehicle pulled up and the officers approached the Complainant's vehicle. The Sergeant relayed to the Respondent that he had seen "furtive movements" and thought the civilians were acting nervous. The Sergeant and the Respondent returned to the vehicle. The Sergeant opened the driver's door and pulled the Complainant out of the vehicle stating he smelled marijuana. The Sergeant then frisked the Complainant because of his movement toward the middle console when he was first pulled over and because the Complainant was wearing baggy pants. Finding no weapons, he instructed the Complainant to walk to the rear of the vehicle. The Respondent asked the Victim to step out of the vehicle and frisked him. Both the Sergeant and the Respondent searched the vehicle including the seats, floor, middle console, and glove compartment. Nothing was recovered from the Complainant, the Victim, or the vehicle.

The Board substantiated two allegations against the Respondent: first, for abusing her authority in frisking the Victim without sufficient legal authority; and Second, for abusing her authority in searching the vehicle of the Complainant. During the Sergeant's plea negotiations, he stated that all police action was taken under his direction, and that he instructed the Respondent to frisk the Victim and search the Complainant's car. The Sergeant pled Guilty and agreed to a forfeiture of ten (10) vacation days. Based on the Sergeant's allocution, the APU asked the Board to dismiss all charges against the junior officer.

The APU's Docket

As seen in the following table, the APU's docket showed a steady decline into the last quarter of 2017. From the Third Quarter of 2016 to the Fourth Quarter of 2017, the APU's docket decreased from a total of two hundred and sixty-six cases (266) to eighty-eight (88) cases. It is the APU's lowest docket since the close of the Second Quarter of 2014. This sharp decline is due to the reduced pace at which the Board recommended Respondents face Charges and Specifications. Since 2015, the Board has issued more Command Discipline recommendations and fewer Charges and Specifications recommendations against officers. During the Third and Fourth Quarters of 2016, the Board recommended Charges and Specifications against seventeen (17) and seven (7) Respondents, respectively. In 2017, the Board recommended Charges and Specifications against five (5), eleven (11), fourteen (14), and ten (10) Respondents in each respective Quarter. Beginning in the Second Quarter of 2015, the number of cases referred to the APU dropped, but have since begun to rise starting in the Second Quarter of 2017.

Cases in Open Docket					
Period	Start of Quarter	Received During Quarter	Closed During Quarter	End of Quarter	Growth
4 th Quarter 2014 (4Q14)	352	51	53	350	-0.6%
1 st Quarter 2015 (1Q15)	350	43	55	338	-3.4%
2 nd Quarter 2015 (2Q15)	338	63	53	348	3.0%
3 rd Quarter 2015 (3Q15)	347	52	51	349	0.6%
4 th Quarter 2015 (4Q15)	349	48	30	367	5.2%
1 st Quarter 2016 (1Q16)	367	24	53	338	-7.9%
2 nd Quarter 2016 (2Q16)	338	16	88	266	-21.3%
3 rd Quarter 2016 (3Q16)	266	15	64	214	-19.5%
4 th Quarter 2016 (4Q16)	214	7	53	168	-21.5%
1 st Quarter 2017 (1Q17)	168	5	37	136	-19.0%
2 nd Quarter 2017 (2Q17)	136	11	25	122	-10.3%
3 rd Quarter 2017 (3Q17)	122	14	23	113	-7.4%
4 th Quarter 2017 (4Q17)	113	10	35	88	-22.1%

Time to Serve Respondents

As shown in the following chart, the length of time NYPD/DAO takes to serve Respondents after the APU files charges with the Charges Unit started to improve in 2017.

As of December 31, 2017, there were seventeen (17) Respondents who had not been served with charges—and the average length of time those cases are awaiting service was forty-four (44) days. This is a dramatic improvement from the last report, in which there were thirty-four (34) Respondents who had not yet been served with charges and the average length of time for service was one hundred ten (110) days.

Time To Serve Respondents		
Period	Number of Respondents Served	Average Length of Time to Serve Respondent
4 th Quarter 2014 (4Q14)	45	36
1 st Quarter 2015 (1Q15)	42	59
2 nd Quarter 2015 (2Q15)	41	76
3 rd Quarter 2015 (3Q15)	58	62
4 th Quarter 2015 (4Q15)	37	58
1 st Quarter 2016 (1Q16)	26	135*
2 nd Quarter 2016 (2Q16)	27	182*
3 rd Quarter 2016 (3Q16)	26	121*
4 th Quarter 2016 (4Q16)	15	108*
1 st Quarter 2017 (1Q17)	3	42
2 nd Quarter 2017 (2Q17)	0	N/A
3 rd Quarter 2017 (3Q17)	2	37
4 th Quarter 2017 (4Q17)	9	44
* In 2016 there was an increase in the number of cases where the Department requested reconsiderations of cases where the Board substantiated Charges and Specifications, which led to an increase the length of time it took the Department to serve Respondents.		

The CCRB strives for efficiency in the disciplinary process. Reducing the average length of time to serve Respondents to thirty (30) days will help ensure that APU prosecutions are processed in a timely manner. This ensures that cases are resolved more expeditiously for both members of the Department and the people of the City of New York.

Additionally, the Board shares the Police Commissioner’s opinion that Civil Rights Law §50-A reform is necessary to increase trust with all New Yorkers. The additional transparency such reform would bring will make it easier for communities to see when an officer faces discipline for misconduct and would serve to improve public confidence.

Thank you for your consideration.

Sincerely,

Jonathan Darche
Executive Director

Cc: CCRB Chair Frederick Davie
Deputy Commissioner Rosemarie Maldonado
Deputy Commissioner Kevin Richardson