

**City of Albany
Citizens' Police Review Board
Albany Public Library
161 Washington Avenue – Large Auditorium
March 13, 2008
6:00 p.m. – 8:00 p.m.**

Present: Jason Allen, Daniel Fitzgerald, Ronald Flagg, James Malatras, John Paneto, Andrew Phelan, Jr., Anthony Potenza, and Fowler Riddick.

I. Call to Order and Roll Call

Chairman Jason Allen called the meeting to order at 6:00 p.m.

II. Approval of the Agenda

The agenda was reviewed. Chairman Jason Allen noted that Chief James Tuffey will speak before 7 p.m. James Malatras moved to approve the agenda. Ronald Flagg seconded the motion. The motion carried unanimously.

III. Approval of the January 10, 2008 Meeting Minutes

The January 10, 2008 meeting minutes were reviewed. Ronald Flagg moved to approve the minutes. Fowler Riddick seconded the motion. The motion carried unanimously.

IV. New Business

A. *New Complaints*

1. New Complaints Received Since January 10, 2008 Meeting

Andrew Phelan reported that three (3) new complaints had been received by the Board since its February 21, 2008 meeting. Mr. Phelan read a summary of each new complaint.

CPRB No. 8-08

According to the complainant, in mid-January, she dated an Albany officer. Three weeks later, the complainant claims that when she ended the relationship with him, he became abrasive and demanded that she return a movie that she borrowed from him. Because they were on bad terms, she mailed the movie to him. The complainant claims that two weeks later, the officer left her a nice message as if they were still friends, when they were not. The complainant alleges that a week and a half later, she received a parking ticket for parking 12 inches from the curb, a minute after she left her car to go to work. The complainant alleges that her car was not parked 12 inches from the curb and other

cars were parked more than 12 inches from the curb. Later on that evening, the complainant alleges that the officer left her a voicemail in which he referred to the ticket as a joke and that she did not have to pay for it. The complainant gave the Albany Police Department (APD) investigator a copy of the voicemail.

*A monitor **was not** appointed to investigate this complaint.*

CPRB No. 9-08

The complainant alleges that on the evening of February 19, 2008, he pulled over for a second, so his friend could get out of the car to run into Dino's Pizza. The complainant was driving his friend's car. After giving the officer his driver's license, the complainant alleges that the officer left and then returned to the car informing him that he had a permit. The complainant further alleges that the officer searched him, his friend, and the car and found nothing. The complainant claims that the officer lied to him just to search the car. The complainant also alleges that the officer told him that his girlfriend is a known prostitute in Albany for years.

The complainant's friend also submitted a hand written complaint along with his complaint. The complainant's friend alleges that the officer mistreated, illegally searched, and called her a prostitute and crack head. She further alleges that she got a ticket for double-parking when her car was the only car on the block.

*A monitor **was** appointed to investigate this complaint.*

CPRB No. 10-08

The complainant alleges that on February 7th, an officer put her in a choke hold, forced her to the ground on her stomach while five (5) months pregnant, and spray mace in her left eye. The complainant further alleges that although she begged the officer to let her up off of her shoulders, he refused and told her to stay like that for a little while. The complainant claims that she continued asking to be let up until a female officer rolled her over and sat her up. The complainant further claims that she was sitting in cold water on the freezing cold ground. When the complainant asked the officers to let her off the ground, the female officer sat her on the low step of a store. The complainant alleges that although she asked for an ambulance, the officers told the fire truck that they did not need an ambulance, so they waited for a paddy wagon. The complainant claims that she told the officer that she was pregnant while he was forcing her to the ground.

*A monitor **was** appointed to investigate this complaint.*

2. New Complaints for Review

Chairman Jason Allen reported that there were four (4) new complaints on the agenda for review by the Board.

CPRB No. 5-07/OPS No. C07-130 (Presented by Andrew Phelan, Jr.)

Andrew Phelan summarized the complaint. The complainant filed a complaint concerning an incident that occurred on February 24, 2007. The complainant alleged that during an animated and loud argument he was having with a girlfriend, an officer grabbed him and pushed him 15-20 feet back, slamming him into a brick wall. The complainant further alleges that the officer yelled at him and told him to shut his mouth. The complainant claims that he has bruises on his arm caused by the officer.

Mr. Phelan noted that he reviewed the Office of Professional Standards (OPS) confidential file. He reported that the complainant failed to show up to an appointment at the OPS. The complainant also failed to show up to a rescheduled meeting. The OPS detective left several messages for the complainant with no response from the complainant. The OPS sent a certified letter to the complainant that was returned by the US Postal Service as unclaimed. The OPS also contacted the Saugerties police for their assistance in locating the complainant. The Saugerties police were unable to locate the complainant. Two attempts were made by the OPS to locate the complainant at his residence but no one was there. The OPS also tried to contact two of the complainant's witnesses, but were unsuccessful.

Mr. Phelan summarized that based on his review, the complainant and his witnesses were uncooperative with the investigation. He summarized the allegations in the case to include use of force when the officer grabbed the complainant by the arm causing bruising on his arm; and conduct standards when the officer told the complainant to shut his mouth.

Mr. Phelan noted that a monitor was appointed to investigate the complaint. Monitor Albert Lawrence was acknowledged. Mr. Lawrence added that the OPS took extraordinary steps to contact the complainant and his witnesses to no avail. Mr. Lawrence noted that this leaves the Board with the testimony of three officers, all of whose statements contradict the complainant's. Chairman Allen noted that the complainant was not present.

Mr. Phelan noted that he agreed with the findings of the OPS on the use of force allegation as *no finding*; and the conduct standards allegation as *no finding*. Daniel Fitzgerald asked if the Board tried to contact the complainant. Mr. Lawrence responded that he is not authorized to contact the complainant on behalf of the Board. He cited the dates and times that the OPS attempted to contact the complainant. Mr. Lawrence also added that the Saugerties police left their business cards, with a note for the complainant to contact them, at the complainant's residence.

Mr. Fitzgerald asked that the complaint be tabled until the next meeting to allow the Board an opportunity to send a letter to the complainant. Chairman Allen asked Mr. Phelan if he saw the certified letter. Mr. Phelan responded in the affirmative. Chairman

Allen explained that he was not opposed to tabling the complainant, but the monitor and Mr. Phelan saw the certified letter. James Malatras agreed with Mr. Fitzgerald that the review of the case be tabled until the next meeting. Mr. Phelan noted that the OPS did everything they could to contact the complainant and his witnesses to no avail.

Mr. Phelan moved to accept the OPS findings of *no finding* on both allegations. Anthony Potenza seconded the motion. The motion carried 5-2, with Daniel Fitzgerald and James Malatras voting against the motion. Ronald Flagg abstained from voting.

CPRB No. 9-07/OPS No. C07-272 (Presented by John Paneto)

John Paneto summarized the complaint. The complainant alleged misconduct by Albany police during a street encounter and subsequent arrest. The complainant further alleged a conspiracy of entrapment for this arrest and for jail time that the complainant may serve. Mr. Paneto noted that a monitor was not appointed to investigate this complaint. He also noted that the complainant submitted five letters along with his complaint. The complainant was arrested on January 9, 2007. The complainant alleges misconduct by an officer who submitted false statements to the grand jury; oppression and harassment by the officer; entrapment by the officer; conspiracy by a Sergeant; and "set up" by officers. Mr. Paneto summarized the findings of the OPS on the conduct allegation of submitting a false statement. Two officers observed the complainant and a female involved in a drug transaction in front of Yan's Grill. The officer followed and eventually stopped the complainant. The officers found two substances which appeared to be crack cocaine. Upon field testing, the substance was determined to be crack cocaine. The complainant lied to the officers about his arrest history. The complainant and the female were arrested on a drug possession charge.

Mr. Paneto summarized the findings of the OPS on the second conduct standards allegation of oppression and harassment. Mr. Paneto noted that based on the investigation, the complainant was unable to give any specific incidents leading to the allegation. Mr. Paneto summarized the findings of the OPS on the third conduct standards allegation of a set up by the officers. According to the officers, the female dropped something and then attempted to destroy it by crushing it with her foot. Although the officer told her to stop several times, she did not stop. The Sergeant named in the complaint was not on duty when the complainant was arrested.

Mr. Paneto summarized the findings of the OPS on the fourth conduct standards allegation of conspiracy. He noted that he reviewed statements by several of the officers in which they denied the allegation.

Mr. Paneto summarized the findings of the OPS on the fifth conduct standards allegation of set up for sale. He noted that the complainant alleged that officers confronted two males away from the site of the original arrest. Based on the investigation, the two males were stopped for loitering near a known drug area. According to the officer, the statement he made to the men was cautionary.

Mr. Paneto concluded that his review of the investigation showed that the officer's actions were acceptable for this type of street encounter. It was noted that the complainant was not present. Mr. Paneto moved to accept the OPS finding of *unfounded* on the conduct standards allegation of a false statement; *unfounded* on the conduct standards allegation of oppression and harassment; *not sustained* on the conduct standards allegation of set up; *unfounded* on the conduct standards allegation of conspiracy; and *unfounded* on the conduct standards allegation of set up for sale. James Malatras seconded the motion. The motion carried unanimously.

CPRB No. 16-07/OPS No. C07-466 (Presented by Anthony Potenza)

Anthony Potenza summarized the complaint. On May 20, 2007 at approximately 11:30 p.m., the complainant alleges that he was standing on the sidewalk in front of his friend's building when an officer aggressively got out of his car and harassed the complainant. The complainant claims that he began running, tripped and fell to the ground. The complainant further alleges that the officer beat him; pepper sprayed him; threw him into the trunk of the patrol car; and illegally transported him to the south station. The complainant claims that an hour later, he was transported to Albany Medical Center, where he remained for five (5) hours.

Mr. Potenza noted that in addition to the complaint, the complainant submitted several letters. In the first letter, the complainant requested the Government Law Center's assistance with his complaint. In the second letter, the complainant requested the Board's assistance in obtaining the minutes from a July 10, 2007 revocation of a parole hearing. In the third letter, the complainant informed the Board that the charges against him were dismissed. Mr. Potenza noted that in reviewing the case file, the charges were not dismissed. He also noted that the complainant submitted two (2) letters to the Board inquiring about the status of his complaint and informing the Board about his new address at the Bare Hill Correctional Facility.

Mr. Potenza summarized the OPS report on the case. He reported that the OPS interviewed the complainant, target officers, and conducted a canvass for witnesses. Mr. Potenza summarized the findings of the OPS on the use of force allegation as *not sustained*. He noted that based on the OPS investigation, the officer stated that the complainant continued to struggle and while attempting to place him into custody the officer used open handed techniques taught in the Zone 5 Training Academy to attempt to take the complainant into custody. The officer stated he never struck the complainant. Mr. Potenza also noted that another officer stated he observed the complainant fighting with the officer and only open handed techniques, such as the bent wrist along with a one second burst of OC spray, were used. According to the OPS investigation, after administering the OC spray the complainant continued to struggle; however, the officers were able to handcuff him. Mr. Potenza summarized the findings of the OPS on the conduct standards allegation as *unfounded*. He noted that based on the OPS investigation, the officers all stated that the complainant was transported to the south station in the rear seat of a marked caged police vehicle. Albany Police Department radio

recordings substantiated that the supervisor on the scene ordered the complainant to be transported in that manner. Mr. Potenza summarized the findings of the OPS on the second conduct standards allegation as *unfounded*. He noted that based on the OPS investigation, the complainant alleged that during a parole hearing the officer's testimony was inconsistent. The only inconsistency found during the course of the investigation was that the arresting officer stated that he and the complainant fell to the ground and began wrestling. The other officer on the scene stated that based on his limited and obstructed view he believed the complainant tripped and fell to the ground. Both officers stated there was a struggle and the complainant was continuously and actively resisting his arrest.

Mr. Potenza noted that he reviewed the monitor's report. He summarized the monitor's report. According to the monitor, the complainant was charged with criminal possession of a stolen credit card, criminal possession of a controlled substance, resisting arrest, and obstruction of governmental administering in the second degree. Mr. Potenza noted that the complainant's medical records indicated that the complainant was treated at Albany Medical Center and diagnosed with illicit crack cocaine intoxication. The complainant advised the medical staff that he used the drug for four (4) days and was coming down from it. The medical records also indicated a significant amount of alcohol in the complainant's body. The OPS conducted a canvass of the neighborhood to locate any witnesses or the complainant's friend to no avail. During questioning by the OPS, one of the target officers stated that he saw the complainant looking into the window of an unoccupied car. When the officer went to approach the complainant, the complainant placed both of his hands down the front of his pants, which led the officer to believe that the complainant had a gun, drugs, weapon or stolen property. The complainant ran with the officer in pursuit. During a struggle between the complainant and the officer, the complainant and officer fell to the ground. According to the officer, the complainant was kicking and striking him, so the officer used the open handed technique on the complainant. The officer saw the complainant swallowing crack cocaine, so he sprayed the complainant with OC spray and as a result the officer became incapacitated by the effects of the OC spray. The officer stated that he was not present when the complainant was transported because another officer arrived at the scene to take him so he could decontaminate himself. It was noted that several officers arrived on the scene to assist the officer. All of officers were interviewed by the OPS.

Mr. Potenza reported that the monitor reviewed twenty-one (21) documents in the OPS case file. He noted that the monitor agreed with the OPS findings on all three allegations. Mr. Potenza further reported that the monitor's report noted several discrepancies between the statement the complainant gave to the OPS and his original complaint. The first discrepancy was that complainant said that he tripped and fell while running away from the officer when he was caught. The second discrepancy was that the complainant complained of right arm pain, but while at the hospital, he only complained of right thigh pain. The third discrepancy was that the complainant would not say that he was fighting with the officers, but the complainant did say that it was unjust for him to be arrested, sprayed with OC and handcuffed. All of the officers observed the complainant struggling

with the officers. The fourth discrepancy was that the complainant never mentioned anything about being in the trunk of the patrol vehicle. Last, the hospital staff mentioned that the complainant was unwilling to give his medical history and denied any other physical complaints. Mr. Potenza moved to accept the OPS findings of *not sustained* on the use of force allegation; *unfounded* on the first conduct standards allegation; and *unfounded* on the second conduct standards allegation.

Chairman Allen asked what was the document used to give the complainant's medical history. Mr. Potenza responded that the complainant authorized the release of his medical information. John Paneto stated that he is still unclear what the reason for the stop was, and what initiated the encounter between the officer and the complainant. Monitor Theresa Balfe responded that according to the complainant, the officers looked at him strange, so he ran. However, the officers noticed that the complainant was looking into an unoccupied vehicle, so they approached him. Ms. Balfe added that while the complainant was running, the complainant was getting rid of the wallet and other things that were in his possession. She further explained that the complainant was arrested on four charges, one for stolen property. Ms. Balfe explained that as a monitor she is not allowed to attend interviews of complainants in jail or on the scene. Mr. Paneto questioned why the officer used the OC spray on the complainant. Ms. Balfe responded that the complainant was resisting and struggling. She added that the complainant stated clearly that he did not think he was fighting with them, but he did not deny struggling. Mr. Paneto asked for clarification about the complainant being transported in the trunk of the police vehicle. Ms. Balfe responded that in the complaint, the complainant stated that, but when the OPS interviewed the complainant, the complainant stated that he did not remember how he was transported. Mr. Paneto added that the APD vehicles have so much equipment in their trunks that a human being would not be able to fit in the trunk. Commander Burris Beattie agreed. Ms. Balfe added that the drugs and alcohol found in the complainant's system might have affected his judgment.

Chairman Allen reiterated that Mr. Potenza previously made his motion. Ronald Flagg seconded the motion. The motion carried unanimously.

V. Report from Albany Police Chief James Tuffey

Chief James Tuffey noted that based on recent allegations that were reported in the news, the APD looked at the issue of which complaints the Board receives and which complaints the Board does not receive. He reported that based on discussions with the Board, the Common Council and the City administration, he made a suggestion that if a citizen chose to opt out of filing a complaint with the Board, the OPS will forward a form that lists the citizen's name, address and phone number to the Board. The form will not include what the complaint is about. Once the Board receives the form, they will follow-up with the citizen to explain the complaint review process to the citizen and see if the citizen is satisfied with his/her complaint being investigated only by the OPS. Chief Tuffey asked Chairman Allen to forward the form to the Board for review. He added that

the APD Standard Operating Procedures is being rewritten to incorporate steps in getting the reports through the OPS to the Board.

Chief Tuffey noted that in 2006, he was informed that there were issues with the cameras the department purchased. Those issues included powering up and down. Chief Tuffey further noted that he has looked at five companies, and the department has reached an agreement on the best cameras to use. He further noted that the department has funding for twelve (12) cameras. However, there will be future discussions with the City about funding for all police cars. Chief Tuffey described the features of the cameras that will be purchased.

Chief Tuffey reported that he met with the APD Sergeant's and Lieutenant's unit regarding the mediation program. He noted that he gave them the list of mediators and is awaiting a response from them.

Chief Tuffey reported that the early warning system's policy is being finalized; and the use of force is being entered into the system. He explained the reason for the delay in implementing the system was the technology.

Ronald Flagg asked Chief Tuffey for clarification on the intent of the form. Chief Tuffey responded that if the citizen chooses not to fill out a Citizen Complaint Form, but still wants the complaint to be handled within the police department, the OPS will notify the Board of the person's name, address and phone number by sending the form to the GLC. This will allow the Board to proactively contact the citizen to make sure that is what the citizen wants to do. The OPS will submit the forms, just like they do with the complaint forms within two days of receiving them.

VI. New Business

2. New Complaints for Review (Continued)

CPRB No. 30-07/OPS No. C07-724 (Presented by Fowler Riddick)

Fowler Riddick summarized the complaint. On October 31, 2007, while on Washington Avenue and Lark Street, the complainant alleges that two officers on bicycles approached him and his two alligators. According to the complainant, the officers began to question him about the alligators. The complainant alleges that the officers made fun of him and asked him for his alligator license. According to the complainant, he showed the officers the license. The complainant further alleges that when he asked the officer for a copy of the paper that he was writing on, the officer refused and told the complainant to call the Chief. According to the complainant, he called the Chief and the Chief left him an inaudible voice message on the same day he was going to file the complaint.

Mr. Riddick reported that the officer submitted an inter-office departmental correspondence (IDC) as part of the OPS investigation. According to the officer, he was

assigned to bicycle patrol on Lark Street. The officer stated that he observed the complainant walking up and down Lark Street with an alligator in a tank. The officer asked the complainant if he had a permit for the alligator. The complainant supplied the officer with paperwork from the Health Department. According to the investigation, the officer had no further conversations with the complainant regarding his alligators. At no time did either of the officers make fun or display rudeness to the complainant. Mr. Riddick reported that the OPS interviewed the complainant about his complaint. The OPS questioned the complainant about his allegations that the officer made fun of him. During this interview, the complainant stated that based on the way the officer was questioning him, he felt that the officer was making fun of him. The complainant also stated that the officer took his name, address and phone number.

Mr. Riddick summarized the findings of the OPS on the conduct standards allegation as ***Not Sustained***, where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged the officers made fun of him and were rude to him. Both officers did not indicate making fun of the complainant or displaying rudeness to him. The officer asking the questions about the complainant's name, address and phone number and then writing them down, was completing the required field interview card in accordance with department procedures. Based on the conflicting reports there is not substantial evidence to prove or disprove the allegations made in the complaint.

Mr. Riddick noted that a monitor was not assigned to investigate the complaint. He acknowledged that the complainant was present. The complainant agreed with Mr. Riddick's summary of his complaint. The complainant summarized his complaint. Chairman Allen explained that what makes the case challenging was that the complainant was surrounded by at least twelve people on Lark Street and there are no witnesses. Mr. Paneto asked the complainant to describe the license he has for the alligators. The complainant responded that he applied for the license five years ago at the Wildlife Department in downtown Albany. He has three licenses for the caymens, and two licenses for the alligators. Mr. Paneto clarified that according to New York State Law, the complainant needs to have a license to own the alligators. The complainant explained that the license allows him to transport and own the alligators. Mr. Paneto asked the complainant if he communicated that to the Albany police. The complainant responded in the affirmative. James Malatras noted that the complainant previously filed a similar complaint with the Board which involved his alligator at Lark Fest. Mr. Malatras added that in this case there are no witnesses, so there are not enough facts to prove or disprove the allegation. Chairman Allen asked the complainant was the Times Union reporter with him at the time of the incident. The complainant responded in the negative.

Mr. Paneto asked if those individuals who have these types of licenses are known to the officers. Commander Burris Beattie responded that it depends on the individual officer and if he/she has had any contact with people with these types of animals. He said that it is hard to tell with over three hundred officers. Mr. Paneto asked if anything was in place for an officer to know how to handle a situation where someone has a license to

carry an alligator. Commander Beattie responded that in this case, the officers asked the complainant for his license, which the complainant produced and then the officers did the necessary field interview. Commander Beattie added that the complainant was unable to get a copy of the field card at the scene, but if he submitted a FOIL request, he would have been able to get a copy of that document. Commander Beattie added that these officers did not know the complainant and that he owned the alligators.

Mr. Malatras noted that the officer's conduct was in question, not if they had the right to ask the complainant for the license. The complainant agreed. The complainant added that the officer knew him and the officer told him that he knew the complainant had a license.

Mr. Riddick moved to accept the OPS finding of *Not Sustained* on the conduct standards allegation. Ronald Flagg seconded the motion. The motion carried 7-1, with John Paneto voting against the motion.

B. *Appointment of New Members to the Committee on Complaint Review for April 2008*

The following Board members were appointed to the Committee on Complaint Review for April 2008: Chairman Jason Allen, Daniel Fitzgerald, John Paneto, Andrew Phelan, Jr., and Anthony Potenza.

C. *Approval of 2007 Third Quarterly Report*

Chairman Allen asked the Board if there were any questions. It was noted that there were no questions. Andrew Phelan moved to approve the 2007 Third Quarterly Report. James Malatras seconded the motion. The motion carried unanimously.

D. *Committee/Task Force Reports*

Community Outreach

Committee Chairman James Malatras reported that John Paneto gave an outreach presentation to the SUNYA Committee on University & Community Relations. He further reported that the brochure is undergoing its final stage in proofing edits and will soon be ready to be printed. Mr. Paneto added that twenty individuals attended the outreach presentation at SUNYA at the police department's center station. He further added that he gave his report to Coordinator of the Board Sharmaine Moseley. Chairman Allen asked Ms. Moseley to forward Mr. Paneto's report to the Board.

E. *Report from the Government Law Center (GLC)*

Government Law Center Coordinator of the Board Sharmaine Moseley gave the report.

Complaint Inventory as of Date of Meeting

It was reported that as of today, there are currently thirty-one (31) active complaints before the Board for review. Of those thirty-one (31) active complaints, four (4) were reviewed at tonight's meeting, which leaves the Board with twenty-seven (27) active complaints. It was noted that there may be approximately nine (9) complaints ready to be reviewed at the next month's Board meeting.

It was further reported that two hundred fifty-two (252) complaints have been closed and nine (9) complaints remain suspended from review. The total number of complaints filed to date is two hundred eighty-eight (288).

Reports

The fourth quarter report for 2007 has been completed and is undergoing review. Also, the GLC is currently drafting the 2007 annual report.

NACOLE

It was reported that the NACOLE conference is scheduled for October 26th – 30th in Cincinnati, Ohio. Board members Andrew Phelan and John Paneto have confirmed that they will be attending the conference. It was reported that the GLC is drafting a letter on behalf of the Board to the Chief to see if the APD would send someone to the conference.

Board Meeting

It was reported that the next Board meeting is scheduled for Thursday, April 10th at the library.

Questions and/or Comments from Board

Chairman Allen commented that the Board received correspondence regarding complaint no. 2-07. He noted that that complaint will be reviewed at the next meeting of the Board.

F. *Report from the Office of Professional Standards*

Commander Burris Beattie noted that Chief Tuffey gave the report at the beginning of the meeting.

G. *Report from the Chair*

Chairman Jason Allen thanked the public for attending tonight's meeting. He commented that he is honored to be the Chair on a Board that continues to strive for responsible oversight and accountability. Chairman Allen thanked the Board for their input and patience as we develop our recommendations improving the visibility and

resolution of the complaint process as well as the tools for highlighting and understanding trends. We are all concerned about events which were alleged to occur on the evening of December 22, 2007 and allegations that the complaint was covered up. Most importantly, the Board would like the complainant to know that she could still opt to have the CPRB in the complaint process. Chairman Allen commented that he felt the following recommendations are critical to ensure credibility in the complaint process and presented them to the Board for discussion.

Recommendation #1: All Complaints Come to the CPRB

In the event that someone does not fill out a form or states that they do not want the CPRB to review the complaint, the APD will forward the complainant's contact information to the CPRB for outreach. The APD is updating its SOP to reflect that. The CPRB would need to define how this will work, including how the CPRB will communicate to the complainant and what the form letter would look like. The CPRB needs its outreach subcommittee to ensure that this process is in place for a vote at the Board's next meeting.

Recommendation #2: Video and Audio in the APD

This evidence will assist the OPS and the CPRB to understand the facts in a case, which would go beyond the "he said/she said" allegations, which is often typical of the cases the CPRB sees. We look to the Police Department Liaison and Policy Review subcommittee to report to the CPRB on its progress.

Recommendation #3: Mediation

This is an important aspect of the CPRB's by-laws which allows the complainant and the target officer to sit with a mediator and resolve the issue at hand. Many of the CPRB's complaints, especially those concerning rudeness, may best be resolved in this manner.

Recommendation #4: Early Warning System

This is an important tool, which the APD recently purchased for everyone from first line supervisors to management to understand trends and if individual or collective action is required. The CPRB's Policy Review committee met with the APD for a demonstration of the system. The CPRB is also sending a letter to the APD requesting the officer interview transcripts be made available to the CPRB. The transcripts are an important part of a complainant's file and bring clarity to the officer's side of events in an investigation.

Anthony Potenza moved to adopt the recommendations. Fowler Riddick seconded the motion. The motion carried unanimously.

John Paneto noted that he has a concern about the CPRB as an entity. He noted that

historically the legislation sets up the model of the CPRB. He further noted that when individuals begin to ask whether the CPRB could do something differently, they need to look at how the CPRB was created. The Albany model does not allow the CPRB to have subpoena power. The CPRB does not have the authority to hire someone outside to investigate. There are several Boards that have that type of authority. Mr. Paneto summarized that if the Albany model needs to be changed, then it must be done through the Albany Common Council.

Chairman Jason Allen noted that he would like to make one additional statement. He noted that the media has been reaching out to individual CPRB members for statements and opinions regarding the allegations in the Times Union. He asked that as the CPRB moves forward please keep in mind that pursuant to Article V Section 1 of the CPRB's by-laws "It is the further intention of the board to encourage the exercise of thoughtful discretion in order to curtail or minimize the potential for inconsistent public statements made by members of the Board that may be construed by the public or the media in a manner detrimental to the fulfillment of the Board's mission under Part 33 and these by-laws. Only the Chair or his or her designated media liaison officer shall make official statements for the Board. Except when expressly authorized by the Chair to speak on behalf of the Board, each member shall refrain from speaking for the Board and shall make diligent efforts to avoid the appearance of doing so."

Chairman Allen noted his disappointment in the quotes which appeared in the Times Union attributed to an anonymous Board member. He explained his disappointment in that he was not consulted, and that the statements did not reflect the true feelings of the CPRB or that individual Board member as well. Chairman Allen noted that the CPRB holds others accountable for following the rules. He added that it seems hypocritical to the public if one of the Board members is not following the rules as well. Chairman Allen stated that he does not agree with Board members speaking to the media without consulting the Chair or hiding behind anonymity. The public needs to understand that the CPRB is an unbiased body where complainants, police, and the general public are provided a fair forum for their cases. He added that regardless of the by-laws requirement of speaking to the media, more important is the perception of impartiality. If the Board loses that impartiality, it has lost the foundation of its existence. There is no place on this Board for any member who does not agree with the essence of impartiality.

Chairman Allen made the following statement on behalf of the Board for discussion:

"We strongly believe that the statements in the Times Union do not reflect the feelings of this Board. Indeed, there have been times, when we have had questions about a particular case and have sent it back to the Office of Professional Standards (OPS) for review. However, this by no means reflects a collective failing of the entire system or men and women who work to support it."

Mr. Paneto stated that each member is an independent person and was chosen to act as one body. He noted that he understood the Board's policy and procedure. He further

noted that if a member has a personal dissent with the process that they also have that right. Mr. Paneto summarized that he supports the Chair's position.

All Board members except for James Malatras noted that they support the Chair's position. James Malatras stated that he did not support the second part of the Chair's recommendations regarding the media statement because he was not consulted. He added that if the Board speaks as a whole, the members should know in advance what the Board is saying.

VII. Public Comment

Chairman Jason Allen opened the floor for public¹ comment. He noted that the comments would be limited to two minutes per person. A citizen asked what would be the best way to give the Board a complaint. She described a complaint that she has against the APD. Mr. Malatras explained the complaint process to the citizen. He noted that the Board reviews investigations conducted by the OPS. The Board does not have the authority to go out and investigate complaints. James Malatras explained the role of the GLC in the process. Chairman Allen added that if the citizen has a question about APD procedures then she would need to contact the GLC to review the public copy of the APD Standard Operating Procedures once she files a FOIL request.

Attorney Mark Mishler stated that he is very disturbed at the response of the Board to Chief Tuffey's statement as to whether this Board will receive all complaints received by the APD. He stated that it is not up to the Chief or the Board to decide that there are complaints of police misconduct filed with the police department that will not be provided to the Board. The legislation that created the Board states that a copy of each complaint submitted to the police department shall be provided to the CPRB within two (2) business days of receipt by the APD. Mr. Mishler stated that the legislation also defined a complaint as a written statement concerning police conduct which is either submitted to the CPRB for filing with the APD or filed directly with the APD. If it goes to the OPS first, the OPS, the Chief, nor the complainant has the power to say they will not forward it to the Board. Mr. Mishler noted that although many people were shocked by the article in the Times Union, he was not that shocked because he heard of this happening before. The Board should not have been shocked because they should have been aware of this before. Mr. Mishler commented that he could not believe someone would go to the OPS to file a complaint and say that they do not want it to go to the CPRB. The Board should be telling the APD that they want those detectives who are telling citizens not to file complaints with the Board to be investigated.

Dr. Alice Green, Executive Director of the Center for Law and Justice stated that when the Board originated eight years ago, the Center along with the NYCLU made recommendations to the Board. She noted that they made some clear recommendations to the Board that the Board has not taken seriously. Dr. Green stated that the events that occurred over the last couple of weeks point out some serious concerns about the effectiveness of the Board to provide service to the

¹ Approximately one hundred (100) citizens, elected officials, and media attended the April 15, 2008 Board meeting.

community. Dr. Green commented that she made it clear to the Board years ago that the Board was not receiving all complaints filed with the APD. The Board did nothing with that information. The GLC indicates that it is in the law that the police department should have established an early warning system. Dr. Green added that this was in the recommendations submitted to the Board eight years ago and should have been established by now. Because this is not an independent board we will never give the citizens what they deserve. Dr. Green stated that board members should be allowed to voice their opinions or point of view. We are very concerned whether the Board, as it is structured, can ever effectively conduct a real honest review of police misconduct. The Center for Law and Justice is at the point of suggesting that the Board be dissolved if no changes are made to enable real citizen review.

Common Councilmember Dominic Calasaro stated his concerns about the complaint process. He noted that the law is black and white. According to Councilmember Calasaro all complaints should go to the Board. He also stated that no individual can be denied the right to give an opinion. Any member of the Board can give his opinion, and not speak for the Board. He cited the legislation creating the Board. Councilmember Calasaro noted his issue with a member of the Board going to the Chief without Board approval to say that he is being questioned about the Board. The Board is supposed to be an independent body that does not run or give forewarning to the police department saying that it is being questioned. Councilmember Calasaro stated that the Board should have investigatory powers and know if officer A has a certain number of complaints against him. This should have been a recommendation from the Board.

Chairman Allen commented that all complaints come to the CPRB. He explained that what has been problematic is that there may be a verbal complaint or someone may not want to fill out the form and as a result leaves. He added that the Board wants to hear about those people. Chairman Allen noted that he will consult with the Board's counsel regarding those people who may write on the form that they do not want the CPRB to review their complaint. He does not know if the Board has the right to look at that complaint. Chairman Allen explained that the Board wants the contact information from those people to reach out to them, and explain the process to them.

Chairman Allen noted the frustration the Board faces are complaints with a lack of evidence. He explained that the video and audio will go a long way. He noted that subpoena power will not help the Board if it's one person against another person's word. There have been a lot of cases before the Board in that if there was a camera and audio in the patrol car, a lot of things would have been cleared up.

James Malatras explained that the Board does not only have a duty to an individual complaint, but a duty to get the full picture of what is going on in the community. The Board does not have that full picture. The standing document was a big issue for some Board members, and was recalled unanimously because it was not just about one individual. It is about how the community interacts with the police and vice versa.

Chairman Allen added that the Board has a mechanism in place for subpoena power which is to refer complaints to the Common Council. It has been eight years and not one case has been

referred to the Common Council. He further added that he is not opposed to subpoena power, but he would like to see mediation and other things that are more obtainable that would help the Board out with its cases. James Malatras clarified that previously, there were Board discussions about sending certain cases to the Common Council.

Common Councilmember Corey Ellis stated that the Board will never get the evidence it needs unless the Board has an independent investigator. Councilmember Ellis commented that he was startled by the Chief's recommendation, because any changes on how complaints are accepted or handled is a legislative function. He added that if changes need to be made then it has to be done by the Common Council. Councilmember Ellis referred to a case that the Board reviewed earlier in the meeting. He asked if what the monitor explained happened to the complainant was in the report. Mr. Potenza replied that the explanation was in the monitor's report and the monitor gave an explanation during the review of the case. He added that he read the monitor's report verbatim. James Malatras noted that the minutes of this meeting will be available next month, so the Councilmember could read the full record. Mr. Potenza explained the reason why the complainant was stopped. Chairman Allen agreed that after the meeting he would show Councilmember Ellis the paragraphs in the monitor's report that pertained to the stop.

Common Councilmember Richard Conti stated that his interpretation of the CPRB legislation was that all complaints should go to the Board. He added that there may be some interpretations that the law may be ambiguous. Councilmember Conti further stated that the Chief is proposing a policy change regarding the forms. He noted that more discussion about what constitutes a complaint is definitely needed to resolve this issue.

Common Councilmember Corey Ellis asked Chairman Allen if he supported separate investigative power of the CPRB. Chairman Allen responded that is not the way the Board is constructed presently and the way cases are presented. John Paneto stated that the current model is the model that the Board was given to operate under. He suggested that the Common Council revisit how the Board is constituted and what powers the Board has then the Board could answer Councilmember Ellis' question. Mr. Paneto commented that the Board is not in a position to project what it should do. He added that he agrees with Dr. Green in that the Board as it is constructed should be disbanded. If the model is not working for the City of Albany, then the City needs a new model. Councilmember Ellis commented that the only way for the Board to have more evidence is to have separate investigative power. As long as the Board is silent on this issue, then the Common Council would continue to believe that everything is okay.

Chairman Jason Allen clarified that he should not have said "no." He added that he is not necessarily opposed to it, but there is a clear line in sight to getting more evidence to the Board. Chairman Allen explained that last month, the Board reviewed a case that was sustained by the OPS and the Board on an allegation of rudeness because there was a tape recording of a phone call. The Board is proposing video and audio so there is more evidence in an investigation. Chairman Allen further explained that if an officer and a citizen are the only ones on the scene, he does not know how separate investigative powers would help in the investigation.

James Malatras commented that what the Common Council is proposing is a legislative function. He suggested that the Common Council meet with the Board as a whole or individually to see what each member thinks. Mr. Malatras added that this is a public forum where the Board can voice their opinions, but it is up to the Common Council to figure out the legislation.

A citizen asked the Board if there was an effort by the Board to find out the number of complaints that the OPS received that the Board did not receive. He noted that the Board's annual reports are reflective of only those complaints that are forwarded to the Board. The citizen added that these figures would be good to have for the Board's next annual report. Chairman Allen agreed and commented that as part of this effort, the Board will try to incorporate that data into its annual report.

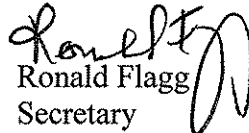
John Paneto noted his confusion on the role of the APD in the filing of complaints. He added that he did not know that the Board was not receiving all complaints filed through the OPS until the recent article in the Times Union. Mr. Paneto further noted that he is not opposed to changing the model, but if it is changed then a newly created Board would be needed with additional resources and incentives because of the caseload and time committed to each case review.

Daniel Fitzgerald stated that the Board has done a good job at doing what it can do under the current legislation. He reiterated the Board's initiatives on trying to get cameras and audio into police cars; working with the APD on implementing the early warning system; and continuing to work with the APD on policy changes. If there is enough Common Council interest, then they need to look at legislative action to see if the Board could accomplish what they want the Board to accomplish. Mr. Fitzgerald noted his concern with completely dissolving the current Board. He further noted that modifying the current Board would be a better option because the Board has made a lot of progress with mediation and is very close to having a program. He asked that if someone is looking at how the Board is formed in the future, consideration should be given to the progress made so far and what needs to be kept.

VIII. Adjournment

Chairman Allen moved to adjourn the meeting. Andrew Phelan seconded the motion. The motion carried unanimously. The meeting adjourned at 8:20 p.m.

Respectfully submitted,


Ronald Flagg
Secretary

James Malatras commented that what the Common Council is proposing is a legislative function. He suggested that the Common Council meet with the Board as a whole or individually to see what each member thinks. Mr. Malatras added that this is a public forum where the Board can voice their opinions, but it is up to the Common Council to figure out the legislation.

A citizen asked the Board if there was an effort by the Board to find out the number of complaints that the OPS received that the Board did not receive. He noted that the Board's annual reports are reflective of only those complaints that are forwarded to the Board. The citizen added that these figures would be good to have for the Board's next annual report. Chairman Allen agreed and commented that as part of this effort, the Board will try to incorporate that data into its annual report.

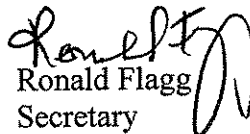
John Paneto noted his confusion on the role of the APD in the filing of complaints. He added that he did not know that the Board was not receiving all complaints filed through the OPS until the recent article in the Times Union. Mr. Paneto further noted that he is not opposed to changing the model, but if it is changed then a newly created Board would be needed with additional resources and incentives because of the caseload and time committed to each case review.

Daniel Fitzgerald stated that the Board has done a good job at doing what it can do under the current legislation. He reiterated the Board's initiatives on trying to get cameras and audio into police cars; working with the APD on implementing the early warning system; and continuing to work with the APD on policy changes. If there is enough Common Council interest, then they need to look at legislative action to see if the Board could accomplish what they want the Board to accomplish. Mr. Fitzgerald noted his concern with completely dissolving the current Board. He further noted that modifying the current Board would be a better option because the Board has made a lot of progress with mediation and is very close to having a program. He asked that if someone is looking at how the Board is formed in the future, consideration should be given to the progress made so far and what needs to be kept.

VIII. Adjournment

Chairman Allen moved to adjourn the meeting. Andrew Phelan seconded the motion. The motion carried unanimously. The meeting adjourned at 8:20 p.m.

Respectfully submitted,


Ronald Flagg
Secretary