The City of New York

POLICE DEPARTMENT

December 3, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Michael Fantry
Tax Registry No. 936569
122 Precinct
Disciplinary Case No. 2010-3068

Police Officer Michael Carr
Tax Registry No. 944415
121 Precinct
Disciplinary Case No. 2010-3070

Police Officer Miguel Rodriguez
Tax Registry No. 946423
121 Precinct
Disciplinary Case No. 2010-3071

Police Officer Lucas Wong
Tax Registry No. 945110
122 Precinct
Disciplinary Case No. 2011-3557

Police Officer Christopher Vultaggio
Tax Registry No. 942681
Detective Borough Staten Island
Disciplinary Case No. 2011-3558

Police Officer Erik Miller
Tax Registry No. 942210
122 Precinct
Disciplinary Case No. 2011-3559

The above-named members of the Department appeared before me on April 15, 2013, May 16, 2013, July 2, 2013 and July 3, 2013 charged with the following:

PD 158 151 (Rev. 1-97) Server

Disciplinary Case No. 2010-3068

1. Said Police Officer Michael Fantry, assigned to the 122 Precinct, while on duty, on or about April 10, 2010, within the confines of the 122 Precinct, in Richmond County, did fail and neglect to perform said officer's duties, to wit: said officer failed to conduct a proper investigation and failed to completely and accurately prepare a UF-61 relating to a bias incident, as required.

P.G. 203-05, Page 1, Paragraph 1 POLICE OFFICER-DUTIES AND REPONSIBILITIES

2. Said Police Officer Michael Fantry, assigned as indicated in Specification #1, while on-duty, on or about April 10, 2010, within the confines of the 122 Precinct, in Richmond County, did fail and neglect to request a Patrol Supervisor to respond to the scene of a bias incident, as required.

P.G. 207-10, Page 1, Paragraph 3 BIAS RELATED INCIDENTS

Disciplinary Case No. 2010-3070

1. Said Police Officer Michael Carr, assigned to the 122 Precinct, while on-duty, on or about April 10, 2010, within the confines of the 122 Precinct, in Richmond County, did fail and neglect to perform said officer's duties, to wit: said officer failed to conduct a proper investigation relating to a bias incident, as required.

P.G. 203-05, Page 1, Paragraph 1 POLICE OFFICER-DUTIES AND REPONSIBILITIES

2. Said Police Officer Michael Carr, assigned as indicated in Specification #1, while on-duty, on or about April 10, 2010, within the confines of the 122 Precinct, in Richmond County, did fail and neglect to request a Patrol Supervisor to respond to the scene of a bias incident, as required. (*As amended*)

P.G. 207-10, Page 1, Paragraph 3 – BIAS RELATED INCIDENTS

Disciplinary Case No. 2010-3071

1. Said Police Officer Miguel Rodriguez, assigned to the 122 Precinct, while on-duty, on or about April 10, 2010, within the confines of the 122 Precinct, in Richmond County, did fail and neglect to perform said officer's duties, to wit: said officer failed to conduct a proper investigation relating to a bias incident, as required.

P.G. 203-05, Page 1, Paragraph 1 POLICE OFFICER-DUTIES AND REPONSIBILITIES

2. Said Police Officer Miguel Rodriguez, assigned as indicated in Specification #1, while on-duty, on or about April 10, 2010, within the confines of the 122 Precinct, in Richmond County, did fail and neglect to request a Patrol Supervisor to respond to the scene of a bias incident, as required.

P.G. 207-10, Page 1, Paragraph 3 – BIAS RELATED INCIDENTS

Disciplinary Case No. 2011-3557

1. Said Police Officer Lucas Wong, assigned to the 122 Precinct, while on-duty, on or about April 10, 2010, within the confines of the 122 Precinct, in Richmond County, did fail and neglect to perform said officer's duties, to wit: said officer failed to conduct a proper investigation and failed to completely and accurately prepare a UF-61 relating to a bias incident, as required.

P.G. 203-05, Page 1, Paragraph 1 – POLICE OFFICER-DUTIES AND REPONSIBILITIES

2. Said Police Officer Lucas Wong, assigned as indicated in Specification #1, while on-duty, on or about April 10, 2010, within the confines of the 122 Precinct, in Richmond County, did fail and neglect to request a Patrol Supervisor to respond to the scene of a bias incident, as required.

P.G. 207-10, Page 1, Paragraph 3 – BIAS RELATED INCIDENTS

Disciplinary Case No. 2011-3558

1. Said Police Officer Christopher Vultaggio, assigned to the 122 Precinct, while on-duty, on or about April 10, 2010, within the confines of the 122 Precinct, in Richmond County,

did fail and neglect to perform said officer's duties, to wit: said officer failed to conduct a proper investigation relating to a bias incident, as required.

P.G. 203-05, Page 1, Paragraph 1 POLICE OFFICER-DUTIES AND REPONSIBILITIES

2. Said Police Officer Christopher Vultaggio, assigned as indicated in Specification #1, while on-duty, on or about April 10, 2010, within the confines of the 122 Precinct, in Richmond County, did fail and neglect to request a Patrol Supervisor to respond to the scene of a bias incident, as required.

P.G. 207-10, Page 1, Paragraph 3 – BIAS RELATED INCIDENTS

Disciplinary Case No. 2011-3559

1. Said Police Officer Erik Miller, assigned to the 122 Precinct, while on-duty, on or about April 10, 2010, within the confines of the 122 Precinct, in Richmond County, did fail and neglect to perform said officer's duties, to wit: said officer failed to conduct a proper investigation relating to a bias incident, as required.

P.G. 203-05, Page 1, Paragraph 1 – POLICE OFFICER-DUTIES AND REPONSIBILITIES

2. Said Police Officer Erik Miller, assigned as indicated in Specification #1, while on-duty, on or about April 10, 2010, within the confines of the 122 Precinct, in Richmond County, did fail and neglect to request a Patrol Supervisor to respond to the scene of a bias incident, as required.

P.G. 207-10, Page 1, Paragraph 3 BIAS RELATED INCIDENTS

The Department was represented by Beth Douglas, Esq., Department Advocate's Office.

Respondents were all represented by Michael Martinez, Esq.

Respondents, through their counsel, entered a plea of Not Guilty to the subject charges.

A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2010-3068

Respondent Fantry is found Guilty of both Specifications.

Disciplinary Case No. 2010 3070

Respondent Carr is found Not Guilty of both Specifications.

Disciplinary Case No. 2010-3071

Respondent Rodriguez is found Not Guilty of both Specifications.

Disciplinary Case No. 2011-3557

Respondent Wong is found Not Guilty of both Specifications.

Disciplinary Case No. 2011-3558

Respondent Vultaggio is found Not Guilty of both Specifications.

Disciplinary Case No. 2011-3559

Respondent Miller is found Not Guilty of both Specifications.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Marina Myaskovskaya, Tomasz Wojcik, Sergeant Iladen Laureano, Detective Anthony Caban, and Lieutenant Geoffrey Gaeta.

Marina Myaskovskaya

Marina has lived on Staten Island for eleven or twelve years. She resides with her husband, Tomasz Wojcik, her two children [redacted] and Minor A (16 years old), and her nephew, [redacted].

On April 10, 2010, at about 9:00 p.m. she was at home with her parents, Tomasz, Minor A, and Minor A's friend. As Marina and her husband were watching television, Minor A entered the room exclaiming "[t]hat gang is here, gang is here." Marina and Tomasz went to the window and saw a group of kids on their front lawn "screaming, yelling, [and] holding bottles of beer." The windows of the house were closed, but they could hear noise and see motions and gestures.

Tomasz left the house and Marina followed behind. The group started running towards the park and stopped on the corner of [redacted] and [redacted] in the park. As Marina and Tomasz approached the group, the group began to call Marina and Tomasz names, using anti-Russian slurs like "[f]ucking Russians." This group of kids did not live in the community, and had been "terrorizing the kids for over a year or over two years." One of the boys, later identified as Minor B, yelled that his father was a police lieutenant, and that he was going to go home and tell his father that Tomasz "sexually harassed him."

Marina ran to her closest neighbor, knocked on the door, and screamed for her neighbor to call the police. The group of teenagers then jumped into a white Lincoln SUV and drove off. Marina returned home and called 911. She told the operator that a group of kids were threatening her, screaming at her, holding beer, and relayed the license plate number of the car.

Two police officers, "one [looking] Hispanic with darker skin" and "one [looking] white," arrived at their house. Marina told the story to the two police officers. She also told them that for the past two years that this group has targeted her children, and that she has prevented her children from leaving the house.

Marina explained that her children slowly stopped leaving the house both during the day and at night. They stopped going to the park, and instead walked three to four miles away to play. Her son and five or six of his friends said that there was a gang in the park beating them up. Marina said that this gang would come into their community to chase and threaten her son and his friends. These boys would go from one home to another, but could no longer stay outside.

Marina is from Ukraine, while Tomasz is from Poland. She explained that about 70% of her community is from the former Soviet Union, and all of Minor A's friends' families are from the former Soviet Union as well. Marina was not sure exactly where the kids who were bothering Minor A and his friends were from, but she heard they were from the Tottenville area.

When the two police officers arrived at her home, Marina described the situation to them. By the time the officers had arrived, Marina did not see the white car anymore. Once the officers drove towards the park and turned right, she saw the teenagers again crossing the baseball field at the park. Marina described the baseball field as "a little bit to the left" of where the police car turned right.

Before they left, the officers explained to Marina that they didn't know exactly who the teenagers were or how much they could do, but that they would drive around to see if they could find them. Marina never saw those two officers again.

Later, two female friends of Minor A came over to their house, and around 10:00 p.m., Minor A and his friend decided to walk the girls home. Because of their concern about the earlier incident, Marina and Tomasz decided to walk about ten to fifteen feet behind them. While walking, the white Lincoln SUV appeared again. The boys inside the car began screaming, but as Marina, Tomasz, and Minor A and his friends got closer, the car drove away. There were two different routes that Tomasz could take to return to his house. Tomasz took one route while Marina, Minor A and his friend took the other route. As they approached the driveway, Tomasz told Marina to "Get into the car, get into the car. They are here. Let's take pictures." Marina and Tomasz then entered the car and drove from [redacted] to [redacted]. When she spotted the group of kids she began to take pictures with her phone. Marina then explained that when the kids spotted the flash from her phone they began running in all different directions.

Tomasz then suggested to Marina that they stand on the corner of [redacted] and [redacted] because the pictures they had taken did not come out clearly, and the group was likely to return. When Tomasz stopped the car, Marina spotted the white Lincoln parked across the street. Marina exited her car and began to take pictures of the license plate. At that point, a girl, later identified as Minor C, exited the Lincoln and started yelling at Marina. Minor C threatened to go home to tell her mother that Marina had hit her, so Marina walked back towards

her car. Marina later clarified in her testimony that she never hit Mnor C that day. Then a group of boys began to surround her, spitting at her and threatening that "[her] son going to pay the price. They're going to get him anyway." Marina was "so nervous that [she could not] recall exact threats."

After one of the kids spat on her jacket, Marina remembered that she still had her cell phone on her. She began to call 911. But as soon as the group heard her speaking to an operator they jumped into their car and drove away. When asked by the court to describe the gestures of the group of kids, Marina stated that they were "throwing their hands, they were making, like, gestures hitting one hand with fist."

When she called 911, Marina explained that there had been a previous incident and the group had returned, surrounded her, spit on her, and threatened her. Marina again described the car as a white Lincoln SUV.

After the car drove away, Marina returned to her home and stood on the front steps with her parents and husband and waited for the police to arrive. Soon after, the SUV returned to the house "packed with kids," while three or four boys ran behind. Everyone exited the vehicle, including one adult female who approached the house and began poking Tomasz while screaming, "You hit my daughter, you hit my daughter. You're going to jail." This woman was identified as Person D. Marina then squeezed her body in between Person D and Tomasz and used her cell phone to call 911. As she tried to speak to the 911 operator, Person D hit Marina and she fell to the ground. When asked to describe the hit, Marina stated that Person D

struck the right side of her jaw with a closed fist, and with enough force to knock her backwards onto the steps of her home.

Minor C then grabbed Marina by the jacket lifted her off the ground, and pushed her towards the "planter box with bushes." The box was about six or seven inches lower than where she was standing. While Marina was falling down, she grabbed Person D's hair. Marina's neighbor helped her clear out the group of kids from her door steps.

Marina lost her phone during the incident. When Tomasz called Marina's phone Minor C answered and refused to return the phone to Marina. Marina's neighbor then spoke to Minor C over the phone in Italian, and got the phone back for Marina. Marina was missing her phone for about 10 or 20 minutes.

Just before Minor C and Person D left Marina's door steps (before her phone was returned), Minor C screamed "[f]ucking immigrants, go back where you came from" at Marina. And then, "Person D told [Minor C]…'get into the car and shut up because it's a hate crime.'"

After Marina's phone was returned to her, a boy later identified as Minor B told her that her car would be destroyed, her house burned and that "one morning my husband is going to get out of the house to work and he going to be shot because his father is a police lieutenant and he has a gun at home." She continued, "And then they going to kill my son in front of me, and then they going to deal with me. And all that was accompanied with curse and calling me Russian bitch. And words and all that." Another boy then yelled, "Guys, we have to get out of

here. Let's get out." Before they all got into the SUV, Minor B told Marina that "it's not over and he still going to get me."

The SUV was on [redacted] and as it drove away towards [redacted], three radio motor patrol (RMP) cars turned onto [redacted]. Marina said that the RMPs were probably able to see the SUV but she was not sure. Marina indicated to a police officer who was taking a report that this was the third time she had called 911 and that the group of kids just left the scene. Marina told her account of the incident to the officer. The police also spoke to Marina's neighbor, who served as a "volunteer in police department." The following day, Marina's father "show[ed] me big bruise on his rib cage, and he said that Minor C hit him in the chest." Her father passed away in June, 2012.

At about 3:00 a.m. the police responded again to Marina's residence. Marina told her account of the incident to a supervisor. The police supervisor informed her that "it's only my words against kids' words...and the worst thing that can happen is it would be a misdemeanor." She said that another officer who was there wanted to interview Minor A alone because that officer did not believe that "[this incident] happened just from nowhere." Tomasz informed the officers that Minor A was a minor and that if the officer wanted to interview him, the officer should do it in front of Minor A's parents. The officers did not interview Minor A and told Marina that they would return at 6:00 a.m. However, the officers did not return. Marina described the supervising officer as "tall with dark hair, blue eyes; he even said that his roots from Ukraine." The other officer was "a little shorter, blonde hair, young...early 30s." Marina

said, "Supervisor talk to me and says that he should have arrest me, and another one, the blond one, who says that if we would give him time alone with Minor A he would get truth out of Minor A." The supervisor also told Marina that she had hit Minor C and that Minor C had scratches on her face. Marina denied that she hit Minor C.

On April 12, 2010, Monday morning, Marina noticed a dent the size of a 10-inch ball on the front right fender of her vehicle, an Acura RDX. Monday night Marina filed a report at the precinct. While at the precinct, she asked if the reports from the earlier incident were ready but she was told to call Tuesday (the next day). She called twice on Tuesday but was unable to retrieve the report.

Marina was "scared and so panicky." She tried to reach the "Commissioner of Staten Island," called Michael Bloomberg's Office and e-mailed Commissioner Kelly. Bloomberg's office referred her to the Human Rights Office which then referred her to the Hate Crime Task Force (HCTF). Marina was interviewed by HCTF at her house.

On Friday April 16, 2010, while Marina and her family were driving home, they passed the park and noticed the same group of teenagers standing there. Marina was in the passenger seat with her window down when Minor C yelled, "So you have Mercedes, too." Marina became worried that the kids would damage her husband's Mercedes. Tomasz parked the car and went around the block with his nephew and then saw about 20 kids with metal pipes walking towards their house.

While the group walked towards the house, Marina called 911 and her nephew approached the leader of the group. Her nephew said something to the group and the group dropped their pipes and ran off.

Marina did not clearly recall what happened next. She said, "I don't think the [police] report was made again. After police left, I call, I believe captain or sergeant from Hate Crime Unit and - - and I believe next day they made arrests on Sunday." Minor C, Minor E, Person D and Minor F were arrested. Marina said that Person D was arrested for hitting her and Minor C and Minor B were arrested for calling her a "Russian bitch" and "threats" on April 10, 2010. She went to the Richmond County District Attorney's (DA) Office where she discussed the details of the incident. In 2012, she was informed that Minor B and Minor F agreed to take a plea, but she did not know what it was. She was not contacted by the DA's office since then.

Department's Exhibit (DX) 1 is a compact disc (CD) containing the recordings of three 911 calls placed by Marina on April 10, 2010 and DX 1A is the transcript of the three 911 calls.

After the CD was played, Marina agreed that the third 911 call was contemporaneous with when she was struck and pushed by Person D and Minor C. An [audio] recording of what occurred after the third 911 call was also made by another of Marina's neighbors.

During cross-examination, Marina said that she placed the first 911 call after she was called a "fucking Russian bitch," and after Minor B threatened Tomasz about telling his father, a lieutenant, that Tomasz sexually harassed him. This interaction was not recorded. The ages of the teenagers involved ranged from 13 to 17 years old. Marina was told their ages by the DA's

office. Marina said she only reviewed the third 911 call in 2012 while in Family Court. Marina heard her neighbor's recording of this incident before she testified in this forum.

The first time the teenagers came to her house, Marina and Tomasz followed the group to the corner of [redacted] and [redacted]. It was on this corner where Minor B threatened to make the false allegation against Tomasz.

Marina's son used to be acquaintances with some of the teenagers from the group. Some of them used to play handball with her son. Two years before this incident her son had told her that he was having trouble with these "kids". Marina's son was 13 at the time of the incident. She said Minor C was the same age as her son but the other kids were 15 or 16 years old. Marina acknowledged that during her 911 call, she said the ages of the group ranged from 12 to 14 years old. She agreed that her son, for two years before this incident, would not go outside because he was afraid of this group.

Marina acknowledged that during the first 911 call, she did not tell the 911 operator that she was called a "fucking Russian," nor did she mention that her husband was threatened by a false allegation of sexual harassment.

When Marina left the car to take a picture of the SUV's license plate, the picture came out blurry. The ignition was turned off and Marina could not see if there was anyone inside of the SUV because the windows were tinted. After she took the photo, Minor C exited the SUV from the passenger seat and "start threatening me, calling me names, threatening that she going to tell her mother that I hit her, I going to spend life in jail, stuff like that." Minor C told Marina "What the fuck are you doing?" when Minor C observed Marina taking pictures of the license

plate. Minor C was about two or three feet away from Marina. Marina agreed that she neither yelled at nor hit Minor C.

After this verbal exchange, Marina decided to walk back to her car but as she walked back to the car, she was surrounded by a group of kids, who came from "around the corner," in the middle of the road. The group threatened her but did not hit her. Marina then placed the second call to 911 and stated that she was being attacked by the group. She told the 911 operator that she was being shoved, that she had the license plate number and that she had called two hours ago. She also told the 911 operator that the group spat on her and called her a "fucking Russian bitch."

Marina did not tell the 911 operator that Minor C threatened to tell her mother that Marina struck her. Marina was half-a-block away from her house and her husband was about 10 feet from her when she was surrounded. Tomasz did not exit the vehicle when he observed that Marina was surrounded. Marina did not ask Tomasz if he observed the group spitting on her. The group dispersed when Marina started to talk to the 911 operator and Marina then went home. Marina agreed that during her second 911 call, she indicated that she was being bothered by a "bunch of Italian kids, I don't know, its at least - - I can't tell you exactly. It's three and four or five; so it's eight or nine of them, three girls and the rest is boys, drunk."

Marina thought that the group was of Italian descent because her son told her they were "an Italian gang."

A little while after this incident, the group and Person D went to Marina's house. She said Person D looked agitated and "[s]he looked like she run from madhouse." Person D first

approached Tomasz and told him that he was going to jail for striking her daughter. Marina denied that Tomasz or she hit Minor C. Marina said that she did not have enough time to go inside of her house and lock the door. Marina placed herself between Person D and Tomasz, because she believed that Person D was going to hit Tomasz and then tell the police that Tomasz hit her. Person D then hit Marina but Marina did not know which hand Person D used to hit her. Marina fell down and then Minor C then "lift[ed] me up from the steps... turned me around and tried to threw me out from that stoop, which is five steps high."

Marina did not call 911 after her physical altercation with Minor C and Person D. Marina denied that she told the 911 operator that the group had weapons and that they beat her up before she was actually attacked. She spoke to two officers who arrived at the scene after the group had dispersed. The two officers ascertained whether her house or neighboring houses had surveillance camera footage of the incident. She did not know whether Tomasz was interviewed by the officers. When the police asked her if she needed medical attention, Marina replied that she did not because she was a nurse. She explained, "I can feel at that time that nothing is broken, that, yes, my back was hurting but not to the point that I have to go to hospital."

After the incident Marina and her family went to sleep. Early in the morning, a police supervisor and other officers returned to her residence. She did not know whether the same police officers who were at her house earlier had returned with the supervisor. Marina said, "I gave them the whole story what happened prior. And they said that basically it's my words against those teenagers' words; it's no really witnesses, and even so I don't have physical injury; it's going to be misdemeanor." She continued, the police "receive phone - - the [redacted] call 911

because Minor C claimed that I beat her up and she has scratch on her face and that felony and they should have arrest me."

The next interaction Marina had with the police was when she went to the precinct to report the dent on her vehicle. On Wednesday, April 14, 2010 HCTF responded to her residence and interviewed Marina, Tomasz, her son, her neighbor and the neighbor's father and "the father of one more boy who was beaten up." She said HCTF arrested the [redacted] family on Sunday, four days after the interview.

Marina testified in Family Court against Minor C, but not against Minor B or Person D. She also filed an order of protection against the family.

On redirect examination, Marina explained that she did not tell the 911 operator that Minor C threatened to make a false allegation against her because she was "surrounded, threatened and in fear and panic."

Upon examination by the Court, Marina testified that she did not file a separate complaint for the bruise that her father received, but she took pictures of the bruise and gave the pictures to HCTF.

During redirect examination, DX 2 was admitted into evidence. It is an audio recording by Marina's neighbor of what occurred after the third 911 call was placed. DX 2A is the transcript of the call.

During recross-examination, Marina said DX 2 records the time that she fell after Person D hit her. She did not tell the police that her father had a bruise because her father lived in Brooklyn. After the incident, Marina's father returned to Brooklyn and a few days later,

Marina's mother informed Marina that her father was bruised. The HCTF did not want the pictures of the bruise.

Marina did not recall a male who said, "Two guys hit my mother, that's not cool, that doesn't roll with me. No guy should hit a girl." Marina recalled that she was accused of hitting Minor C in the face and that Person D accused Tomasz of hitting Minor C in the face. She did not recall that Minor B was upset because Minor C was hit in her face.

Tomasz Wojcik

Tomasz's account of the incident basically corroborated Marina's testimony.

Tomasz testified that the second time the police responded, one of the officers had a conversation with Marina. Marina told the officers that she was "punched," Tomasz stated, "And [the officer] said, 'No, that was only a push.'"

The third time the police responded at 2:00 or 2:30 a.m. A supervisor also responded and Tomasz and Marina both spoke to him. Although Tomasz did not observe Marina show the supervisor a bruise on her face from having been struck by Person D, he said, "I know she mentioned about this, that she said I have a bruise on my face." Tomasz was in the kitchen when he heard Marina tell this to the supervisor.

Tomasz also testified that an officer told him, "Well, if I was with your son for five minutes, I would get the whole truth out of him." Tomasz said, "You know you can't do that," because his son was only 14 years old and had gone through a lot that day.

During redirect examination, Tomasz explained that he did not exit his vehicle when he observed Marina being spat on because he wanted to avoid a confrontation with the kids and knew he would get arrested if he put his hands on them.

Sergeant Iladen Laureano

Laureano was the Internal Affairs Bureau (IAB) sergeant who investigated this incident. He testified about the evidence he gathered from his investigation. He conducted Department interviews and gathered copies of the 911 calls and other recordings. DX 3 is a copy of the 122 Precinct roll call from April 10, 2010 through April 11, 2010.

Laureano testified that the commanding officer of the HCTF called IAB regarding this incident. Laureano became involved in this investigation four days after the call to IAB was made. The first call to IAB was about Lieutenant Kelly shielding his family from the incident that had occurred on [redacted].

Both parties stipulated that after Laureano left IAB, Lieutenant Rinaldi was disciplined for failing to notify IAB that an on-duty lieutenant, Lieutenant Kelly, who was assigned to the Brooklyn Gang Squad, was off post at his residence in Staten Island. Rinaldi, who was the platoon commander at the time of the incident, was informed by Gaeta that Kelly was at the scene of the incident. Rinaldi was not disciplined for failing to investigate a bias motivated incident.

Detective Anthony Caban

Caban, a 22-year member of the Department, assigned to the HCTF, defined a bias incident as:

> a crime that has been deemed bias by a member of the service of the rank of captain or above... When we call it a possible bias incident, it's a crime that's initially motivated whole or substantially in part by a bias component where it's race, religion, creed.

Being motivated "in whole or in substantial part" means "that part of the law states that the motivating factor of the incident must be bias related, but it doesn't necessarily have to be the whole motivation to the initiation of the crime; it could be substantially part of it."

Caban explained,

> The protected classes are specified in Penal Law 485. So if a crime is deemed bias, the motivating factor does not have to be solely based on the protected class as stated in the penal law. It could be . . . a partial motivation or interjected during the commission of the crime.

Caban defined a hate crime as:

> a crime that's committed where the motivating factor of the crime itself is based on one of the protected classes. And once an incident is deemed a hate crime, then the Hate Crime Task Force takes over the investigation, and ultimately the District Attorney's Office will classify it as a hate crime.

The protected classes are race, religion, ethnicity, gender, age, disability or sexual orientation[1].

Sometimes matters are brought to the HCTF after the determination is made by a duty captain or by someone of the rank of captain or above. Also, a patrol supervisor may contact HCTF about an incident. Those calls are forwarded to the commanding officer of the HCTF.

[1] Caban left out "ethnicity" and said "creed", but explained that he was speaking off the top of his head.

Sometimes the HCTF will get calls from organizations throughout the city, like the mayor's office, Christine Quinn's office, gay organizations, black organizations, Hispanic organizations and other community groups.

Caban explained that Inspector Michael Osgood, the commanding officer of the HCTF at the time, deemed this case a possible bias incident based on the level of violence increasing and the complainants' identity being invoked numerous times. "And, you know, the group of people that were outside their home kept yelling out 'You fucking Russians, go back to your country, I hate Russians' and so on."

When asked by the Court whether if there had been no increase of violence would this case have been deemed a bias crime, Caban replied, "No. At times it would be deemed bias, but we also take into consideration the level of violence because sometimes the confrontation does not begin as a hate crime but it ends as one."

Caban considered that the violence in this case escalated because of "[t]he level of aggression, the screaming, the amount of people, the threats that were made and the length of time that they were outside these people's home. Also, . . . after the initial incident, there was another response from the perpetrators, they came back with more people, and the level of violence just kept escalating from there. So there was a couple of factors there." The violence included Marina being punched and Marina's father being kicked, as well as some pushing and shoving.

In describing the difference between a bias crime and a hate crime, Caban explained that the Department determines whether an incident involves possible bias, and the District Attorney will make the final determination whether a hate crime occurred.

Caban gave an example of how an incident could start without it being bias motivated and then become so:

> For example, I'm a male Hispanic, I'm parking my car, I'm confronted by a male black, and the male perceives that I took his parking spot; we begin to argue, pushing and shoving begins; my identity is invoked, he called me a stupid Puerto Rican, let's say; and the level of violence keeps escalating; and let's say the other individual starts punching me, keeps invoking my identity; the level of violence increases, I get kicked, I get hit with a baseball bat; and it calls for reinforcements. It's just an example so that you can clearly see that the initial confrontation began because I took the man's parking spot, but as the incident progressed, the level of violence increased, my identity was invoked on numerous occasions, and then ultimately it would be classified as a possible bias incident.

Caban further explained,

> Inspector Osgood took everything into consideration based on the fact that the aggression became progressive, it didn't stop, it was continuous, their identity was invoked numerous times, and the level of violence was increasing. And then he made the decision to deem this a possible bias.

On cross-examination, Caban described that a member of service who responds to an incident which may be bias is required to notify a supervisor.

Caban said that in this case he was not involved in any internal investigations of misconduct against any members of service. His investigation was limited to whether a possible bias incident took place and also whether arrests should be made.

In determining whether or not the law had been broken, the detective had to look at the elements of the crime. He agreed that some elements are pretty easy to determine; for example, grand larceny is determined by a set amount of money taken and a statute of limitations is determined by the amount of time that has passed. These elements are not subject to interpretation. Whereas there is more nuance to determine whether a crime is a hate crime, about which reasonable people may disagree. There is a human element that he might discuss or debate with other people with whom he works. Caban agreed that not every time race or ethnicity is mentioned does it become an actual bias incident.

Respondents' counsel gave Caban the following hypothetical:

> . . .[Y]ou have two people that are the best of friends. . . . [T]hey've been friends for ten years, and one is Irish and one is Italian. . . . [T]hey have a falling out one day and it turns into a fist fight. And the Italian guy says, "You lousy Irish bum, take this" or whatever, in the middle of the fight.

Caban agreed that the invocation of the friend's ethnic identity wouldn't necessarily make it a bias incident. Caban "absolutely" agreed that sometimes a racial or a bias-type insult can be gratuitous and not what caused the incident itself. He agreed that sometimes people just want to be mean and hurtful, and they say the things that hurt the most. He agreed that while § 207-10 of the Patrol Guide outlines how members should deal with bias incidents, there are common sense exceptions to these rules.

Caban agreed that the police officer's responsibility is to evaluate the condition and take the appropriate action. If the police officer suspects that there is a bias incident, the officer has a responsibility to notify a patrol supervisor. The patrol supervisor is then supposed to do his or

her own evaluation. After that, according to the Patrol Guide, the duty captain is notified. After it goes to the duty captain or the commanding officer, they're supposed to make a decision as to whether or not to notify the HCTF. Much like in other specialized units a determination has to be made whether to bring in the Sex Crimes Unit if it's a certain type of case. That's because people in those units, including Caban's unit, have extra expertise in a certain situation.

Caban agreed that the reason for having these specialized units is to investigate or determine what is beyond the capacity of regular patrol officers. Caban agreed that the difficulty is getting regular patrol officers to recognize when they have a bias incident they need to report.

In a situation in which people who have been friends for a long time have now had a falling out and one of them called the other one a "Russian pussy," Caban would not automatically think that was a bias incident. If an officer heard that some individuals were coming around someone's house screaming, "We want to fight you, we want to beat you up," Caban stated that would not automatically be a bias incident.

Caban agreed that the simple mentioning of ethnicity, gender, or a protected class is not indicative of a bias incident and that in New York City people are always talking about each other's ethnicity. Caban agreed that police officers encourage people to give descriptions of individuals and often what comes in that description is a mention of someone's ethnicity, gender or other designation.

Caban believed that in this case, the complainants in the 911 calls actually identified their assailants as "a bunch of Italians." Even though Caban thought none of them may have been Italian, Caban did not consider the complainants biased for saying this.

Caban only interviewed the complainants, Marina and Tomasz, and never questioned or learned the version of Kelly's family, who were the people he arrested. He had extensive interviews with Marina and Tomasz.

Once there was an allegation of police misconduct, IAB was informed. During the initial interviews of Marina and Tomasz, they complained that they felt Lieutenant Kelly was getting preferential treatment from the responding police officers. The Commanding Officer of HCTF, the Executive Officer, Caban and another detective all went to the home of Marina and Tomasz at [redacted] to interview them.

Because allegations were made against the police officers of possible corruption or misconduct, IAB had to be notified. The parallel investigations of IAB and HCTF would share information. Caban spent "[c]lose to three weeks . . . . about two weeks" on this investigation. He said, "They were long hours, long days." Marina and Tomasz were interviewed more than once by Caban's unit.

When Caban is assigned a case in the Hate Crimes unit, generally that's the only case on which he works. Caban and his team are able to devote whatever time they need to the investigation itself. Most of Caban's office was working on this case. Altogether, from Caban's unit, that included the inspector, the captain, sergeant, and about four or five detectives. Caban agreed that a lot of manpower was put into this case.

In a bias incident, it does not matter whether the person is actually accurate, Caban stated, it is the perception that matters. For example, if someone attacks a person, assumes that person

is Jewish, attacks the person yelling out anti-Semitic things and it turns out the person is not Jewish, a bias crime has still been committed.

Lieutenant Geoffrey Gaeta

Gaeta is a 14-year member of the Department. On April 10, 2010, Gaeta was a sergeant in the 122 Precinct. He was working the midnight tour 2305 by 0802 as the patrol supervisor assigned to an RMP with an operator, Officer Matthew Nalwasky.

About a half an hour into his tour, he was requested to respond to [redacted]. Respondent Fantry called him on his cell phone about "an on-duty lieutenant there who was upset with the level of service he was receiving from them." As he came to the scene and approached Respondent Fantry, he saw "another male there who I learned was Lieutenant Frank Kelly. . . He was a little irate, I would say, or upset." Kelly's tone of voice was "sharp."

Kelly told Gaeta that "his daughter first was involved in confrontation with a civilian who [he] later learned was Marina . . . And that his daughter got slapped in the face and his wife had confronted Marina."

In his conversation with Respondent Fantry, Gaeta did not recall any mention of anti-Russian epithets or statements. Respondent Fantry was requesting Gaeta's presence because Kelly was unhappy with "the officer's answers in regards to the crime that had occurred and the level of action that they would be able to take in order to supervise."

Gaeta spoke with Minor C who told him "that her car was parked near a park, and Marina photographed the car . . . And that then started an argument between Marina and Brianne."

Gaeta also spoke to Person D, Lieutenant Kelly's wife, who told Gaeta "[t]hat she was upset about this. And she and her daughter drove over to Marina's house. And they confronted her." Person D said "that they had words of what had occurred. And that spilled out from ... the top portion of a stairway to the lower portion of a stairway, and that she pushed Marina." Gaeta thought that Person D might have then called her husband. The incident took place at a park near where Person D lives.

Gaeta "then spoke with Frank Kelly again" and told him that he "was trying to straighten this out."

He learned that Person D's son and Marina's son used to be friends, so Person D could tell Gaeta where Marina lived.

Gaeta then drove to Marina's house to speak with her. Respondent Wong, Respondent Vultaggio, Respondent Fantry and Respondent Miller also drove in their separate cars to [redacted].

It did not take him more than a couple of minutes to get there. When he arrived at Marina's home, it was around 1 a.m.

Gaeta spent 20 minutes to a half hour at the Kelly residence.

He remembered that his driver and at least two other officers walked in with him, but he could not recall who they were.

Marina, her husband, Tomasz, and her son, Minor A, were there. Tomasz, Gaeta said, "didn't really speak all that much from what I can recall."

Marina told Gaeta that her son and the lieutenant's son had an argument. "I think she [Marina] told me that she slapped Brianne . . . And that Brianne and her had had a verbal dispute outside of the park . . . I think at some point she mentioned her husband -- excuse my language -- was called a Russian pussy."

After he learned that Marina's son and Person D's son had been friends, Gaeta wanted to speak with Marina's son, Minor A. Minor A had to be woken from bed. When Gaeta asked Minor A about what happened, Gaeta said, "From what I can recall, he didn't give me any form of a straight answer. He just dodged all of my questions for the most part. And that's when I told him he was full of shit."

Marina was in the room and Gaeta believed that Tomasz was also in the room when Gaeta spoke to Minor A. After Gaeta told Minor A to go back to bed, Gaeta asked Marina about her being shoved by Person D: "And she told me she didn't feel like she was shoved. If anything she might have tripped or something like that."

Gaeta did not recall Marina mentioning being punched by Person D.

When Gaeta went back to [redacted], Lieutenant Kelly had gone back to work. Gaeta told Person D "[t]hat they should just leave each other alone."

Gaeta could not recall which officer told him that they had responded to [redacted] for a prior dispute. Gaeta could also not recall who told him that Lieutenant Kelly was on duty:

"I believe they told me that when I first showed up on the scene, when I first arrived at [redacted], someone told me that he was working. And it was even more odd. I think he had taken off his gun belt at some point also, because I didn't see him wearing any." At some point Gaeta learned that Kelly was assigned to Brooklyn South Gang, which does not cover the 122 Precinct in Staten Island. Gaeta confirmed that a member of service is not permitted to go off post to a residence for personal reasons.

When Gaeta spoke with Kelly on the phone, Gaeta told Kelly, "[J]ust stay away from each other" or "[s]omething to that effect" and "there really wasn't much that we could do."

When asked whether he gave any directions to the members of service with him, he replied, "I probably said there's not much that we could do here. All we could do is take complaint reports." Complaint reports were prepared under his direction.

Gaeta signed three complaint reports: DX 5A, 5B and 5C. However, one of those reports was prepared before his involvement in the case. This complaint was the one that included the term "Russian pussy."

That night Gaeta spoke with Lieutenant Rinaldi, the desk officer, to let him know what he was doing because he "was out there for quite some time." During the conversation, Rinaldi questioned Kelly's being on duty. "That was one of his main concerns. Other than that, he didn't . . . have a problem with what I was doing." Rinaldi did not indicate whether he would be making any notifications about an on-duty member of service being off post in Staten Island. Nor did Gaeta take any action or make any notifications about Kelly being on duty and off post.

Gaeta believed he told Rinaldi the entire story that Person D and Marina told him, but did not think that he ever mentioned the bias terminology, a bias motivation or the epithet "Russian pussy."

As a result of this incident, Gaeta received charges and specifications for failure to ensure members under his supervision properly prepared a complaint report by indicating the identity of known perpetrators, failure to notify the duty captain of a possible bias incident and failure to notify IAB that an on duty member of the service was off post. Gaeta pled guilty to all three charges and received a penalty of 20 vacation days. The plea was on December 8, 2011 and the penalty was approved by the Police Commissioner on January 19, 2012.

Gaeta had never seen Lieutenant Kelly before this incident and did not have any motivation to favor him or his family.

On cross-examination, it was demonstrated that approximately two months after the Police Commissioner signed off on Gaeta's plea, Gaeta was promoted to Lieutenant. Gaeta agreed that one of his motivations in taking that plea and getting rid of that case was that he was getting ready to be promoted. It was not possible for him to be promoted while those charges were pending. He agreed that was one of his considerations in taking the plea.

The evening he received a call from Respondent Fantry asking him to come to [redacted] Respondent Fantry told Gaeta something about an on-duty lieutenant who had responded to this scene.

Before this call, Gaeta had been Respondent Fantry's supervisor as well as the supervisor of the other officers. So when Respondent Fantry called and said he needed Gaeta to come over,

Gaeta knew to go over as soon as he could. Gaeta agreed that he would listen to what his officers had to tell him first.

After speaking to Respondent Fantry, Gaeta went over to speak to Lieutenant Kelly. "I believe he told me he got a call from his wife, and she was upset about a dispute that his daughter had had with Marina." Gaeta learned right away that Kelly hadn't been involved personally in any incident.

When asked if Kelly was upset at the time, Gaeta replied, "Excuse my language, but I think the guy who was driving me said this guy looks like he's a real asshole." Gaeta agreed with the assessment that the lieutenant's "behavior was consiste[nt] with asshole-ish behavior." Although Kelly as a lieutenant outranked Gaeta, Gaeta was on duty and Kelly had no reason to be there other than a personal one. Gaeta agreed that Kelly was not thrilled with the response he had been getting from the officer who had requested his presence there. In this case, Lieutenant Kelly felt his wife and daughter were victims and was complaining that these officers were not doing enough about that. The police told him that there was nothing they could do and Kelly was upset about this.

However, after speaking to Person D and Minor C, the wife and daughter of Kelly, Gaeta did not think an arrest could be made. Gaeta confirmed that, shortly after an officer arrests someone, a supervisor has to decide whether or not to verify that arrest. If he were to disagree with an officer's assessment, that officer would have to be punished.

Gaeta explained, "Generally an arrest on a violation ha[s] to occur in the presence of the officer." An officer is not allowed to make an arrest on a violation that he hasn't witnessed

himself. When he interviewed Person D and Brianne individually, they did not allege anything that rose to a level beyond a violation. Gaeta determined there was no assault, adding, "And there were no injuries that would have dictated arising to the next level."

A violation, such as harassment, would generate a complaint report that is filed as a closed complaint. A closed complaint means it is not going to be investigated. The complaint will not be investigated whether or not the parties know each other.

Gaeta learned that the Kelly allegations were probably tied to an earlier incident that occurred at [redacted]. When Gaeta went to [redacted], he asked the other officers to leave and stand outside the door while he questioned the wife and the husband. He believed he would be better able to speak with and get the truth out of the complainants if the discussion was just between him and them.

Marina told him there was a history of trouble between Kelly's son, Minor B, and her son. They used to be friends and then had a falling out. That's how this incident had started, she told Gaeta. He wanted to explore the reason for this falling out. But, he said, the son "refused to say anything about it." Gaeta spoke with the son, he stated, "with the mother and the father being present." From what Gaeta could recall, because the son "had a very negative attitude" separating him from his parents to speak with Gaeta would not really have made a difference.

During his official Department interview on September 1, 2010, Gaeta was asked what the police officers told him had happened there earlier. Gaeta replied, "That they had responded . . . to a 1010 group at that location. It was a large group of people who were in front of the

house. And they ended up taking a report, because someone was called a 'Russian pussy,' from what I recall."

Marina complained to Gaeta that she had gotten pushed or shoved at some point while she was having a dispute with Person D outside of the house. Marina indicated that although she tripped, it was because she lost her balance. Gaeta stated that Marina did not sustain any injuries. Because what Marina told him did not rise to the level of anything beyond a violation and the incident was not witnessed by law enforcement, Gaeta determined there was no cause to make an arrest.

When Gaeta told her that no arrest was going to be made with them as the victims, "[s]he didn't like the answer."

Marina may have told him that the incident occurred "because they were Russian." Gaeta stated, "[N]othing had been spelled out to me that would make it a biased crime or a hate crime." Gaeta still did not feel this was a bias incident. Gaeta thought that he told the Department investigators that the incident "did not fit the criteria of it being a biased incident." He also told Rinaldi he did not think this was a bias incident.

When asked whose job it would have been to determine whether or not there was enough information to make a notification for a bias incident, Gaeta replied, "Well, I think as the patrol guide [states], it's in the eyes of the police officer, I believe, who's on the scene. But then they would have in turn notif[ied] me and I would make the notification."

Gaeta reiterated that he conducted a lengthy interview at the house on [redacted]. He agreed that a large portion of his interview occurred outside of the presence of the officers who

responded. These officers were not privy to whatever Gaeta learned. He agreed that the hierarchy of the Department, a paramilitary organization, rendered him in charge of classifying the crime.

Gaeta stated that hearing that someone called another person a "Russian pussy" would not require an automatic notification for a bias crime.

When asked by the Court why he did not think that this was a bias incident, Gaeta explained:

> I believe as to the Patrol Guide, it says the incident has to be motivated in whole or a substantial part by the person's race, ethnicity, gender, creed. I don't remember everything else. So, at that point, through my investigation, I believe this was not in regard to the fact that they were Russian. It was from my investigation. Two kids had a falling out over whatever a period of time it was, and it had nothing to do with the fact that he was Russian.

In addition to telling Rinaldi that he didn't think there was any bias incident, he also told him there was an on-duty lieutenant who was present and out of his sector.

As the supervisor, he reviewed all the complaint reports issued in this case to check their accuracy. He did not change them, have any problems with them or give any direction on how to write them.

On redirect examination, Gaeta stated that Marina told him she called 911 more than once. He did not think she told him that she called three times. She told him what time the incident initially occurred. He did not recall Marina telling him that other members of the service had responded to her house earlier. No one ever told him that Lieutenant Kelly's son threatened to go home and get his father's gun or that the son said his father is a police officer.

Gaeta confirmed that there is no separate complaint report that a member of service prepares when the allegation is for harassment. There are not different complaint reports used by the Department for different allegations for a crime or violation. There is just one. The information that a member of service is required to fill out is the same for every complaint report.

Stipulation

Both parties stipulated that Lieutenant Joseph Rinaldi received a Command Discipline and three day penalty for violating Patrol Guide § 207-21. Rinaldi failed to notify IAB when he became aware of an allegation of misconduct involving a member of the service.

Respondents' Case

Respondents testified on their own behalf.

Respondent Carr

Respondent Carr, a five-year member of the Department, testified that he worked from 3:00 p.m. to 11:35 p.m. on the day of the incident. At 9:50 p.m., Respondent Carr and his partner, Respondent Rodriguez, responded to [redacted] to a 10-39 "crime in progress," harassment. It took him no more than "several minutes" to arrive at the location. Before Respondent Carr arrived at Marina's residence, he noticed a group of kids that were standing outside around the block from Marina's residence.

Respondent Carr pulled up to Marina's residence where she was waiting outside and interviewed her as he remained seated in the RMP. Respondent Carr testified that Marina "stated that she was having (sic) with some kids in the area. Kids had been loud, causing a disturbance. They wanted to quote unquote fight them. And the kids said something to the extent we run the block." Respondent Carr said that Marina was talking in a normal conversational tone. She did not sound irate or frantic while talking to Respondent Carr.

Respondent Carr told Marina that he would conduct a canvass. He drove to the end of the street and into the nearby schoolyard but did not find the kids. He also asked a man who was standing on the street if he had seen anything. The canvass yielded negative results and Respondent Carr returned to Marina's residence. Respondent Carr told Marina that he did not find the kids and to call 911 if she needed further assistance. Respondent Carr did not receive another call from Marina that evening. According to his Activity Log, Respondent Carr's last job that evening involved a stolen vehicle. He received the job at 10:31 p.m., and resumed patrol at 11:35 p.m. Then he went end of tour.

Respondent Carr testified that Marina did not allege that she was a victim of a bias incident or hate crime. Nor did she allege that the kids used the term "Russian." Respondent Carr did not have any reason to believe that this was a bias incident. He did not request a supervisor to the scene because "that type of job that we responded to is not something that requires a supervisor to be on the scene."

On cross-examination, Respondent Carr said that although this location was not in his assigned area of patrol, he was told to respond to this job by the radio dispatcher. Respondent

Carr testified that the radio dispatcher did not give, and he did not recall, a description of the individuals who had allegedly harassed Marina.

Respondent Carr noticed about 10 or more "kids" on the corner of the street before he arrived at Marina's residence. The "kids" could have been between the ages of eight years old to teenagers. Respondent Carr did not recall what, if anything, Marina told Respondent Rodriguez. Marina told Respondent Carr that she thought that the "kids" were Italian. Respondent Carr did not recall the ethnicity of the group of "kids" he had observed. Respondent Carr agreed that Marina mentioned a white vehicle but not its license plates. He testified that he did not request more information from the radio dispatcher because the complainant, Marina, was already present to provide the necessary information. Although Tomasz was outside with Marina when Respondent Carr returned from the canvass, he did not speak to Tomasz.

Respondent Carr said he did inform the radio dispatcher that he was conducting a canvass because "we don't do that for harassment. It's not Department procedure." The canvass was "several minutes" long. After the canvass was conducted, Respondent Carr marked the job as a 10-91, meaning "there was no longer a threat present at the location."

Respondent Rodriguez

Respondent Rodriguez, a five-year member of the Department, was Respondent Carr's partner and RMP operator on April 10, 2010. Respondent Rodriguez's account of the incident was almost the same as Respondent Carr's account.

Respondent Rodriguez said that Respondent Carr did most of the talking because Carr initiated the conversation with Marina. Respondent Rodriguez testified that he vaguely remembered the conversation between Marina and Respondent Carr. He said Marina told them that the incident involved "a group of kids making loud noises, complaining. And just yelling and screaming. She made a statement that they said they either run the block or control the block." He did not recall whether the group of "kids" made any racial comments that would indicate a hate crime.

Respondent Rodriguez said that Marina did not tell him where the "kids" had gone.

On cross-examination, Respondent Rodriguez said that when he first arrived to [redacted], Marina was waiting outside of her house by herself.

He said the canvass was about five to eight minutes long. He was sitting between Marina and Respondent Carr while they were talking but he did not recall Marina's responses because he was listening to the radio.

Respondent Rodriguez said that when they returned to Marina's house after the canvass, Tomasz was waiting outside with her.

Respondent Fantry

Respondent Fantry, an eight-year member of the Department, testified that on the date of the incident, he worked from 11:15 p.m. to 7:55 a.m. (first platoon), and he was partners with Respondent Miller. Respondent Fantry testified that roll call takes about five or ten minutes and at the completion of roll call, he begins patrol in his sector car. Around the time the first platoon

is conducting roll call, the third platoon (3:00 p.m. to 11:35 p.m.) is going end of tour. If there are jobs during this period, the radio dispatcher holds the jobs until the first platoon officers have sector cars and are available for patrol.

Respondent Fantry had just walked out of the muster room and was in the precinct when he was assigned by the radio dispatcher to respond to [redacted]. He went to retrieve his RMP, but his RMP was blocked by "multiple cars." He did not know that other officers had already responded to [redacted] earlier. The job was described as a 10-34 "assault in progress." The radio dispatcher did not describe any weapons involved or whether it was a hate crime. He said about four RMPs are assigned on the first platoon. In jobs involving "30s," (e.g. 10-34s), one other sector also responds as a backup.

Respondents Fantry and Miller first arrived on [redacted] at 11:50 p.m. and resumed patrol at 12:50 a.m.

When Respondent Fantry arrived a[redacted] he observed a group of people between the middle of the street and the sidewalk and another RMP. The other RMP was occupied by Respondent Vultaggio and Respondent Wong who arrived to [redacted] before Respondent Fantry. Respondent Vultaggio and Respondent Wong also conducted the preliminary interview. Respondent Fantry walked over to Respondents Wong and Vultaggio, and "[O]fficer Wong had stated that there was some kind of altercation. But he was having trouble understanding [Marina] because she had a strong accent. He was speaking to a blonde female at the time." He continued, "I had asked what was going on. There were multiple people talking. There were

neighbors outside their houses. They were talking. It just seemed like everybody had something to say." He agreed that no one from the group was fighting.

Respondent Fantry testified that he asked Marina if she was involved and she said yes. And then, "I had asked her to walk across the street and talk to me privately. Which she did. We walked across the street away from the other group. Officer Wong was standing there with me. And I was allowing Marina to tell me what was going on." He said Marina told him:

> There was a group of kids that had come in front of her house looking for her son. Her son alerted her that there was a group of kids outside that wanted to fight him. She didn't want the kids in front of her house. She didn't want the problem. She went outside and spoke to them. The kids had left. So she went back in her house. She had looked at her window and saw the kids come back to the location. At which point she got her husband. They followed - - the kids didn't stop in front of her house. They had walked past it towards the park. Her and husband had followed the kids towards the front entrance of the park, which was a couple of hundred feet from her front door. They had an argument with the group of kids in regards to being in front of her house. She had said that she was trying to take pictures of the kids. They were inside -- they were near a white car. She was trying to get a picture of the car. Anything to show the police that these were the kids that were causing the problems earlier. She had mentioned she called 911 a few times. She said they had this argument and they left. Marina and her husband Tomasz had walked back to the house. The kids were by the park. Nothing at that point had happened. She said a little while later, the white car had pulled up again. This time an older woman got out of the driver's seat. Tomasz was in the house. Marina was sitting on the front steps waiting for the police to come, because she had called 911. Before we had gotten there, this white car pulled up. A group of a kids got out of the car. An older woman gets out of the driver's seat and goes over and approaches Marina who is sitting on her steps. Her steps go up two or three steps, a platform, and there are more steps going up to the front door.
>
> ...She had said that the woman had come onto her porch, her steps. They had a verbal argument. She was pushed into the handrailing next to the steps. She said she hit her back against - her lower back against the railing.

Marina told Respondent Fantry that she did not have any injuries. He took Marina's information so that he could prepare a Complaint Report. Tomasz was with Marina when Respondent Fantry was taking the information down and Tomasz said that during his verbal argument with the group, one of the "kids" had called him a "Russian pussy and told him to go back to his house."

Respondent Fantry determined that Tomasz's incident and Marina's incident were harassment because Marina had a verbal altercation with Person D. Although Marina said she was pushed, she did not have any "significant injuries."

Respondent Fantry prepared the Complaint Reports and marked them as "closed to patrol" because there was an unknown group of "kids" and a white vehicle with an inaccurate license plate. Respondent Fantry remained on [redacted] for 35 minutes. He transmitted a final disposition to the radio dispatcher of "93 Charlie times two," two Complaint Reports prepared.

He testified that neither Tomasz nor Marina indicated that they believed that what happened to them was a hate crime or a bias incident. He did not consider the term "Russian pussy" to constitute a hate crime because "when he stated it to me, I thought it was more identifying factor. Not a racially motivated incident. Like I said, Tomasz walked a couple of hundred feet to the front entrance of that park to confront them. At that point he was called a 'Russian pussy' and he was of foreign decent. I believe he had a Russian accent to begin with. That to me was just an identifying factor." He did not notify a supervisor because a harassment job does not require that a supervisor be notified.

After he resumed patrol and answered other jobs, Respondent Fantry received a call from Respondent Wong who believed he had the other party involved in the [redacted] incident and asked Respondent Fantry to respond to [redacted]. Respondent Wong had already taken two Complaint Reports regarding the incident and was the initial police officer who had responded to the scene. Respondent Fantry arrived at the scene and tried to speak with Respondent Wong. But he was interrupted by an individual later identified as Lieutenant Kelly, Minor C's father. Respondent Fantry testified that Kelly "walked directly up to me and started screaming in my face about what I was doing in relation to the job." Kelly was in civilian clothes and Respondent Fantry was in his uniform. He said Kelly was very angry and hostile. Respondent Fantry told Kelly to go inside his house and check on his daughter while he resolved this situation.

Respondent Fantry did not know what had happened to Minor C because he did not have an opportunity to speak with Respondent Wong.

Respondent Fantry called Sergeant Gaeta to the scene because Kelly requested that Respondent Fantry call his sergeant. When Gaeta arrived, Respondent Fantry told him that he had handled a previous dispute involving a group of "kids" who were harassing a husband and wife and their son, and prepared two complaint reports.

After speaking to the Kelly family, Gaeta asked Respondents Fantry, Wong, Vultaggio and Miller to follow him to [redacted]. Gaeta was with his operator, Nalwasky. Respondent Fantry said that "[Gaeta and Nalwasky] had gone back and forth a few times." Gaeta then told Respondent Fantry to hand in the two Complaint Reports that he had prepared and resume patrol.

Respondent Fantry submitted the Complaint Reports and recalled that Gaeta reviewed and signed the reports and did not ask Respondent Fantry to make any changes. He reiterated that he classified this incident to be harassment and therefore did not request a supervisor to the scene.

On cross-examination, he said he responded to [redacted] at 1:05 a.m. where he encountered Kelly.

He testified that when he first responded to [redacted], Marina only told him that she was pushed. Respondent Fantry indicated that Marina did not tell him that her cell phone had been taken, her father had been punched or shoved, or that one of the boys from the group had said that his father was a police officer.

When questioned by the Court, Respondent Fantry said that he stood on one side of Marina while he interviewed her, and Respondent Wong stood on the other side. He did not know whether Respondent Wong had participated in the interview of Marina because Respondent Wong was facing the crowd. Respondent Wong "might have asked a question or two." He said that he inserted the license plate number that Marina gave him in the Complaint Report, but since he categorized the incident as harassment, he did not conduct a check on the license plate.

Respondent Wong

Respondent Wong, a six-year member of the Department, testified that on the date of the incident he was assigned to the first platoon. His partner on that day was Respondent Vultaggio.

Respondent Wong and his partner were not assigned to a job after roll call. However, when they heard a 10-34 "assault in progress" over the radio, they responded to [redacted]. He was the recorder and Respondent Vultaggio was the operator. They were the first officers to arrive at [redacted] where they noticed a "large crowd." Respondent Wong testified, "We were approached by [Marina] and we started to interview [Marina] to see what was going on why we were there." He said he responded to [redacted] as a backup unit to help out the sector that was assigned this job. He wanted to assure the complainant that the police were there until the primary unit arrived. He spoke with Marina for "maybe 2 or 3 minutes."

He did not recall exactly what Marina said to him but said there was "a lot of commotion around. A lot of noise. I didn't understand her too well." He did not observe any confrontations while he was there.

When Respondent Fantry arrived, Respondent Wong told him what had happened. Respondent Fantry then took Marina to his RMP where he interviewed her. Respondent Wong followed them to the RMP. He overheard enough of the interview to understand that this incident involved a dispute with a group of kids but nothing related to a hate or bias related crime. He testified that his role at the incident was to "make sure that it is safe and secure for everybody there." Respondent Wong also overheard Marina "saying something" about a white SUV which fled from the scene. Respondent Wong told Respondent Vultaggio about the SUV and then canvassed for it. The canvass was unsuccessful.

At 12:30 a.m., Respondent Wong responded to [redacted] where he learned that the other party, in the incident with Marina, resided. He called Respondent Fantry to the scene

because Respondent Fantry had already prepared two Complaint Reports involving this incident. Gaeta also responded to [redacted] after Respondent Fantry requested him. Gaeta interviewed the Kellys and then went to Marina's residence where he interviewed her. Although Gaeta was the person who conducted the investigation, Gaeta directed Respondent Wong to prepare a Complaint Report listing Minor C as the complainant. Gaeta approved the report.

Respondent Wong testified that he did not believe that the incident was a bias motivated incident and so he did not include that in the Complaint Report. He was not privy to Gaeta's interview with Marina or the Kelly family.

On cross-examination, Respondent Wong said that when he first responded to [redacted], Marina told him "something about a large dispute with some group of kids. And after that I really don't recall exactly what she was talking about at all." He did not recall whether Marina told him that she was punched and had her cell phone taken from her. He said, "I remember trying to communicate with her. It was a little difficult with a lot of noise in the background and she was very agitated and screaming. I couldn't understand her too well." He did not recall if he observed a group of kids at the scene and whether he asked Marina where the group of kids went. He recalled that he tried to interview Marina but before he could finish, Respondents Fantry and Miller arrived.

Respondent Wong recalled that while he was on [redacted] he observed a white SUV or sedan. He also observed a group of about seven kids inside the Kelly residence. He did not recall whether he told Respondent Fantry about the white vehicle or the seven kids.

Respondent Wong said that he did not believe that the [redacted] incident was a bias motivated incident.

During his official Department interview on May 13, 2010, page 32, line 7, Respondent Wong, was asked the following questions and gave the following answer:

> Q: When you hear about this slur, do you think biased crime in your head? Is that your thought process?
> A: Yes, crossed my mind... The same thing as endangering the welfare of a child. It's just you think of everything.

It occurred to Respondent Wong that the incident could be many different crimes, including a bias motivated one, but did not feel that it was a bias motivated incident. He agreed that he could not adequately explain his answers during his Department interview because the interviewer would not give him an opportunity. He acknowledged that he did not tell his attorney, who was present at the interview, that he was not given the opportunity to explain himself.

Respondent Miller

Respondent Miller, a seven-year member of the Department, was Respondent Fantry's partner and provided a similar account of the incident.

Respondent testified that upon first arriving at [redacted], he spoke to the neighbors that were standing outside who told him they did not observe anything. He said Respondent Fantry prepared the Complaint Reports. He agreed that no allegations of a hate crime or a bias motivated incident were made. He testified that there was no reason to believe that there was a bias motivated incident.

On cross-examination, he acknowledged that he did not speak with Tomasz. He was not near Respondent Fantry when Respondent Fantry was preparing the Complaint Report. He recalled that the neighbors "just told me they had been having problems with kids in the neighborhood, but that's about it. And that's all we talked about. They were just trying to find out what happened." He agreed that he did not hear anyone at the scene refer to anti Russian statements or epithets.

Respondent Miller did not speak to Respondent Fantry about the conversation Respondent Fantry had with Marina.

Respondent Vultaggio

Respondent Vultaggio, a six year member of the Department, was Respondent Wong's partner and provided a similar account of the incident. In addition, he testified he did not observe any hostility between the people that were standing outside when he arrived at the scene. He testified that "everybody was all loud. And [Marina] had told us there was a verbal argument that she had with some kids. They left and then they returned. Her and her husband... tried to take a picture of one of their cars. And then they were turned with another female. There was a verbal altercation and she said she was pushed and fell." While he was talking to Marina, Respondent Wong stood behind him and "tr[ied] to keep an eye on the crowd."

He testified that Marina was upset, agitated and loud because the Respondents did not arrive there immediately. Also, he said it was hard to understand Marina because she had an accent.

One of the neighbors told Respondent Vultaggio that he had witnessed a white car driving around the area earlier that day. Respondent Wong and Respondent Vultaggio then conducted a canvass for the white vehicle. The canvass was conducted for about five or ten minutes and ended with negative results. He agreed that no allegations were made regarding anyone's ethnicity or nationality.

FINDINGS AND ANALYSIS

On April 10, 2010, at about 9:00 p.m. Marina Myaskovskaya was at home with her parents, her husband, Tomasz Wojcik, her son, Minor A, and Minor A's friend. As Marina and her husband were watching television, Kotlyar entered the room and told them that there was a gang of "kids" outside of their house. Marina and Tomasz went to the window and observed a group of teenagers on their front lawn "acting disorderly."

At that point, Tomasz left the house to confront the group and a few minutes later Marina followed behind. The group moved towards the park and stopped on the corner of [redacted] and [redacted] in the park. Marina testified that when she and her husband approached the group, someone from the group made anti-Russian statements, calling them "fucking Russians." Minor B told the couple that his father was a police lieutenant, and that he was going to go home and tell his father that Tomasz sexually harassed him.

Marina went to her neighbor's house and asked the neighbor to call the police. The group of teenagers then jumped into a white SUV and drove off. Marina returned to her house and called 911.

Two officers responded to Marina's residence and she described what had happened to them. Before driving away, the officers told Marina that they didn't know who the teenagers were or how much they could do, but that they would drive around to look for them. Marina never saw those two officers again.

Tomasz and Marina then drove around the neighborhood to look for the group of teenagers. She spotted them and began to take pictures with her phone. When the teenagers saw she was taking pictures, they began running in all different directions.

Marina and Tomasz then went to search for the white SUV. They found it a block or two away from her house. Marina got out of her car and began to take pictures of the license plate. Minor C got out of the SUV, yelled at Marina and threatened to tell her mother that Marina had hit her.

When Marina started to walk towards her car, the teenagers surrounded her and one of them spat on her. Marina called 911 and the teenagers dispersed.

Marina and Tomasz then went home and called 911 again. While they waited outside for the police to arrive, they saw the group of teenagers and the SUV driving towards their house. This time the group was larger and Person D, the mother of Minor C, was there. Person D approached Tomasz and accused him of hitting Minor C. Marina came between the two of them and Person D struck Marina on her face with a closed fist.

Marina fell down but grabbed onto Person D's hair. Minor C then lifted Marina off of the ground and pushed her into the bushes by her house. Before leaving Marina's residence, Minor C said, "Fucking immigrants, go back where you came from." When three police cars arrived, the

group dispersed. Marina told the police about the incident and Complaint Reports were prepared.

At about 2:30 a.m. three police cars, including a supervisor, returned to her house. Marina reiterated the details of the incident to the supervisor. The officer wanted to interview Marina's son in private but Marina and Tomasz did not allow it.

On Monday morning, Marina noticed a dent on her vehicle. That night she went to the precinct to file a complaint. While at the precinct, she requested a copy of the Complaint Report for the incident on April 10. She was told the report was not ready and to call Tuesday afternoon. When she called on Tuesday afternoon, "there was no trace of that report." Frustrated by the lack of response, she called the "Commissioner of Staten Island," sent an e-mail to Commissioner Kelly, and called the mayor's office. The mayor's office referred her to the Human Rights office. After speaking to and being transferred to "a number of people" in the Human Rights office, someone gave her the phone number to the Department's Hate Crime Task Force (HCTF), which she called.

HCTF interviewed Marina and determined that the incident was a hate crime. Five people were arrested. Minor C received an Adjournment in Contemplation of Dismissal, Minor E pled guilty to the charge of Unlawful Assembly and received Probation, and the criminal cases against Person D, Minor B and Minor F were sealed.

Much later in the night after the incident, Lieutenant Gaeta, who was a sergeant then, conducted a lengthy and final interview alone with Marina and Tomasz in their home. Gaeta testified that hearing that someone called another person a "Russian pussy" would not require an

automatic notification to the HCTF and that he did not consider the incident to be motivated by bias. He believed that:

> [t]he *Patrol Guide* says the incident has to be motivated in whole or a substantial part by the person's race, ethnicity, gender, creed. . . So, at that point, through my investigation, I believe this was not in regard to the fact that they were Russian... Two kids had a falling out over whatever a period of time it was, and it had nothing to do with the fact that he was Russian.

As the supervisor, he reviewed all the complaint reports prepared for this incident. He did not change them, have any problems with them or give any direction on how to write them.

Gaeta received three Charges and Specifications as a result of this incident. He was charged with failing to ensure that members under his supervision did properly prepare a Complaint Report, failing to notify the duty captain of a bias motivated incident, and failing to notify IAB that an on-duty lieutenant was present at the scene and off post. He pled guilty to the charges and forfeited 20 days.

Detective Caban, from the Hate Crimes Unit defined a bias incident as:

> a crime that has been deemed bias by a member of the service of the rank of captain or above... When we call it a possible bias incident, it's a crime that's initially motivated whole or substantially in part by a bias component where it's race, religion, creed.

Being motivated "in whole or in substantial part" means "that part of the law states that the motivating factor of the incident must be bias related, but it doesn't necessarily have to be the whole motivation to the initiation of the crime; it could be substantially part of it."

Caban explained,

> The protected classes as are specified in Penal Law §485. So if a crime is deemed bias, the motivating factor does not have to be solely based on the

> protected class as stated in the penal law. It could be . . . a partial motivation or interjected during the commission of the crime.

The protected classes are race, color, national origin, ancestry, gender, religion, religious practice, age, disability and sexual orientation. Penal Law §485.

Caban explained that Inspector Osgood deemed this case a bias motivated incident based on the level of violence increasing and the complainants' identity being invoked numerous times. Caban considered that the violence in this case escalated because of:

> [t]he level of aggression, the screaming, the amount of people, the threats that were made and the length of time that they were outside these people's home. Also, . . . after the initial incident, there was another response from the perpetrators. They came back with more people and the level of violence just kept escalating from there.

HCTF determined that the violence involved Marina being punched and Marina's father being kicked, as well as some pushing and shoving.

The detective also agreed that there is more nuance involved in determining whether a crime is a hate crime, about which reasonable people may disagree. Caban acknowledged that not every time race or ethnicity is mentioned does it become an actual bias incident, that sometimes a racial or a bias-type insult can be gratuitous and not what caused the incident itself, and that in New York City people are always talking about each other's ethnicity.

Caban spent "[c]lose to three weeks... about two weeks" on this investigation and that included "long hours, long days." Marina and Tomasz were interviewed more than once by Caban's unit. Most of Caban's office was working on this case. That included the inspector, the captain, sergeant, and about four or five detectives.

The issue before this tribunal is not whether what occurred was a bias or hate crime, but whether Respondents should have determined that a possible bias motivated incident occurred and requested the response of the patrol supervisor as delineated in PG 207-10.

I. Disciplinary Case Nos. 2010-3070 and 2010-3071 (Carr and Rodriguez)

Under Specification No. 1, Respondents Carr and Rodriguez are charged with failing to conduct a proper investigation relating to a bias incident on April 10, 2010.

Under Specification No. 2, Respondents Carr and Rodriguez are charged with failing and neglecting to request a Patrol Supervisor to respond to the scene of a bias incident on April 10, 2010.

At about 9:45 p.m., Marina called 911. She told the operator that a group of kids were threatening her, screaming at her and holding beer. She relayed the license plate number of the car. Officers Carr and Rodriguez arrived at the scene "several minutes" after 9:50 p.m. The radio dispatcher transmitted the job as a 10-39 "crime in progress," more specifically, harassment.

Marina testified,

> We told them whole story, what's going on, that for two years kids are targeted and they became just like in jail in their houses. They cannot even step out of the houses, they're beaten up. They chased and what happens that evening, that finally those kids show up in front of my house and everything that happened that evening.

Later on in the direct examination the Advocate asked Marina again specifically what she told the police when they arrived. Marina replied,

> I described all the situation and specifically that kids came that were screaming, that we get out, that they call us names, how they call me and their threats that they're going to report that my husband sexually harassed that boy
>
> . . .

Respondent Carr testified that Marina said that "Kids had been loud, causing a disturbance," "the kids wanted to fight them," and the kids said "something to the extent we run the block." Respondent Carr said that Marina was talking in a normal conversational tone. She did not sound irate or frantic while talking to him.

Respondent Carr testified that Marina did not allege that she was a victim of a bias incident or hate crime; nor did she allege that the kids used the term "Russian." Respondent Carr stated that he did not have any reason to believe that this was a bias incident. He did not request a supervisor to the scene because "that type of job that we responded to is not something that requires a supervisor to be on the scene."

Respondent Rodriguez testified that he spoke "very little" to Marina. His partner "did most of the talking" and "initiated the talk." He had worked with Carr a long time and "usually whoever initiates the conversation" would conduct the interview. Respondent Rodriguez vaguely recalled that Marina said "it was a group of kids making loud noises, complaining. And just yelling and screaming. She made a statement that they said they either run the block or control the block."

He did not recall Marina saying anything about the kids making any comments, about ethnicity or anything about a bias or hate crime. According to the Sprint Report (DX 4), nothing had come over the radio about a biased or a hate crime.

In her general narrative of the events of April 10, 2010, Marina testified about the anti-Russian epithets which were directed at her husband and herself. However, when asked specifically on direct examination what she told Respondents Carr and Rodriguez, Marina never mentioned the slurs. Instead, she recited a litany about adolescents in the neighborhood being frightened and chased by other teenagers.

The Advocate had to ask Marina again what she told Respondents. However, even after prodding, Marina never testified that she reported any specific anti-Russian epithet to Respondents. Instead, Marina testified she reported only "they call us names" and "how they call me." Such statements are too general on which to base a finding of guilt.

Marina's original statement before prodding focused on fighting, fear, and general threats in the neighborhood. Her initial statement supported Respondents' testimony that they never heard anything to indicate a bias crime occurred and that there was no reason to call their supervisor.

Accordingly, Respondents Carr and Rodriguez are found Not Guilty of all the Specifications alleged against them.

II. Disciplinary Case Nos. 2011-3558 and 2011-3557 (Vultaggio and Wong)

Under Specification No. 1, Respondent Vultaggio, on April 10, 2010, failed to conduct a proper investigation relating to a bias incident.

Under Specification No. 2, Respondent Vultaggio, on April 10, 2010, failed to request a Patrol Supervisor to respond to the scene of a bias incident.

Under Specification No. 1, Respondent Wong, on April 10, 2010, failed to conduct a proper investigation and to completely and accurately prepare a UF-61 relating to a bias incident.

Under Specification No. 2, Respondent Wong, on April 10, 2010, failed to request a Patrol Supervisor to respond to the scene of a bias incident.

Around 11:15 p.m., Marina made a 911 call. The tape of the 911 call was played in the court room. In that call there were references to ethnic epithets, but no evidence was presented that Respondents ever heard that tape or that the dispatcher ever transmitted those statements to the responding officers. (DX 1). Respondents Vultaggio and Wong were the first officers to respond to the 10-34 "assault in progress" radio transmission. About two or three minutes later, Respondents Fantry and Miller arrived.

Marina testified that when the three police cars arrived,

> I told him that it's my third police call and that they just took off in a car because it's literally happened at same time that police were getting in and they getting out... Then I gave all the story starting with kids home locked up in the house, with what happened before, that I call police, what happened then when I took picture and everything that happened by my house when all this group came.

Marina told an officer about the incident between herself and Person D. In response to the Advocate's asking her specifically what she told the police officers, Marina replied,

> Specifically exactly what I told now: That she came. She start provoking my husband, accusing him of hitting Minor C. I got in between them. I start calling police. She hit me with closed fist. I fell on the floor. Minor C pick me up, start pushing me through the bushes to throw me from that landing. And all threats that Minor B was threatening me with.

When asked what she told the officers about the threats, Marina replied, "That he wanted to destroy car, burn house, shot my husband, kill my son in front of me and then deal with me."

Respondents Wong and Vultaggio were the partners who responded first to an assault in progress radio call. Wong testified that when they pulled up to the scene of the incident, there was "a large crowd on [redacted] across the street." The partners were there to provide assistance to the primary unit and to let the complainant know they were there to help her if she needed anything.

Respondent Vultaggio testified that when they got out of the car, that he and his partner spoke with Marina:

> [a]s best as we could. Everybody was all loud. And she had told us there was a verbal argument that she had with some kids. They left and then they returned. Her and her husband --her husband tried to take a picture of one of their cars. And then they were turned with another female. There was a verbal altercation and she said she was pushed and fell.

Respondent Vultaggio described Marina's attitude:

> [a]s very upset and agitated. She was getting a little loud with us. She seemed not to be happy with how long it took us to get there. And, you know, she was trying -- it was a little hard to understand her with her accent. She was very emotional at the time.

Marina was also breathing heavy.

Respondent Wong did not remember "too much exactly at that point" what Marina said, and stated, "I remember there was a lot of commotion around. A lot of noise. I didn't understand her too well." All Respondent Wong could ascertain was, "There was some kind of dispute with some group of kids."

When Respondents Fantry and Miller arrived, Marina went to speak with Respondent Fantry and Respondent Wong followed. Respondent Vultaggio went to perform crowd control with Miller.

Respondent Wong testified that he was one or two steps away from Respondent Fantry while he was interviewing Marina. Respondent Wong's function was to "make sure that it is safe and secure for everybody there," to stand between them and the rest of the crowd and ensure that the two were able to speak privately. Respondent Wong "caught bits and pieces" of the conversation between Respondent Fantry and Marina. He could not hear details. He never heard her say anything about a bias incident or a hate crime. This interview took place for "probably a few minutes." Then Respondent Wong went with Respondent Vultaggio to canvas the area in search of the vehicle that Marina had described.

Both Respondents Wong and Vultaggio did not hear anything about a bias or hate crime or anything about ethnic slurs from Marina or anyone else. Their testimonies corroborated Marina's testimony. Nothing in what Marina testified that she told the officers indicated that she mentioned anything to them about ethnic slurs or a bias incident.

Regarding the Department's charge that Respondent Wong failed to prepare a complaint, Wong was not assigned to this job and was not responsible for preparing the Complaint Report. Respondents Fantry and Miller were assigned to the sector and Respondent Fantry, as the investigating officer, was responsible for preparing the UF-61.

Accordingly, Respondents Vultaggio and Wong are found Not Guilty of the all the Specifications alleged against them.

III. Disciplinary Case No. 2010 3068 (Fantry)

Under Specification No. 1, Respondent Fantry, on April 10, 2010 failed to conduct a proper investigation and failed to completely and accurately prepare a UF-61 relating to a bias incident.

Under Specification No. 2, Respondent Fantry, on April 10, 2010, failed to request a Patrol Supervisor to respond to the scene of a bias incident.

Respondent Fantry testified that when he arrived he walked over to where Respondents Wong and Vultaggio were. "Officer Wong had stated that there was some kind of altercation. But he was having trouble understanding [Marina] because she had a strong accent." A lot of people in the neighborhood were present and talking.

Respondent Fantry walked across the street to speak with Marina privately, with Respondent Wong standing nearby watching the crowd.

Respondent Fantry reported what Marina told him:

> She had told me that there was a group of kids that had come in front of her house looking for her son. Her son alerted her that there was a group of kids outside that wanted to fight him. She didn't want the kids in front of her house. She didn't want the problem. She went outside and spoke to them. The kids had left. So she went back in her house.
>
> She had looked at her window and saw the kids come back to the location. At which point she got her husband. They followed -- the kids didn't stop in front of her house. They had walked past it towards the park. Her and husband had followed the kids towards the front entrance of the park, which was a couple of hundred feet from her front door.
>
> They had an argument with the group of kids in regards to being in front of her house. She had said that she was trying to take pictures of the kids. They were inside -- they were near a white car. She was trying to get a picture of

> the car. Anything to show the police that these were the kids that were causing the problems earlier. She had mentioned she called 911 a few times. She said they had this argument and they left. Marina and her husband Tomasz had walked back to the house. The kids were by the park. Nothing at that point had happened.
>
> She said a little while later, the white car had pulled up again. This time an older woman got out of the driver's seat. Tomasz was in the house. Marina was sitting on the front steps waiting for the police to come, because she had called 911. Before we had gotten there, this white car pulled up. A group of a kids got out of the car. An older woman gets out of the driver's seat and goes over and approaches Marina who is sitting on her steps. Her steps go up two or three steps, a platform, and there are more steps going up to the front door.

Respondent Fantry continued,

> She had said that the woman had come onto her porch, her steps. They had a verbal argument. She was pushed into the handrailing next to the steps. She said she hit her back against -- her lower back against the railing... I remember asking her if she needed any medical attention. If she had any injuries. She told me, no that she was fine. She said if her back tightens up or she feels pain tomorrow she will see her own doctor.
>
> She said that they had a license plate to this white vehicle which she believed to be a Cadillac. And they had left the scene. And she waited for us to get there.

When he went with Marina to the trunk of his patrol car to get her information for a report, Marina's husband, Tomasz joined them. Tomasz "was only involved in the altercation that took place down the street from his house at the front entrance of the park... He had stated that during this verbal argument, one of the kids had called him a 'Russian pussy' and told him to go back to his house."

Respondent Fantry determined that "in both cases, Marina and Tomasz, that it would be harassment. It was a verbal altercation. Marina had a verbal altercation with a female directly where she was pushed and had no significant injuries. To me that was harassment. As far as

Tomasz was concerned, I gave him a report for harassment as well for an unknown group of kids."

Respondent Fantry wrote up the complaint reports contemporaneously during the interviews. Normally Respondent Fantry would hold on to the reports "to the end of tour or the next time I go into the base and I put them in a basket at the desk where a sergeant would review them and sign off on them."

Respondent Fantry testified that he did not consider the statement "Russian pussy" by itself to constitute a biased incident. He explained,

> When he stated it to me, I thought it was more identifying factor. Not a racially motivated incident. Like I said, Tomasz walked a couple of hundred feet to the front entrance of that park to confront them. At that point he was called a Russian pussy and he was of foreign decent. I believe he had a Russian accent to begin with. That to me was just an identifying factor.

Because the 122 Precinct is a particularly diverse precinct in the very diverse borough of Staten Island, Respondent Fantry agreed that it was normal to be given information about ethnicity in descriptions. He did not call his supervisor to the scene because Respondent Fantry "didn't feel he needed to be notified in a case of harassment."

Respondent Fantry's testimony corroborated Marina's testimony, in which she made no statement to any police officer about any epithet uttered about her Russian ethnicity. However, Fantry's testimony that Tomasz reported being called a "Russian pussy" did indicate a possible bias incident. This should have alerted Respondent Fantry to investigate whether this incident was motivated by bias and to request the patrol supervisor to the scene.

Accordingly, Fantry is found Guilty of Specifications No. 1 and No. 2.

IV. Disciplinary Case No. 2011-3559 (Miller)

Under Specification No. 1, Respondent Miller is charged with failing to conduct a proper investigation relating to a bias incident on April 10, 2010.

Under Specification No. 2, Respondent Miller on April 10, 2010, failed to request a patrol supervisor to respond to the scene of a bias incident.

Respondent Miller was standing a few feet away from where Respondent Fantry was interviewing Marina. Respondent Miller was focusing on the crowd and did not hear the conversation, write or review any complaints. He did not speak to anyone or overhear anything that would make him think a bias incident had occurred.

Marina's testimony, which demonstrated that she never told any officer anything that would lead one to consider a bias incident had occurred, corroborated Respondent Miller's testimony that he did not hear anything that would lead him to believe that a bias incident had occurred. Also, Respondent Miller testified that he did not hear Marina's statements to Respondent Fantry. Therefore, Respondent Miller is found Not Guilty of Specification Nos. 1 and 2.

PENALTY

Disciplinary Case No. 2010-3068

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent Fantry was appointed to the Department on January 10, 2005. Information from his personnel files that was

considered in making this penalty recommendation is contained in an attached confidential memorandum.

When Tomasz told Respondent Fantry about the ethnic slur he was called, Respondent Fantry should have realized he now had to report a possible bias incident. However, the evidence demonstrated that the complaint Fantry heard from Marina was about a possible assault. Also, not one of the other police officers involved in the investigation heard anything that would have led them to believe that a bias incident had occurred.

Respondent Fantry's own supervisor reviewed the complaint Respondent Fantry prepared, in which Respondent Fantry wrote that Tomasz had been called a "Russian pussy," and the supervisor found no fault; even after interviewing Marina and Tomasz at length later that night, Respondent Fantry's supervisor concluded that no bias incident had taken place.

Respondent Fantry diligently recorded everything that he was told when he arrived that evening. His testimony demonstrated that he listened carefully to what Marina told him and her concerns. He did not try to hide anything that he heard. Respondent Fantry should not be penalized for being extremely diligent in obtaining information.

It is therefore recommended that Respondent Fantry receive a Reprimand as penalty in this matter.

APPROVED
DEC 23 2013
RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,

Amy J. Porter
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MICHAEL FANTRY
TAX REGISTRY NO. 936569
DISCIPLINARY CASE NO. 2010-3068

In 2011 and 2010, Respondent received ratings of 4.0 "Highly Competent" on his annual performance evaluations. In 2009, he received a rating of 3.5, "Competent/Highly Competent." [redacted]. Respondent has no prior formal disciplinary record.

For your consideration.

Amy J. Porter
Assistant Deputy Commissioner – Trials