

**City of Albany
Citizens' Police Review Board
Albany Public Library
161 Washington Avenue – Large Auditorium
September 18, 2008
6:00 p.m. - 8:00 p.m.**

Present: Ronald Flagg, Daniel Fitzgerald, John Paneto, Andrew Phelan, Jr., Anthony Potenza, and Reverend Edward Smart.

Absent: Jason Allen and Hon. Fowler Riddick.

I. Call to Order and Roll Call

Acting Chairman Ronald Flagg called the meeting to order at 6:05 p.m.

II. Approval of the Agenda

The agenda was reviewed. Reverend Edward Smart moved to approve the agenda. Andrew Phelan, Jr. seconded the motion. The motion carried unanimously.

III. Approval of the July 8, 2008 Meeting Minutes

The July 8, 2008 meeting minutes were reviewed. Andrew Phelan moved to approve the meeting minutes. Anthony Potenza seconded the motion. Reverend Smart abstained from voting because he was not present at the July meeting. Daniel Fitzgerald also abstained. The motion carried 4-0 with Reverend Smart and Mr. Fitzgerald abstaining.

IV. New Business

A. *New Complaints*

1. New Complaints Received Since July 8, 2008 Meeting

Andrew Phelan reported that eighteen (18) new complaints had been received by the Board since its July 8, 2008 meeting. Reverend Edward Smart asked if it was possible to suspend the reading of new complaints because of the number of complaints. Board Counsel Patrick Jordan stated that it would be difficult to deviate from past practices of the Board. Reverend Edward Smart moved to suspend the reading of new complaints received since July 8, 2008. Daniel Fitzgerald seconded the motion. Acting Chairman Ronald Flagg explained that the motion carried unanimously to suspend the standard operating rules that had been followed as far as the public reading of the new complaints, but they will be submitted for the record.

2. New Complaints for Review

Acting Chairman Ronald Flagg reported that there were five (5) complaints on the agenda for review by the Board.

CPRB No. 28-07/OPS No. C07-678 (Presented by Reverend Edward Smart)

Reverend Edward Smart summarized the complaint. Reverend Smart reported that the complainant alleged that the complainant and his girlfriend were leaving a friend's house on Orange Street when they were stopped by police officers. The complainant alleged that the officers pulled up to him as he was walking back to his car and told him to put his hands on his head. According to the complainant, the officer asked him, "Why are you on the street? Why are you coming from a drug house?" The complainant further alleged that the officers then patted him down and asked if he had any drugs or weapons on him. According to the complainant, he told the officers that he did not and that they could not go through his pockets. The complainant claimed that he was handcuffed, searched, and placed in the rear of a police car. According to the complainant, when he told the officers that he had a bad back, the officers said, "We don't give a f**k," and were rough with him by pulling his legs and pulling him by the belt while placing him in the back of the police car. The complainant alleged that while he was in the back of the police car, the officers continued to ask him about the house. According to the complainant, he told the officers to do their jobs and figure it out for themselves. The complainant further alleged that an officer squeezed the complainant's face and pulled the complainant's hat down over his eyes. The complainant claimed that the officer opened the door of the police car and instructed the complainant to get out of the car. Since the complainant could not get out of the car, the officer grabbed the hem of the complainant's shirt and pulled him from the car and, in doing so, broke the chain the complainant was wearing around his neck. According to the complainant, once he was outside the car, the officers removed the handcuffs and while the complainant was standing his chain fell to the ground. The complainant alleged that as he bent over to pick up the chain, the officer started yelling at him to leave it. The complainant further stated that another officer came over and gave him a ticket for unlicensed operation when he was not driving.

Reverend Smart reported that he reviewed the citizens' complaint form dated 11/13/2007; monitor's report; confidential report; five (5) sworn and signed statements; one (1) sworn and signed statement; inter-departmental correspondence (IDC); administrative correspondence; copy of ticket; VA expired license; purpose report; four (4) arrest records; twenty-three (23) call reports; and a field report dated 3/14/2008.

Reverend Smart noted that the complainant made four allegations. He reported that the first allegation was that the complainant was racially profiled when the complainant passed the drug house. The second allegation was call handling where the complainant's

civil rights were violated when the officers searched the complainant. The third allegation was abuse when the officers pulled the complainant's hat down over the complainant's eyes and then squeezed the complainant's face. The fourth allegation was that while the officer removed the complainant from the police car, the officer pulled on the complainant's shirt and broke the complainant's chain.

Reverend Smart summarized the findings of the Office of Professional Standards (OPS) on the allegation of conduct standards as ***not sustained***, where the review fails to disclose sufficient facts to prove or disprove the allegations made by the complainant. Reverend Smart reported that based on the OPS investigation into the allegation that the complainant was stopped because of racial profiling, the officers stated that the reason for the stop was not based on race but on the observation of a weed house which they had performed surveillance on in the past. Reverend Smart noted that he concurred with the OPS preliminary finding of ***not sustained*** on the allegation of conduct standards.

Reverend Smart summarized the findings of the OPS on the allegation of call handling as ***not sustained***, where the review fails to disclose sufficient facts to prove or disprove the allegations made by the complainant. Reverend Smart reported that based on the OPS investigation, the pat down that was conducted was not a search; it was done for the safety of the officers and the complainant. Reverend Smart noted that none of the documentation or sworn testimony proved or disproved the complainant's allegation. Therefore, the preliminary finding of the OPS of ***not sustained*** is supported by sworn testimony and other witnesses.

Reverend Smart summarized the findings of the OPS on the second allegation of conduct standards as ***not sustained***, where the review fails to disclose sufficient facts to prove or disprove the allegations made by the complainant. Reverend Smart reported that based on the OPS investigation, the officers conducting the interview process stated that the complainant's hat was not pulled down over the complainant's eyes or over the complainant's face. Reverend Smart noted that, based upon the testimony of evidence, he concurred with the OPS preliminary finding of ***not sustained*** on the second allegation of conduct standards.

Reverend Smart summarized the findings of the OPS on the third allegation of conduct standards as ***sustained***, where the review discloses sufficient facts to prove the allegations made by the complainant. Reverend Smart reported that based on the OPS investigation, one of the officers did not recall the chain being broken while the complainant was placed in the back seat of the patrol car. Another officer recalled that while removing the complainant from the patrol car, he grabbed the complainant by the arm, and used his weight to help the complainant exit from the rear of the car. Based on the OPS investigation, the officer recalled that the complainant commented regarding the chain being broken. The officer admitted that he saw the chain fall to the ground. Reverend Smart noted that he concurred with the OPS preliminary finding of ***sustained*** on the third allegation of conduct standards.

Acting Chairman Ronald Flagg acknowledged that Monitor George Kleinmeier was present. Mr. Kleinmeier stated that he had nothing further to add. It was noted that the complainant was not present. Acting Chairman Flagg reminded the Board that they should refrain from saying the officers' names and complainants' names and addresses when reviewing complaints in public.

Daniel Fitzgerald asked if there was a difference between the two officers' testimony in regard to the handcuffing. Reverend Smart replied that the witnesses' and the officers' stories varied slightly. He explained that the allegation about the broken chain was sustained by more than one person, including the officer.

Reverend Smart moved to concur with the OPS findings of *not sustained* for the first conduct allegation; *not sustained* for the call handling allegation; *not sustained* for the second conduct standards allegation; and *sustained* for the third conduct standards allegation. Andrew Phelan seconded the motion. The motion carried unanimously.

CPRB No. 5-08/OPS No. C08-83 (Presented by John Paneto)

John Paneto summarized the complaint. Mr. Paneto noted that Monitor Richard Lenihan was present. He also noted that the complainant was not present. Mr. Paneto stated that this complaint is tied to a subsequent complaint listed on the agenda. He reported that he met with the detective who investigated the complaint and reviewed the entire document on file, including the search warrant. In addition, the complainant had a rather extensive encounter history with the APD. Mr. Paneto noted that he reviewed the OPS report and the monitor's report.

Mr. Paneto reported that the date of the incident was January 17, 2008. The complainant alleged that the officers jumped out of their vehicles and without reasonable suspicion approached him. According to the complainant, the officers told him that they had been receiving complaints that people were smoking crack inside the complainant's apartment. The complainant alleged that he was being harassed by rogue cops. Mr. Paneto reported that the complainant was subsequently arrested and charged with unlawful maintenance and imitation of a controlled substance. The complainant claimed that the officers never found drugs on the complainant. According to the complainant, the officers found the drugs on the street. The complainant further claimed that an officer physically pushed the complainant and knocked the complainant to the ground for no particular reason.

Mr. Paneto summarized the findings of the OPS on the first conduct standards allegation that an Albany Police Department (APD) officer jumped out of his vehicle and without reasonable suspicion proceeded to pat the complainant down and threw the complainant to the ground. Mr. Paneto reported that based on the OPS investigation, the complainant and the complainant's residence were clearly under surveillance, and the police were operating under information received from complaints about possible drug use and a drug

house. Mr. Paneto further reported that the police officers were following all individuals who were entering or leaving the residence. Based on the investigation, there were as many as twelve (12) individuals who entered and exited the complainant's house within a small period of time, at 2 o'clock in the morning.

Mr. Paneto summarized the findings of the OPS on the second conduct standards allegation that the complainant was harassed and needlessly confronted by the APD. Mr. Paneto reported that based on the OPS investigation, the officers conducted a preliminary investigation consisting of surveillance. Due to the surveillance, the complainant was stopped and questioned and the APD had a search warrant. The complainant's claim that the police officers charged him unnecessarily or without reasonable suspicion is contradicted by the officers' report. Mr. Paneto further reported that the officers claimed that they pulled the complainant over, but not in the way described by the complainant.

Mr. Paneto summarized the findings of the OPS on the third conduct standards allegation that the police patted down the complainant and did not find any drugs on the complainant. Mr. Paneto noted that the complainant claimed that the police found something alongside of the complainant on the street. Mr. Paneto further noted that during his review of the case file, he asked the OPS detective for clarification on this allegation. Mr. Paneto stated that he did not have any history or knowledge about how the APD handled imitation controlled substances. Mr. Paneto further stated that if you buy marijuana you get marijuana. He added that this was a rather dangerous behavior by the complainant. Mr. Paneto explained that usually the buyers are already in a high state. They may be drinking or taking prior or additional drugs, so when the buyer makes the purchase they do not know that they are buying soap shavings. Mr. Paneto reported that the complainant was charged with imitation controlled substance. Mr. Paneto commented that he did not understand why someone would sell fake drugs. That person is in jeopardy when the buyer finds out they have made a bad purchase. Mr. Paneto reported that based on the police report, the officers confronted the complainant. The complainant was read his Miranda rights. When the complainant was searched, no additional drugs were found other than the imitation drugs alongside the complainant. Mr. Paneto further reported that based on one of the officers' statements, the complainant admitted to the officer that the complainant's intention was to sell the fake crack.

Mr. Paneto summarized the findings of the OPS on the allegation of use of force. Mr. Paneto noted that the complainant claimed that the police officers used excessive force in taking him down and that the target officer has been continuously harassing him. Mr. Paneto reported that based on the OPS investigation, the target officer indicated that the officers used reasonable force to apprehend the complainant and the complainant was read his Miranda rights. Mr. Paneto further reported that according to the APD attendance record, the target officer named by the complainant was not at the scene or on duty that night.

Monitor Richard Lenihan was acknowledged. Mr. Lenihan noted that he had nothing further to add to the report.

Mr. Paneto moved to concur with the findings of the OPS on the first conduct standards allegation as *exonerated*, where the target officer jumped out of the vehicle without reasonable suspicion.

Mr. Paneto moved to concur with the findings of the OPS on the second conduct standards allegation as *exonerated*, where the complainant was harassed by both cops.

Mr. Paneto moved to concur with the findings of the OPS on the third conduct standards allegation as *exonerated*, where the complainant alleged that the officers found stuff on the ground and not on the complainant. Mr. Paneto noted that the police had reason to believe that the fake drugs were the complainant's because the complainant was in such close proximity.

Mr. Paneto moved to concur with the findings of the OPS on allegation of use of force as *unfounded*. He explained that the OPS report found that reasonable force was used to stop the complainant and arrest him because of the surveillance and the search warrant. In addition, the officer named in the allegation was not on duty that evening.

Reverend Edward Smart seconded the motion. The motion carried unanimously.

CPRB No. 6-08/OPS No. C08-139 (Presented by John Paneto)

John Paneto summarized the complaint. He noted that this complaint was filed by the same complainant whose case was previously reviewed. Mr. Paneto noted that some of the issues in this complaint were unclear. He also noted that the same monitor who investigated the previous complaint was present to answer any questions or comments from the Board. Mr. Paneto reported that the complainant alleged that an officer and the officer's team of rogue cops illegally stopped the complainant, questioned the complainant, and accused the complainant of breaking into cars because the complainant had two (2) cell phones on him. The complainant further alleged that he was harassed and illegally searched. According to the complainant, the officers would not have known of the two cell phones if the complainant was not illegally stopped in the first place. The complainant alleged that an officer continued to harass him for no particular reason because the officer did not like him.

Mr. Paneto summarized the findings of the OPS on the first conduct standards allegation, that the APD illegally stopped the complainant. He added that based on the case file, the complainant was an individual who had been under constant police surveillance for many reasons. Mr. Paneto reported that based on the OPS investigation, the complainant was observed loitering in the area. The complainant was stopped for concerns about on-going drug activity at his home residence. The officer stated specifically that the complainant

was asked about what he was doing. Mr. Paneto reported that according to the field interview card, there was no reference to the cell phones that the complainant alleged were in his possession and identified by the police. Mr. Paneto stated that he did not know if that clarified whether or not the complainant had one (1) or two (2) cell phones, but he did bring it up as an issue.

Mr. Paneto summarized the findings of the OPS on the second conduct standards allegation that the complainant was being harassed and illegally searched. Mr. Paneto reported that based on the OPS investigation, the officers indicated that they never exited the patrol unit. The officers spoke to the complainant through the patrol unit's window. Mr. Paneto added that one of the officers stated that he never got out of the car, or patted the complainant down to find the questionable cell phones. The other officer stated that they observed the complainant loitering in the area near his residence and that was the reason for the stop.

Mr. Paneto summarized the findings of the OPS on the third conduct standards allegation that one officer has been harassing him. Mr. Paneto reported that based on the OPS investigation, the target officer indicated that he was not working during the time the complainant alleges in the complaint. Mr. Paneto added that the complainant identified a police officer who was not on duty or in the area. According to the APD's scheduling system, the officer had a regularly scheduled day off. In addition, the officer indicated that he had not been in contact with the complainant since January 10th.

Mr. Paneto moved to concur with the findings of the OPS on the first conduct standards allegation as *unfounded*, where the review showed that the act or acts complained of did not occur or were misconstrued.

Mr. Paneto moved to concur with the findings of the OPS on the second conduct standards allegation in regards to harassment and the illegal search as *unfounded*, where the review showed that the act or acts complained of did not occur or were misconstrued.

Mr. Paneto moved to concur with the findings of the OPS on the third conduct standards allegation with regards to a personal vendetta and harassment by a particular officer as *unfounded*, where the review showed that the act or acts complained of did not occur or were misconstrued.

Monitor Richard Lenihan was acknowledged. Mr. Lenihan added that the previous complaint reviewed by Mr. Paneto and this complaint mirrored one another. Mr. Paneto commented that he noticed that the APD's OPS file did not mention certain information and also made no commentary on this individual and neither did the monitor. Mr. Paneto noted that the complainant has had a long history of persistent illegal behavior with the APD since 1991. He added that the complainant has had over a hundred and forty encounters with the APD since 1991. Mr. Paneto stated that the APD is wasting a lot of

time and resources on dealing with one individual with such a long and persistent history of misconduct.

Acting Chairman Flagg reminded the Board to deal with the cases that are presented to them. Daniel Fitzgerald asked if any of the complainant's contacts with the APD ever resulted in a conviction. Mr. Fitzgerald explained that if the allegation is harassment, then an individual can have contact with the police not at their will. Mr. Paneto replied that the APD and the monitor were rather kind. The complainant had been arrested and jailed with continuous drug charges and the complainant's house was under surveillance and searched several times.

Acting Chairman Flagg reiterated that the Board is only given the responsibility to deal with the cases that are presented to them at that time. Mr. Fitzgerald asked if the complainant was under surveillance for five years with absolutely no result or has it resulted in some type of conviction. Mr. Paneto replied that it has resulted in several convictions and jail time. Mr. Paneto explained that if an individual participates in inappropriate behavior in the community on a regular basis then the chances of the same police officer meeting that individual face-to-face are highly probable. The complainant would think of it as harassment. Mr. Paneto reiterated that there were about one hundred encounters between the complainant and the APD. He added that there are just too many encounters for the complainant to say that he is just being harassed.

Acting Chairman Flagg stated that Mr. Paneto made his motion for the case. Daniel Fitzgerald seconded the motion. The motion carried unanimously.

CPRB No. 24-08/OPS No. C08-270 (Presented by Anthony Potenza)

Anthony Potenza summarized the complaint. He noted that a monitor was assigned to the case. Mr. Potenza reported that the complainant alleged violations of conduct standards and use of force. On April 9, 2008, the complainant stated that while the driver of another car attempted to park in front of the complainant's vehicle, the driver of the other car backed into the complainant's parked vehicle two (2) or three (3) times. The complainant then got out of the parked vehicle and yelled at the other driver, "What are you doing?" The driver of the car attempting to park allegedly answered, "That's what bumpers are for." An officer working at a mobile command post across the street from the incident came across the street; spoke to the complainant allegedly at close proximity; allegedly began yelling at the complainant saying, "Get out of my face"; and allegedly pushed the complainant. The complainant further alleged that the officer stated something to the effect of "What would you do if someone else was in the car and had a baseball bat?"

Mr. Potenza reported that based on the OPS investigation and the statements obtained from the officer involved and another officer who observed the incident from the mobile command post, the entire incident lasted no more than two (2) minutes. Mr. Potenza

further reported that the officer involved stated that he did not push the complainant nor was there any physical contact between the officer and the complainant. The second officer stationed in the mobile command post stated that he did not observe the incident as alleged by the complainant and did not see the first officer push the complainant. Mr. Potenza noted that attempts were made by the OPS to locate other witnesses and obtain statements. Four (4) contacts were made and each of the parties contacted stated that they did not witness the incident.

Mr. Potenza summarized the findings of the OPS on the conduct standards allegation as ***not sustained***, where the review fails to disclose sufficient facts that the act or acts complained of did not occur or were misconstrued. Mr. Potenza moved to concur with the findings of the OPS in the conduct standards allegation as ***not sustained***, and the violation of use of force as ***not sustained***.

Mr. Potenza summarized the monitor's recommendation. Mr. Potenza reported that the monitor believed that the OPS has limited its ability to pursue any other avenue in this case, due to the lack of civilian witnesses. He noted that the OPS conducted a canvass of the area of Clinton Avenue and Lark Street where the incident occurred and have not located anyone who may have witnessed this incident or anyone who was willing to state that they did. Mr. Potenza reported that, based on the OPS investigation, there was no video surveillance at the intersection of Lark and Clinton that could provide some detail. He added that although the monitor agreed with the scope of the investigation conducted by the OPS, the monitor recommended that patrol officers prepare some type of incident report that describes the persons involved in an incident or altercation and to obtain the names of persons for future reference.

Monitor Richard Lenihan was acknowledged. Mr. Lenihan stated that he had nothing to add. It was noted that the complainant was not present. Mr. Phelan seconded the motion. The motion carried unanimously.

CPRB No. 27-08/OPS No. C08-289 (Andrew Phelan, Jr.)

Andrew Phelan noted that he reviewed the case file at the OPS on September 10, 2008 and September 16, 2008. He added that the complainant submitted the complaint form on behalf of her brother who was a victim of an assault. Mr. Phelan summarized the complaint. The complainant alleged that her brother was hit in the head with a beer bottle from behind and physically assaulted by three (3) young men. The complainant further alleged that her brother saw an officer sitting in his police car and decided to ask for help. The brother told the officer that he was attacked and the officer looked at him and saw that he was bleeding from his head and face. According to the brother, the officer told him, "Whatever. Move along." The complainant further alleged that a friend drove her brother to Albany Medical Center, where an officer completed a report.

Mr. Phelan reported that based on the OPS investigation into the conduct standards allegation, the complainant failed to produce the information to clarify the complaint and further the investigation. Mr. Phelan added that unsuccessful attempts were made to contact the brother by letters sent by the OPS and the GLC to further attempt to clarify the complaint. Mr. Phelan reported that the victim signed for the letter indicating that he received a certified letter on 5/1/08. The OPS had absolutely no contact with him after that. Mr. Phelan added that the complainant's brother has not cooperated with the OPS in reference to addressing this complaint. Therefore, a full and complete investigation cannot be conducted at this time. Mr. Phelan stated that the complainant has no direct knowledge of what occurred because she was not present at the time of the incident. Mr. Phelan noted that a monitor was appointed to this case. Monitor George Kleinmeier was acknowledged. Mr. Kleinmeier stated that he had nothing to add to the complaint.

Mr. Phelan summarized the findings of the OPS on the conduct standards allegation that an officer ignored the complainant's brother while the brother was badly injured and being chased by three men as *no finding*. Mr. Phelan explained that the OPS was unsuccessful in their attempts to contact the brother. Mr. Phelan moved to concur with the findings of the OPS in the conduct standards allegation as *no finding*.

Mr. Paneto asked if the OPS tried to contact the individuals. Mr. Phelan replied yes. It was noted that the complainant was not present. Anthony Potenza seconded the motion. The motion carried unanimously.

Acting Chairman Flagg referred the Board to item IV (A) (1) on the agenda. He explained there were three (3) complaints in the summary of the new complaints received since the 7/8/08 meeting that the Board needs to resolve. Acting Chairman Flagg read the summary of the three (3) new complaints.

CPRB No. 47-08¹

The complainant alleges that on April 25, 2008, two (2) officers elbowed and pepper sprayed him while he was in a holding cell following a hearing at Albany County Court. The complainant further alleges that a Detective committed perjury at the complainant's hearing on January 29, 2008. Commander Beattie added that all of the complaints were based on the Albany County Sheriff's Department and not based on the APD, and were still open because the OPS is still doing their investigation. Detective Kathy Hendrick added that the complaint regarding the pepper spray was in the jurisdiction of the Albany County Sheriff's Department; the Board has voted on that and closed the complaint. The other two complaints are still open because Detective Hendrick has not submitted her

¹ CPRB No. 47-08 was closed at the Board's July 8, 2008 meeting. The July meeting agenda inadvertently listed it as CPRB No. 15-08/OPS No. C08-291. The complainant filed CPRB No. 15-08 and CPRB No. 47-08. CPRB No. 15-08/OPS No. C08-291 is still an active complaint.

report. Mr. Flagg stated that in reference to this complaint, it is outside of the Board's jurisdiction and the Board has already voted on it.

Acting Chairman Flagg stated that CPRB No. 60-08 and CPRB No. 61-08 are also still being investigated by the OPS and the Board has not yet received the OPS report on these complaints. Mr. Flagg added that he must continue reading CPRB 47-08 to make it a formal part of the minutes.

CPRB No. 47-08

Acting Chairman Ronald Flagg noted that the complainant sent a letter and a complaint to the GLC on two different occasions. The GLC sent the complainant correspondence informing him that the Board did not have any jurisdiction to review the allegations in his letter because it was against the Albany County Sheriffs Department. A CPRB number was not assigned to that letter but an OPS number was assigned to that letter. The last Board meeting agenda listed CPRB No. 15-08 as being reviewed and closed when it should have been CPRB No. 47-08 which was a number that was reassigned by the GLC to the letter. Therefore, CPRB No. 47-08 was technically closed at the last meeting of the Board and CPRB No. 15-08 remained active. Mr. Paneto asked if any Board member had CPRB No. 15-08 or was it still at the OPS. Government Law Center Coordinator of the Board Sharmaine Moseley replied that it was still at the OPS.

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

The following Board members were appointed to the Committee on Complaint Review for October 2008: Daniel Fitzgerald, John Paneto, Andrew Phelan, Jr., Anthony Potenza, and Reverend Edward Smart.

C. *Approval of the 2007 Annual Report* *Approval of the 2008 First Quarterly Report*

Acting Chairman Ronald Flagg asked if the Board members had received the Annual Report and had any comments in reference to it. Mr. Paneto asked Ms. Moseley if the letters that were forwarded to Chief of Police ever come back with a rebuttal or if the report should be left "as is." Mr. Paneto asked if the Chief signed off on the reports. Ms. Moseley replied in the negative, and she explained that only the Board signs off on the reports. Mr. Paneto asked if the Board was ready to sign off on it. Mr. Fitzgerald stated that it was a thorough report and the graph work looked really nice. Acting Chairman Flagg asked for a motion to approve the Annual Report. John Paneto moved to approve the 2007 Annual Report. Andrew Phelan seconded the motion. The motion carried unanimously.

Acting Chairman Ronald Flagg asked if the Board had any questions, comments, concerns or changes to the 2008 First Quarterly Report. John Paneto commented that he was overly impressed and overwhelmed with the amount of data and speed with which they got the two reports. Andrew Phelan moved to approve the 2008 First Quarterly Report. Anthony Potenza seconded the motion. The motion carried unanimously.

D. *Approval of Amendments to 2007 Fourth Quarterly Report*

Acting Chairman Ronald Flagg reported that there were some amendments to the 2007 Fourth Quarterly Report before the Board for approval. He explained that the amendments consisted of moving CPRB No. 9-07 from page five to page nine for numerical purposes and adding the action that the Board took on CPRB No. 4-05 at its September 11, 2007 meeting. Acting Chairman Ronald Flagg moved to approve the amendments. The motion carried unanimously.

E. *Committee/Task Force Reports*

By-Laws and Rules/Mediation

Acting Chairman Ronald Flagg noted that he had nothing new to report.

Community Outreach

Committee Chairman John Paneto noted that he had nothing new to report.

Mediation

Acting Chairman Ronald Flagg noted that he had nothing new to report.

Police Department Liaison and Policy Review/Recommendations

Committee Chairman Daniel Fitzgerald reported that he talked with Commander Burris Beattie this week. He noted that Commander Beattie had a couple of items to tell the Board during the OPS report. Committee Chairman Fitzgerald noted that he had nothing additionally to report.

Public Official Liaison

Committee Chairman Ronald Flagg reported that the committee met with the Common Council's Public Safety Committee in July. He stated that it was an excellent meeting and the Public Safety Committee was very supportive of the Board. Committee Chairman Flagg further stated that there were a couple of issues Board Chairman Jason Allen brought up that the Common Council were going to move on. He added that the Public Safety Committee members were very supportive of the new complaint process.

that the Chief implemented in the spring. Committee Chairman Flagg stated that he thought that it was an excellent meeting between the Board and the Common Council.

Task Force on Monitors

Acting Chairman Flagg reported that the Board needed to appoint a new task force chair.

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 fifty-nine (59) active complaints before the Board. Of those fifty-nine active complaints, five (5) were reviewed at tonight's meeting, which leaves the Board with fifty-four (54) active complaints. At the Board's July meeting, there were forty-two (42) active complaints. It was reported that two hundred seventy-eight (278) complaints have been closed and ten (10) complaints remain suspended from review. The total number of complaints filed to date is three hundred forty-two (342).

It was further reported that since the last meeting of the Board in July, the GLC received seventeen (17) grievance forms bringing the total number of grievance forms to thirty-nine (39). In response to our outreach efforts, we have reached out to thirty-nine (39) individuals, and received nine (9) CPRB complaint forms.

CPRB Complaint Database

It was reported that the CPRB's complaint database is now up and running in Microsoft Access. The information in the database can now be downloaded directly onto a spreadsheet and will eventually be downloaded directly into the Board's reports.

Letter to Police Chief James Tuffey

It was reported that at the last meeting of the Board, a letter was circulated to the Board for signatures. The letter was from the Board to Chief James Tuffey commending him on the Grievance Form Proposal and there was a slight signature mishap. Ms. Moseley asked the Board to sign the letter before they leave tonight's meeting.

Board Member Terms Expiring

It was reported that Chairman Jason Allen and Board members Anthony Potenza and Fowler Riddick's terms will expire in October. It was noted that Chairman Allen and Mr. Potenza have strongly expressed an interest in serving another term on the Board. Mr. Riddick has indicated that he will not seek another term; therefore there will be two (2) vacancies on the Board. The Board's meeting packets contain correspondence which was forwarded to the Mayor and the Common Council requesting the reappointment of Chairman Allen and Mr. Potenza, and the need for them to fill the two vacancies.

Reports

It was reported that the Second Quarterly Report for 2008 is currently being drafted. The GLC should have the draft ready for review at the next meeting.

NACOLE

It was reported that Andrew Phelan, Jr., Anthony Potenza, John Paneto, Reverend Smart and Sharmaine Moseley will be going to the NACOLE conference in Cincinnati, Ohio on Monday, October 27, 2008. Acting Chairman Ronald Flagg asked if anyone from the APD was going. Commander Burris Beattie replied that Deputy Chief Stephen Reilly will be attending. Ms. Moseley stated that she needed the Board to make a decision on who will be the voting member from the CPRB at this year's NACOLE conference. Mr. Phelan explained the NACOLE voting procedure. The NACOLE Board meets with the executive committee, and votes on the President, the Vice-President, and the Secretary. Mr. Phelan added that once you are at the conference you will find out who is running because they will be looking for your support. Mr. Phelan stated that they are also voting for Board members and it is a nice honor to be a part of the process. Acting Chairman Flagg asked if the GLC could send an email to the four or five members who are going reminding them to decide on who might be the voting member. Ms. Moseley stated that she would like the members to decide before they leave tonight's meeting. Mr. Paneto noted that he nominated Mr. Phelan because Mr. Phelan did it last year. Acting Chairman Flagg asked if Mr. Phelan was willing to do it again. Mr. Phelan replied in the affirmative. Reverend Smart asked about the reservations at the hotel. Ms. Moseley replied that the GLC made the hotel reservations for the members who are attending the conference; however, the Board members are responsible for making their own flight arrangements and they will be reimbursed for a portion of the airfare.

F. *Report from the Office of Professional Standards*

Commander Burris Beattie of the Office of Professional Standards gave the report.

Early Warning System

Commander Burris Beattie reported that he spoke with the Albany Police Department's Liaison this week concerning a couple of things which included the early warning

system. Commander Beattie further reported that the APD is getting a new early warning system with new software this fall. He added that training will take place within a month for the OPS detectives and personnel at the discretion of the Chief. Commander Beattie explained that the software is far better than the current software in that it has a lot more functionality which would allow the detectives to track an entire case on it. It has provisions in it that will allow the OPS to record video evidence and photographic evidence, with time stamp features and auto-controls. Commander Beattie stated that this may allow the OPS to go through the system a lot quicker and sooner than continuing with the current software. The functionality has several hundred different reports in it. There are also features that allow the OPS to do graphs and charts to better help them run and manage.

Acting Chairman Ronald Flagg stated that in some point in time, the Board could anticipate receiving summaries and reports from the early warning system. Commander Beattie replied that he would like someone to give the Board a demonstration and explain to them what they can and cannot do. As far as what information the OPS can give out, that will be between the Board and the Chief. Mr. Fitzgerald added that this was talked about previously. Mr. Fitzgerald explained that with the previous system it was going to be very difficult for the Board to get anything out of it because it was so directly connected to an officer's identity. With this newer system, the Board can get useful information without conflicting with the Standard Operating Procedure's union policy. Acting Chairman Flagg stated that it is a big move and is way overdue.

Commander Beattie stated that Deputy Chief Reilly and he went out to Rochester and spent some time viewing their system. He added that they told the Chief that the system was better, and the Board would like it.

Patrol Cars with Cameras

Commander Burris Beattie reported that he has not had any influence over this in the past two years. However, currently IT is in the process today of repairing and repositioning the cameras. Commander Beattie further reported that he believed that forty-three (43) or forty-seven (47) cars will eventually be outfitted with cameras, though there is no timetable on that. It may take a few months for installation.

Board Comments/Actions

Revote on the Approval of the July 8, 2008 minutes

Board Counsel Patrick Jordan noted that the Board needed to revote on the approval of the July 8, 2008 minutes because Reverend Smart abstained from voting because he was not present at the July 2008 meeting and Mr. Fitzgerald also abstained. Mr. Fitzgerald responded that he remembered that he was present at the July 2008 meeting. Mr. Jordan stated that a motion needs five (5) votes to carry. Acting Chairman Flagg noted that he

will now accept a motion to approve the minutes from the July 8, 2008 meeting. Mr. Phelan moved to approve the July 8, 2008 meeting minutes. Mr. Paneto seconded the motion. The motion carried 5-0. Reverend Smart abstained from voting because he was not at the July meeting.

Board Assistance with High-Profile cases

Reverend Edward Smart stated this Board could be used in assisting the city with high-profile cases by conducting an independent review of situations that take place within the City of Albany. Reverend Smart referenced the recent shooting of an individual by an APD officer. Acting Chairman Ronald Flagg stated that he would support Ms. Moseley along with Chairman Allen in drafting a letter stating that the Board will provide assistance in any way to the APD and the Mayor's office. John Paneto pointed out that the Board receives complaints long after the event occurred and long after the OPS reviewed it, and the Board usually only gets ten days to review the complaints. Mr. Paneto asked if Acting Chairman Flagg was asking the Board to make themselves available within 24 to 48 hours of an incident. If so, then how can there be an impartial review if a complaint is generated. Acting Chairman Flagg replied that he was saying in essence to be proactive, if there is any way that the Board could assist, then the Board should be willing to assist. He added that although some members might be unable to assist, others might be able to assist in some way. Mr. Paneto stated that if a complaint is filed based on the incident, then the Board may have to recuse themselves. Mr. Paneto noted that this request is a different function of the Board. Board Counsel Patrick Jordan stated that he could not recall a situation where that occurred. He explained that if this were allowed, the Board would simply review complaints earlier. Reverend Smart added that for instance in the recent shooting of this person by the police department, one of the keys to bringing the police department and the community together would be to have an independent body of citizens from the community which would give validity to the internal review process. Reverend Smart stated that he was only making a suggestion that the Mayor or the Chief may not even agree to consider. Mr. Paneto replied that he understood the merit because it would provide a citizens' advisory function early on in the process. Again, the Board members are not lawyers or detectives, but committed residents, who are somewhat more in touch with the community than other members of the City of Albany. Mr. Paneto commented that he did not disagree with it, but maybe the CPRB is not a part of that, but this would be a special advisory committee to the Mayor or Police Chief.

Commander Burris Beattie stated that in officer-involved shootings, the district attorney's office is involved. The district attorney's office would present the case to a grand jury. Commander Beattie further stated that he wanted to make sure that the Board is aware that there is oversight in this particular instance through a grand jury.

Acting Chairman Flagg stated his support of Ms. Moseley communicating the intention that the Board is offering their assistance to the APD and the Mayor's office any time

they may feel that it is appropriate. Mr. Fitzgerald added that perhaps those members who are going to the NACOLE conference can find out if this is something that other groups are doing throughout the country.

Reverend Smart also suggested that the Board should have business cards. Business cards would not only help in getting the telephone number out to people who want to file a complaint, but also to identify the Board as part of the review process. Reverend Smart added that he will pay for the business cards if there is no money for them. Acting Chairman Flagg added that this is a good suggestion for those members who are traveling to another state to meet other members. Reverend Smart stated that the business cards should be for all of the Board members. Mr. Flagg asked if this request could be looked into prior to the trip. Ms. Moseley replied in the affirmative. Rev. Smart asked if he could make a motion for this rather than just a consensus. Reverend Smart moved to get business cards printed for the Board. Mr. Phelan seconded the motion. Mr. Flagg asked Ms. Moseley if she could look into getting business cards for all members of the Board and in particular those going on the trip to the conference in October. Mr. Fitzgerald amended the motion to say it should be done if there was money available in the budget to do it or even if the individual board members are willing to pay for it. The motion carried 5-0 with Mr. Paneto abstaining. Mr. Paneto explained that he was not opposed to the motion but there might be a cost or design factor. This could also be a part of community outreach for the Board. Mr. Paneto stated that the website does not have the Board members photographs. Mr. Paneto added that this would make for greater exposure for the Board. This is the job they are chosen to do and they don't get any money for it. There is a timeline to request cards, at least 10 business days. Mr. Paneto noted that he was not voting for or against the motion, but it is a good idea.

G. *Report from the Chair*

Acting Chairman Ronald Flagg noted that he had nothing new to report. Andrew Phelan asked for the date of the next meeting. Ms. Moseley replied that it is October 9, 2008.

VII. **Public Comment**

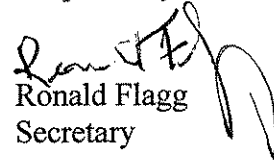
Acting Chairman Ronald Flagg opened the floor for public comment.

A gentleman was recognized, but his comment was inaudible.

VIII. **Adjournment**

Acting Chairman Ronald Flagg asked for a motion to adjourn the meeting. Reverend Edward Smart moved to adjourn the meeting. Andrew Phelan seconded the motion. The motion carried unanimously. The meeting adjourned at 7:35 p.m.

Respectfully submitted,


Ronald Flagg
Secretary

(Attachment A)

Note: The Board unanimously suspended the reading of the new complaints, and submitted the new complaints into the record.

SUMMARY OF NEW COMPLAINTS RECEIVED SINCE 7/8/08 MEETING

CPRB No. 47-08

The complainant alleges that on April 25, 2008 two officers elbowed and pepper sprayed him while he was in a holding cell following a hearing at Albany County Court. The complainant further alleges that a detective committed perjury at the complainant's hearing on January 29, 2008.

Please note that for reporting purposes, the complainant sent a letter and a complaint to the GLC on two different occasions. The GLC sent the complainant correspondence informing him that the Board did not have jurisdiction to review the allegations in his letter because it was against the Albany County Sheriff's Department. A CPRB number was not assigned to that letter, but an OPS number was assigned to it. Last month's meeting agenda listed CPRB No. 15-08 as being reviewed and closed when it should have been CPRB No. 47-08 which was a number that was reassigned to the letter. Therefore, CPRB No. 47-08 was technically closed at the last meeting of the Board and CPRB No. 15-08 remain active.

CPRB No. 48-08

The complainant alleges that on June 13, 2008, her son was a victim of police brutality while he was being held for questioning in relation to a shooting. The complainant further alleges that her son was questioned from 8:00 p.m. until 3:00 a.m. without being read his rights and without being given the right to an attorney. The complainant further alleges that her son was slapped and knocked around repeatedly by officers until he had several bruises. The complainant claims that the police continued to treat her son in this manner despite his telling them that he had nothing to do with the shooting. The complainant further claims that the officers took her son's shirt at 3:00 a.m. to test it for gunpowder residue even though he had been wearing the shirt for the entire interrogation. The complainant alleges that the officers yelled several vulgarities, insults, and threats at her son as he was leaving the police station.

A monitor was appointed to investigate this complaint.

CPRB No. 49-08

The complainant alleges that on May 6, 2008, an officer committed perjury at the complainant's criminal trial. The complainant further alleges that the officer knew an informant who helped in the arrest of both the complainant and another man. The complainant claims that the officer lied under cross examination about knowing the informant.

A monitor was not appointed to investigate this complaint.

CPRB No. 50-08

The complainant alleges that on June 28, 2008, he was assaulted by a police detective while he was handcuffed in police custody. The complainant further alleges that when he asked what was taking so long because he had waited in handcuffs for some time, the detective started punching and kneeling the complainant in his face. The complainant claims that the detective falsely charged him with 2nd degree assault, resisting arrest, and criminal mischief for no reason. The complainant further claims that he is still suffering from the blows the detective gave him.

A monitor was appointed to investigate this complaint.

CPRB No. 51-08

The complainant alleges that APD officers did nothing after he showed them injuries from being pushed, choked, and scratched by another man. The complainant further alleges that the officer at the station was rude and unprofessional. The complainant claims that the officer said, "If an old man with a cane choked you, you should be able to deal with it."

A monitor was not appointed to investigate this complaint.

CPRB No. 52-08

The complainant alleges that on June 24, 2008, an officer asked him to move for no reason from an area of the sidewalk in front a hotel where the complainant was staying. The complainant further alleges that the officer asked him to leave two times, even after the complainant told him that he was simply watching a bicycle for a friend. After the complainant said to the officer, "Why don't you make the drug dealer or the person who just cursed at you leave?" the complainant alleges that the officer threw the complainant against a gate, maced the complainant, and handcuffed him. The complainant further alleges that he was then transported in an EMS truck to the psychiatric ER in order for the officer's actions to be justified. According to the complainant he was humiliated during the psychiatric evaluations and was in tears when he was discharged. The complainant claims that he has not been able to find his friend's bike since the incident occurred.

This complaint relates to allegations of misconduct by a NYC police officer. Therefore, the Board does not have jurisdiction to investigate the complaint.

CPRB No. 53-08

The complainant alleges that on June 24, 2008, he was sleeping in his apartment at night when several officers banged loudly on his door. According to the complainant, the officers shined their lights in his face, pointed their guns in his face, threw him on the floor, and placed a knee in his back. The complainant alleges that the officers then dragged him across the floor, removed his jewelry and interrogated him. The complainant further alleges that the officers left his door wide open as they took him to the police station causing several items to be stolen from his apartment. The complainant claims that he was unjustly charged and arraigned for criminal nuisance. The complainant

further claims that he has been the target of police harassment ever since he won a trial against them previously. According to the complainant, he had to contact the Mayor's office in order to obtain a compliant form because the police was uncooperative.

A monitor was appointed to investigate this complaint.

CPRB No. 54-08

The complainant alleges that on July 14, 2008, police officers treated him rudely, unprofessionally, and used unnecessary force on him. The complainant claims that an officer was rude with him when the complainant was asking him why he received a parking ticket. The complainant further alleges that the officer then cursed at him and told him to go home. The complainant states that he cursed back and began to walk away with his fist raised; immediately, two officers ran up behind him, began choking him, and started grabbing his arms and legs. The complainant further alleges that these actions by the officers could have caused his aneurysm to burst. The complainant claims that these officers were out to get someone else and got the wrong person. The complainant further alleges that the officers lied about the situation in order to cover themselves. The complainant further alleges that these white officers treated him in this manner because he is black.

A monitor was appointed to investigate this complaint.

CPRB No. 55-08

The complainant alleges on July 30, 2008 at 2:45 a.m., an officer gave him a parking violation for parking on the sidewalk, when he was parked on private property.

A monitor was not appointed to investigate this complaint.

CPRB No. 56-08

The complainant alleges that one NYS trooper and two APD officers responded to the scene of an accident which he was involved in. According to the complainant, the trooper was very professional and cordial. The trooper gave the complainant a breathalyzer and asked him a series of questions to try to find out how the accident happened. According to the complainant, after no alcohol was found in his system, the officers gave him directions or where to move and push the vehicle so that it was not in the road. The complainant claims that each time he did what the officer instructed him to do; the officer became condescending and hostile toward the complainant. The complainant further claims that when he asked the officers for their badge numbers and names most of them were very defensive and seemed annoyed. The complainant alleges that when he asked an officer in the traffic division if it was within his legal right to ask for this information, the officer told him that the officers are not legally required to unless they give the person a ticket or citation.

A monitor was not appointed to investigate this complaint.

CPRB No. 57-08

The complainant alleges that on August 8, 2008 at 10:30 a.m., a police officer gave him parking ticket for \$115.00. According to the complainant, after the complainant moved his car from where it was, the officer approached him in a threatening manner. The complainant alleges that the officer told him that he was getting a very expensive ticket and that he better call New York City for a warrant for his arrest. The complainant further alleges that the officer proceeded to call him "ignorant," and threatened to hurt the complainant the next time he saw him. The complainant stated that he called the officer "ignorant" because the officer offended him first.

A monitor was not appointed to investigate this complaint.

CPRB No. 58-08

The complainant alleges as the complainant and her two (2) year old son were walking through a parking lot, an officer jumped out of his car and began asking her a lot of questions. According to the complainant, when she asked the officer why he needed all that information from her; he told her that some kids threw a glass bottle. The complainant noted that she told the officer that she is not a kid and she did not throw the glass bottle. The complainant claims that it was wrong for the officer to write down her name and address on in his notebook. The complainant further claims that she was not able to get the officer's shield or vehicle number because everything happened fast.

A monitor was not appointed to investigate this complaint.

CPRB No. 59-08

The complainant alleges that on July 8, 2008, he was assaulted by a Sergeant from the Albany County Sheriff's department. The complainant further alleges that while he was shackled and handcuffed to the bench, the Sergeant punched him in the face.

This complaint relates to allegations of misconduct by a member of the Albany County Sheriff's Department. Therefore, the Board does not have jurisdiction to investigate the complaint.

CPRB No. 60-08

The complainant alleges that on August 12, 2006, while at his brother's house, he was falsely arrested by several officers. According to the complainant, this occurred after the complainant had broken up a fight between two kids. The complainant alleges that several officers wrongfully wrestled him to the ground and tasered him. The complainant further alleges that he was handcuffed so tightly that his hands were bruised and swollen. The complainant claims that he was denied medical attention for about three hours after being taken to the police station. The complainant further claims that his brother and two friends were falsely arrested and assaulted as well. The complainant alleges racial discrimination by Albany police officers. The complainant further alleges that he has filed previous complaints that have not been forwarded to the Board. The complainant claims that the police falsely stated that the complainant and other the other three who were arrested were involved in a brawl with sixty other people.

This complaint was received by OPS in 2006 but was not forwarded to the Board until September 2, 2008. Normally, a complaint of involving these types of allegation would be assigned a monitor. Although the Board agreed to assign a monitor to the complaint, OPS has completed its investigation of this complaint. When the complaint was read to the Board it was not known at that time that the OPS investigation was complete. Therefore, Chairman Allen asked that with this in mind the Board discuss and make a decision as to whether or not to assign a monitor. This complaint is related to CPRB No. 61-08.

CPRB No. 61-08

The complainant alleges that on August 12, 2006, he was assaulted by several officers and falsely arrested at his home. The complainant claims that he and his two housemates were in front of their residence when officers demanded to see identification to prove their place of residence. When they refused, the officers allegedly tried to remove everyone from the house by force. The complainant alleges that even though no one physically resisted very much, an officer tasered the complainant while others kned him in the back and pinned his legs down. The complainant further alleges that the OPS detective discounted his story by stating that he should have just given his ID. The complainant claims continued racial harassment by officers in his neighborhood. The complainant further claims that an officer refused to give his name to the complainant's fiancée at the scene and at the station. The complainant alleges that the same officer kept referring to his fiancée as a "b***h." The complainant further alleges that his neighborhood is subject to continuing police misconduct in the form of racial discrimination, false arrests, improper policy and procedure, and mistreatment.

This complaint was received by OPS in 2006 but was not forwarded to the Board until September 2, 2008. Normally, a complaint of involving these types of allegation would be assigned a monitor. Although the Board agreed to assign a monitor to the complaint, OPS has completed its investigation of this complaint. When the complaint was read to the Board it was not known at that time that the OPS investigation was complete. Therefore, Chairman Allen asked that with this in mind the Board discuss and make a decision as to whether or not to assign a monitor. This complaint is related to CPRB No. 60-08.

CPRB No. 62-08

The complainant alleges that on September 2, 2008, when she called the APD for assistance in having her boyfriend removed from her house, the officer told her that if she kept taking him back that a "b***h" like her would not have to call 911 in the first place. The complainant further alleges that the officer told her that she deserved what she got and that her boyfriend did not have to remove his belongings if he did not want to. Another officer who was on the scene calmed the situation down. The complainant claims that the first officer entered her home after she asked him not to. The complainant further claims that the first officer harassed her and filed a false statement in his report that she was intoxicated.

A monitor was not appointed to investigate this complaint.

CPRB No. 63-08

The complainant alleges that on August 29, 2008 around 11 p.m., as he was walking with a friend, police officers searched the complainant, took his weed and his cell phone, and then transported him and his friend to the station without giving an explanation. The complainant further alleges that when he arrived at the station, he was told that he was being held for a murder investigation. The complainant claims that when he asked the officers to loosen the tight cuffs, they did not. The complainant further claims that the officers denied him the right to an attorney. According to the complainant, he fell asleep still handcuffed to the chair and awoke around 8am in the morning. When the complainant asked if he could leave, he was told "no," because they were waiting for a detective to arrive. The detective arrived around 10 a.m. The complainant alleges that he agreed to a DNA test because that was the only way he would be able to leave. The complainant further alleges that all his property was returned to him except for 50 dollars.

A monitor was appointed to investigate this complaint.

CPRB No. 64-08

The complainant alleges that on the morning of September 7th at around 4 a.m., as she was getting into her car an officer slammed her car door on her foot. According to the complainant, her flip flop became stuck in the door. The complainant further alleges that as she opened the door to pull her flip flop in, the officer continued to slam the door on her foot about five times. According to the complainant, the officer did not care that her foot was stuck. The officer gave her friend a ticket for parking on the pavement.

A monitor was not appointed to investigate this complaint.