



**Office of the New York State Attorney General Letitia James**

**Office of Special Investigation**

June 4, 2023

# Report on the Investigation into the Death of Morris Sprachman

## SUMMARY

New York Executive Law Section 70-b authorizes the Office of Special Investigation (OSI) of the Office of the Attorney General of New York to investigate and, if warranted, to prosecute offenses arising from any incident in which the death of a person is caused by a police officer. When OSI does not seek charges, Section 70-b requires OSI to issue a public report describing the results of the investigation. This is OSI's report of its investigation into the death of Morris Sprachman, who died following a vehicle collision with a Nassau County Police Department (NCPD) car on December 9, 2022.

At 8:23 a.m.<sup>1</sup> in the morning of December 9, 2022, Nassau County Police Department (NCPD) Officer Mario Pollio was in a marked police car in Nassau County on Hicksville Road, responding to a medical emergency call relating to a teacher at an elementary school. Morris Sprachman was in his car on Hicksville Road, in the opposite direction from Officer Pollio, waiting at an intersection to make a left hand turn into a shopping center. Officer Pollio, with his police lights on, was proceeding through the intersection with a green light when Mr. Sprachman made a left turn, colliding with Officer Pollio's car. Mr. Sprachman was transported to the hospital and died five days later from his injuries.

Having thoroughly investigated this incident and analyzed the law, OSI concludes that a prosecutor would not be able to prove beyond a reasonable doubt at trial that Officer Pollio committed a crime, and closes this matter with the issuance of this report.

## INVESTIGATION

The collision occurred at the intersection of Hicksville Road and North Suffolk Road, in the town of Seaford. OSI visited the scene; although there is a traffic signal at the intersection, there is no separate signal for making a left turn from Hicksville Road in either direction.

OSI reviewed NCPD Homicide Bureau Detective Thomas Roche's incident report, which stated that Officer Pollio was responding to an EMS "cardiac event" at Seaford Manor Elementary School at 1590 Washington Avenue. OSI reviewed the 911 calls and dispatch recordings for the cardiac event. The initial 911 call was made at 8:19 a.m. The caller said her friend is a teacher at the school and is having chest pains and needs an ambulance. The caller requested that the responders approach without sirens to avoid frightening the children. According to a recorded radio transmission, NCPD's dispatch system sent out a call for a female teacher having chest pains in the principal's office at Seaford Manor Elementary School.

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<sup>1</sup> All times are approximate.



Aerial view of the intersection. The curved orange arrow shows the direction of travel of Mr. Sprachman. The blue arrow shows the direction of travel of Officer Pollio.

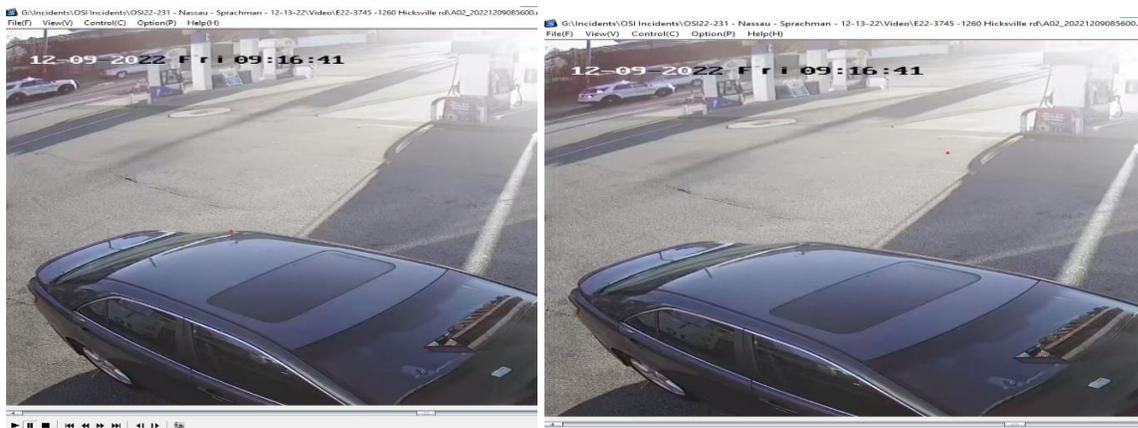
OSI spoke to eyewitness Victor Mazza<sup>2</sup> who was driving on Hicksville Road, in the same direction as Officer Pollio, at the time of the crash. Mr. Mazza said he was headed southbound on Hicksville Road when he stopped in the left turning lane. Mr. Mazza said he had the green light and was waiting to turn when he saw Mr. Sprachman's car, traveling northbound on Hicksville Road, cross into the left turning lane and slowly roll into the intersection. As Mr. Sprachman made the left turn, a police car entered the intersection and crashed into Mr. Sprachman's car. Mr. Mazza told OSI that the police car had its emergency lights on, but he could not remember whether the siren was on.<sup>3</sup> Mr. Mazza said the police car was not speeding and had a steady green light when it entered the intersection and collided with Mr. Sprachman's car, which caused Mr. Sprachman's car to go up on the curb. Mr. Mazza parked his car and checked on the occupants of both the police car and Mr. Sprachman's car. Mr. Mazza said he believed the officer could not have avoided the accident because there was not enough time to brake, and turning the car left or right would not have successfully avoided the collision.

<sup>2</sup> Mr. Mazza also gave a statement to NCPD, which was captured on BWC, and provided a sworn-to written statement to NCPD.

Officer Pollio's BWC ([Pollio's BWC here](#)) shows that Mr. Mazza checked on his condition and said he saw the accident. Mr. Mazza said, "He turned in front of you, you had the green. He never saw you; it was probably a sun glare issue. You were not speeding, you did nothing wrong – you actually hit the brakes." Officer Pollio responded that he pressed on the brakes and the horn but could not maneuver either right or left and there was no way to avoid the collision.

Several people called 911 after the collision, including a female caller who told the 911 operator, "The person literally just turned. I don't know how he didn't see him. The guy had his lights on and everything and the car just turned right in front of him."

OSI reviewed surveillance video from the Amoco gas station, which was about 250 feet from the crash. The video shows Officer Pollio's car approached the intersection with its overhead and rear bumper emergency lights activated.<sup>4</sup> The video does not show the crash and does not contain audio.



Screenshots from Amoco gas station video showing Officer Pollio's car approaching the intersection with emergency lights activated. The time stamp on the video is not accurate.

OSI reviewed video from Paddy's restaurant, which was at the intersection of the crash. The video ([Paddy's video link here](#)) shows Mr. Sprachman's light silver car traveling from south to north (beginning at the right side of screen) at 8:21:41 a.m., coming to a stop in the turning lane at 8:21:55 a.m., and proceeding through the intersection at 8:22:03 a.m. The video shows the aftermath of the collision at 8:22:09 a.m.

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<sup>4</sup> Because of the angle, the video shows the rear bumper emergency lights but not the front grill emergency lights.



Screenshot of Paddy's video showing Mr. Sprachman's car waiting at the intersection moments before proceeding into the turn.



Screenshot of Paddy's video showing the resting place of Mr. Sprachman's car after the collision. The officer's car is off-screen.

The video shows Mr. Sprachman's car entered the intersection and stopped in the middle of the intersection for about seven seconds. Mr. Sprachman's car slowly moved into the left turn, went off camera and seconds later video shows the car drove up on the sidewalk in the opposite direction of travel with passenger-side damage.

According to BWC footage of first responding officer, Kenneth Ortiz, Mr. Sprachman was conscious and coherent after the crash ([Ortiz BWC link here](#)).<sup>5</sup> Mr. Sprachman provided a written statement to NCPD 7<sup>th</sup> Precinct Sgt. Richard Bruno in the hospital and said he was driving on Hicksville Road before the collision. Mr. Sprachman said he made a left turn at North Suffolk Road and Hicksville Road into the shopping center, but his view was obstructed by another car<sup>6</sup> and he was struck by a police car.

Detective Roche said some cars in the NCPD fleet have computer systems that automatically record when an officer's lights and/or sirens are activated but Officer Pollio's car did not have that capability so there is no data on the car's computer system about whether the sirens were activated prior to the crash.

OSI spoke to Detective Thomas Roche of the NCPD Vehicular Homicide Squad. Detective Roche said NCPD body cameras must be manually activated by pressing a button on the camera. Once the officer presses the button, the device captures the prior thirty seconds of video, but the audio takes time to load.

Officer Pollio's BWC video begins at 8:22:04 a.m.; it shows Officer Pollio place his hand on the center of the steering wheel, where a horn would traditionally be, at 8:22:05 a.m., and it shows the air bag deploy at 8:22:06 a.m. According to the BWC footage, Officer Pollio was not holding his phone before the collision. There is no phone visible in his hand at any point during the BWC footage. Officer Pollio's BWC does not show speed of travel. OSI obtained NCPD's GPS records for PO Pollio's car, which provide a snapshot of the car's location and speed every five to six seconds. The GPS records show Officer Pollio's car traveling at 62 mph at 8:22:05 a.m., one second before the air bag deployed. The speed limit in the relevant section of Hicksville Road was 40 mph.

When the audio of Officer Pollio's BWC kicked in the car was stopped and the siren was not on.<sup>7</sup>

OSI interviewed Officer Pollio. Officer Pollio said he was responding to a cardiac call at a school and believed at the time that a child was the individual in distress. Officer Pollio said he had his police emergency lights on but he did not initiate his sirens. Officer Pollio said the

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<sup>5</sup> Officer Ortiz's BWC also captures an interview with Mr. Mazza, which is consistent with Mr. Mazza's interview with OSI.

<sup>6</sup> Mr. Sprachman did not elaborate in his statement where the other car was. OSI reviewed the video surveillance, and there is no other car visible on the video that might have obstructed Mr. Sprachman's view. However, the video surveillance does not cover the entire intersection.

<sup>7</sup> From the start of the BWC, it does not appear that Officer Pollio moved his arm to the center console of the car in order to activate lights or sirens, suggesting that while his emergency lights had been activated, his sirens were not activated at the time of the crash.

fact that the school requested a silent approach was only part of the reason for not initiating his sirens. He stated that often with sirens, other motorists get nervous and then make poor driving decisions which make the roadway conditions unsafe. He explained that sirens, therefore, can create a hazardous situation and he is careful about when to use them. Officer Pollio believed that at the time he could safely respond without the use of sirens and therefore did not initiate them. Officer Pollio also explained that while sometimes he initiates sirens as he approaches an intersection, he did not do so in this case because he believed he could cross safely without sirens since the intersection was not crowded, he had the green light, there were no obstructions to his view or in the intersection, there were no cars traveling in his lane in front of him, and Mr. Sprachman's car was stationary.

Officer Pollio stated that as he crossed the intersection, he realized that Mr. Sprachman's car was turning into him but, by the time he saw Mr. Sprachman's car turning, it was too late to brake or turn to avoid the collision. Officer Pollio said he immediately called the crash in over the radio and left his car to check on the occupant of the other car. He said that off-duty members of the local fire department had already arrived and were helping Mr. Sprachman. Officer Pollio said he was never asked to submit to a portable breath test to determine possible blood alcohol content.



*Photo showing damage to Mr. Sprachman's car.*



Photo showing damage to Officer Pollio's car.

OSI reviewed Mr. Sprachman's hospital records from NUMC which show that Mr. Sprachman's principal and admitting diagnoses were traumatic pneumothorax<sup>8</sup> and injury to the liver. According to the patient care report, Mr. Sprachman told the paramedic he was wearing his seatbelt at the time of crash. Mr. Sprachman had several rib fractures, a pneumothorax to the right side, fracture of the lower sternum, liver laceration, and several hematomas.<sup>9</sup> According to the records, Mr. Sprachman was admitted to NUMC's Surgical Intensive Care Unit on December 10, 2022, for unstable blood pressure and reduced blood flow through and from the heart. On December 12, 2022, Mr. Sprachman showed signs of hypoxia (lack of oxygen to the brain), and aortic stenosis, which results in an inability to pump blood effectively through the chambers of the heart and out to the body. Mr.

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<sup>8</sup> From the Mayo Clinic website: "A pneumothorax ... is a collapsed lung. A pneumothorax occurs when air leaks into the space between your lung and chest wall. This air pushes on the outside of your lung and makes it collapse. A pneumothorax can be a complete lung collapse or a collapse of only a portion of the lung." [https://www.mayoclinic.org/diseases-conditions/pneumothorax/symptoms-causes/syc-20350367#:~:text=A%20pneumothorax%20\(noo%2Dmoe%2D.a%20portion%20of%20the%20lung](https://www.mayoclinic.org/diseases-conditions/pneumothorax/symptoms-causes/syc-20350367#:~:text=A%20pneumothorax%20(noo%2Dmoe%2D.a%20portion%20of%20the%20lung).

<sup>9</sup> From the online Merriam Webster dictionary: hematoma is "a mass of usually clotted blood that forms in a tissue, organ, or body space as a result of a broken blood vessel." <https://www.merriam-webster.com/dictionary/hematoma>.

Sprachman suffered from respiratory failure and cardiac failure and was pronounced dead by Dr. Senese on December 13, 2022. He was 102 years old.

An external examination was conducted at the Nassau County Medical Examiner's Office<sup>10</sup> and OSI reviewed the examination report by Dr. Brian O'Reilly, Deputy Medical Examiner. Dr. O'Reilly determined that Mr. Sprachman's cause of death was cardiorespiratory failure due to blunt force trauma to head, torso, and extremities. Dr. O'Reilly stated "other significant conditions" involved in the death were hypertensive and arteriosclerotic cardiovascular disease and diabetes mellitus. Dr. O'Reilly deemed the manner of death to be "accident."

### LEGAL ANALYSIS

Under Penal Law 125.10, "A person is guilty of criminally negligent homicide when, with criminal negligence, he causes the death of another person."

Criminal negligence is defined in Penal Law Section 15.05(4): "A person acts with criminal negligence with respect to a result [e.g., death] ... when he fails to perceive a substantial and unjustifiable risk that such result will occur .... The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation."

In a series of decisions, the New York Court of Appeals has required prosecutors to establish criminal negligence in fatal vehicular cases with evidence not clearly implied in the statutory definition. Under these decisions, proof of the defendant's failure to perceive the risk of death is not sufficient to convict him or her of criminally negligent homicide, even if the failure is a "gross deviation" from a reasonable standard of care. Rather, the prosecutor must also prove that the defendant committed an "additional affirmative act" or engaged in "risk-creating behavior" amounting to "seriously blameworthy carelessness." *People v Cabrera*, 10 NY3d 370 (2008); *People v Boutin*, 75 NY2d 692 (1990).

In *Cabrera*, the Court reversed a conviction of criminally negligent homicide based on the defendant driver's excessive speed, saying "it takes some additional affirmative act by the defendant to transform speeding into dangerous speeding; conduct by which the defendant exhibits the kind of seriously blameworthy carelessness whose seriousness would be apparent to anyone who shares the community's general sense of right and wrong." *Cabrera*, 10 NY3d at 377, citing *Boutin*, 75 NY2d at 696 (internal quotation marks omitted). The Court continued:

"Thus, in the cases where we have considered the evidence sufficient to establish

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<sup>10</sup> The family of Mr. Sprachman did not consent to a full autopsy, and therefore, only an external evaluation was conducted.

criminally negligent homicide, the defendant has engaged in some other ‘risk creating’ behavior in addition to driving faster than the posted speed limit (**compare** *People v Haney*, 30 N.Y.2d 328 [defendant was speeding on city street and failed to stop at red light before killing pedestrian crossing street with green light in her favor]; *People v Soto*, 44 N.Y.2d 683 [defendant, who was speeding and drag racing on city street, struck and killed driver stopped at red light]; *People v Ricardo B.*, 73 N.Y.2d 228 [defendant was drag racing at between 70 and 90 miles per hour on a busy metropolitan street, ran a red light and struck vehicle crossing intersection with light in its favor]; *People v Loughlin*, 76 N.Y.2d 804, 807 [intoxicated defendant was speeding on obstructed street under construction in residential neighborhood in Queens]; *People v Maker*, 79 N.Y.2d 978, 980 [intoxicated defendant drove at speeds of 50 to 100 miles per hour in 35 miles per hour zone in Manhattan, disobeying several traffic signals]; *People v Harris*, 81 N.Y.2d 850, 851-852 [‘defendant, while legally intoxicated, drove his motor vehicle in the dark of night from a public highway into an unfamiliar farmer’s field, accelerated at times to a speed approximating 50 miles per hour, intermittently operated the vehicle without headlights, and suddenly and forcefully drove through a hedgerow of small trees and shrubs, not knowing what obstacles and dangers lurked on the other side’]; *People v Ladd*, 89 N.Y.2d 893, 894-895 [intoxicated defendant driving on wrong side of a foggy road at 4:30 A.M.], **with** *People v Perry*, 123 A.D.2d 492, 493 [4th Dept 1986], *affd* 70 N.Y.2d 626 [no criminal negligence present where defendant was driving approximately 80 miles per hour in a 55 miles per hour zone ‘on a rural road, on a dark night,’ struck a utility pole, and killed two passengers; defendant’s ‘conduct . . . d(id) not constitute a gross deviation from the ordinary standard of care held by those who share the community’s general sense of right and wrong’ (citations omitted)]). The question [is whether the conduct] constituted ‘not only a failure to perceive a risk of death, but also some serious blameworthiness in the conduct that caused it’ (*Boutin*, 75 N.Y.2d at 696).”

*Cabrera*, at 377-378, emphasis added; all material in square brackets in original.

In *People v Badke*, 21 Misc3d 471, (Suffolk Co Ct 2008), the court dismissed criminally negligent homicide counts, finding insufficient the grand jury evidence that defendant drove at excessive speed with passengers in his car, collided with another vehicle, and caused the deaths of three passengers. The court said, “Criminal negligence requires some additional affirmative act by the defendant to transform speeding into dangerous speeding, that is, conduct by which the defendant exhibits the kind of seriously blameworthy carelessness whose seriousness would be apparent to anyone who shares the community’s general sense of right and wrong.” 21 Misc3d at 476.

Another legal factor to consider is the effect of the Vehicle & Traffic Law (VTL) provisions on

emergency driving by police officers.

VTL Section 1104 (b) permits the driver of an emergency vehicle engaged in an emergency operation to (3) “Exceed the maximum speed limits so long as he does not endanger life or property.” Under VTL 1104 (e), the exemptions of VTL 1104 (b) “shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.”

VTL Section 101 defines “Authorized Emergency Vehicle” to include “Every ... police vehicle....”

VTL Section 114-b defines “Emergency Operation” of a vehicle as “The operation, or parking, of an authorized emergency vehicle, when such vehicle is engaged in transporting a sick or injured person, transporting prisoners, pursuing an actual or suspected violator of the law, or responding to, or working or assisting at the scene of an accident, disaster, police call, alarm of fire, actual or potential release of hazardous material or other emergency.”

Although other emergency vehicles must use sirens and lights when engaged in emergency operation, a police vehicle need not do so, VTL 1104(c). Failing to activate sirens and lights does not by itself establish recklessness for police officers engaged in emergency operation, but evidence that officers used sirens and lights is relevant to establish non-recklessness, e.g., *Martinez v. City of Rochester*, 164 AD3d 1655, 1656, (4th Dept 2018) (evidence of sirens and lights and of reduced speed established officer did not act with “reckless disregard”); *Hodder v. United States*, 328 F Supp 2d 335, 345 (EDNY 2004) (officer’s use of sirens and lights and cautious driving showed officer drove reasonably without “reckless disregard”); *Flynn v. Sambuca Taxi, LLC*, 123 AD3d 501, 502 (1st Dept 2014) (failure to activate police siren was not reckless conduct).

Even in civil cases involving police officers who injured people in the course of emergency driving, the Court of Appeals has required evidence of “conscious indifference to the outcome” to establish liability.

*Saarinen v. Kerr*, 84 NY2d 494 (1994), was a civil case in which a police officer injured a civilian in a high-speed chase. The Court said:

“[A] police officer's conduct in pursuing a suspected lawbreaker may not form the basis of civil liability to an injured bystander unless the officer acted in reckless disregard for the safety of others. This standard demands more than a showing of a lack of ‘due care under the circumstances’—the showing typically associated with ordinary negligence claims. It requires evidence that ‘the actor has intentionally done

an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow' and has done so with conscious indifference to the outcome." (*Saarinen* at 501, citations omitted, emphasis added).

The Court went on to say that VTL 1104

"... represents a recognition that the duties of police officers and other emergency personnel often bring them into conflict with the rules and laws that are intended to regulate citizens' daily conduct and that, consequently, they should be afforded a qualified privilege to disregard those laws where necessary to carry out their important responsibilities. Where the laws in question involve the regulation of vehicular traffic, the exercise of this privilege will inevitably increase the risk of harm to innocent motorists and pedestrians. Indeed, emergency personnel must routinely make conscious choices that will necessarily escalate the overall risk to the public at large in the service of an immediate, specific law enforcement or public safety goal. Measuring the reasonableness of these choices against the yardstick of the traditional 'due care under the circumstances' standard would undermine the evident legislative purpose of Vehicle and Traffic Law § 1104, i.e., affording operators of emergency vehicles the freedom to perform their duties unhampered by the normal rules of the road .... [T]he possibility of incurring civil liability for what amounts to a mere failure of judgment could deter emergency personnel from acting decisively and taking calculated risks in order to save life or property or to apprehend miscreants." (*Saarinen* at 502).

In *Criscione v. City of New York*, 97 NY2d 152, 157-158 (2001), the Court of Appeals found that officers operating a police vehicle under circumstances specified in VTL 114-b are granted "a qualified privilege to disregard the ordinary rules of prudent and responsible driving, subject to a reckless disregard standard of liability" and not the ordinary negligence standard (internal quotation marks omitted).

In *Frezzell v. City of New York*, 24 NY3d 213 (2014), also a civil case, the Court said that the approach in *Saarinen v. Kerr*,

"... avoids judicial second-guessing of the many split-second decisions that are made in the field under highly pressured conditions and mitigates the risk that possible liability could deter emergency personnel from acting decisively and taking calculated risks in order to save life or property or to apprehend miscreants." (*Frezzell* at 217, internal quotation marks and citations omitted).

In *Ferrer v. Harris*, 55 NY2d 285, 292 (1982), the Court of Appeals said an emergency

situation, which leaves little or no time for reflection, “itself may be a significant circumstance which should enter into the determination of the reasonableness of the choice of action pursued.” See *also*, *Gonzalez v. Zavala*, 88 AD3d 946 (2d Dept 2011) and *Nurse v. City of New York*, 56 AD3d 442 (2d Dept 2008).

The Court in *Staton v. State of New York*, 29 AD2d 612, 614 (3d Dept 1967), said the actions of a “police officer performing his duty in an emergency situation...must be weighed in the light of the circumstances as they developed and not by subsequent facts or in retrospect.” See *also*, *Paella v. State of New York*, 141 AD2d 999, 1000 (3d Dept 1988) (“The reasonableness of the officer’s conduct must be gauged as of the time and under the circumstances in which he acted, not in retrospect”); and *Kerwin v. County of Broome*, 134 AD2d 812, 813 (3d Dept 1987) (“the acts of the police officer are to be considered as of the time and under the circumstances in which they occurred”).

The evidence in this investigation does not meet the standard the courts have set for proof of dangerous speeding. Examples of “dangerous speeding” include running a red light while racing another car on a busy city street, *People v Ricardo B.*, 73 NY2d 228 (1989); driving drunk in Manhattan while going 25 to 50 mph over the speed limit and disobeying traffic signs, *People v Maher*, 79 NY2d 978 (1989); and driving through a red light at 52 miles per hour, *People v Haney*, 30 NY2d 328 (1972). In contrast, in *People v. Perry*, 23 AD2d 492 (4<sup>th</sup> Dept 1986), *affd*, 70 NY2d 626 (1987), a court overturned a conviction where the defendant was driving at night and going 25 mph over the speed limit on a rural road when he struck a utility pole and killed a passenger, holding that such “conduct d[id] not constitute a gross deviation from the ordinary standard of care held by those who share the community’s general sense of right and wrong.” Similarly, in *People v Badke*, 21 Misc3d 471, 477-78 (Suffolk Co Ct 2008), a court dismissed an indictment when the evidence failed to show “any other factor *in addition to speed* [that] convert[ed] Mr. Badke’s actions to dangerous speeding” (emphasis in original).

Like *Badke* and *Perry*, the evidence does not establish that Officer Pollio’s speeding was “dangerous speeding.” Responding to a cardiac emergency at a school is an emergency vehicle operation within VTL Section 1104(b)(3), under which speeding without sirens is permissible. Officer Pollio was traveling above the posted speed limit of 40 mph when the collision took place, but the evidence does not show any other culpable conduct. The evidence is that Officer Pollio was driving in the correct lane and there is no evidence he was impaired or distracted. He was speeding but was not going excessively fast, he had the right of way, and he had no reason to anticipate Mr. Sprachman would turn his car into the intersection as he proceeded through.

Based on the investigation, OSI concludes that a prosecutor would not be able to prove beyond a reasonable doubt at trial that Officer Pollio committed a crime when he caused Mr.

Sprachman's death, and, as a result, will not present this case to a grand jury for consideration of criminal charges and closes the matter with this report.

## **RECOMMENDATION**

### **Nassau County Police Department Should Equip All Police Cars with Dashboard Cameras**

OSI recommends the NCPD equip all police vehicles with dashboard cameras that would automatically preserve their recordings when police personnel activate police car turret or emergency lights. Dashboard cameras in police cars typically record continuously, re-writing at regular intervals, unless preservation of the recording is activated. Preservation can be triggered by actions such as activating the turret lights. Here, Officer Pollio's car was not equipped with a dashboard camera. Had Officer Pollio's car been equipped with a dashboard camera there would have been a clearer picture of the collision, which would have greatly facilitated the investigation of this case and provided the public with greater transparency of events. OSI recognizes that certain NCPD cars are equipped with dashboard cameras, but recommends that NCPD equip all of its cars with cameras to foster transparency, accountability, and evidence gathering.

Dated: June 4, 2024