

**City of Albany
Citizens' Police Review Board Public Meeting
Albany Public Library
161 Washington Avenue- Large Auditorium
March 12, 2009
6:00 p.m. – 8:00 p.m.**

Present: Jason Allen, Ronald Flagg, Jean Gannon, Marilyn Hammond, John Paneto, Andrew Phelan, Jr., Anthony Potenza, and Reverend Edward Smart.

Absent: Daniel Fitzgerald.

I. Call to Order and Roll Call

Chairman Jason Allen called the meeting to order at 6:05 p.m. He asked that new Board member Jean Gannon introduce herself to the Board. Ms. Gannon introduced herself to the Board.

II. Approval of the Agenda

The agenda was reviewed. Chairman Jason Allen moved to approve the agenda. Marilyn Hammond seconded the motion. The motion carried unanimously.

III. Old Business

A. CPRB No. 25-08/OPS No. C08-239 (Presented by Andrew Phelan, Jr.)

Andrew Phelan summarized the complaint. Mr. Phelan reported that this case was first reviewed by the Board on January 8, 2009. Mr. Phelan noted that the incident occurred in February 2008. Mr. Phelan further noted that he read the OPS report, the confidential report, and the monitor's report.

Mr. Phelan stated that the Board had discussed this case and the OPS findings were approved. Unfortunately, the findings had not been recorded. Mr. Phelan reported that the complainant lived on the second floor and had an Order of Protection against her boyfriend. The boyfriend violated the protection order and went to her house. The complainant got into a confrontation with her boyfriend and called the police. The police arrived, and the boyfriend was arrested. Mr. Phelan stated that he and the monitor agreed with the OPS findings. He added that the Board discussed the case and reviewed it at its January 8, 2009 meeting, and that it should be closed. Chairman Allen asked what happened to the previous vote. Board counsel Patrick Jordan explained that there were two (2) cases which were reviewed back to back. He further explained that although Mr. Phelan moved to close the allegations, the allegations were not actually voted on by the Board.

Mr. Phelan noted that there were four (4) use of force allegations and two (2) conduct allegations. Chairman Jason Allen stated that he remembered the case, but there may have been members who did not. Chairman Allen further stated that he agreed with the OPS findings.

Mr. Phelan reported that the OPS findings for the first use of force allegation were *unfounded*; the second use of force allegation was *exonerated*; the third use of force allegation was *unfounded*; and the fourth use of force allegation was *unfounded*. Mr. Phelan further reported that the OPS finding as to the first conduct allegation was *unfounded*. The OPS finding as to the second conduct allegation was *not sustained*.

Mr. Phelan noted that OPS did a twelve page report, and the monitor did a thirteen page report. Mr. Phelan stated that the allegations were all covered pretty extensively. Mr. Phelan further noted that the complainant was present when the case was first discussed.

Mr. Phelan moved to concur with the OPS findings. Marilyn Hammond seconded the motion. Jean Gannon abstained from voting. The motion carried 7-0 with one (1) abstained.

IV. New Business

A. *New Complaints*

1. New Complaints Received Since February 12, 2009 Meeting

Chairman Jason Allen reported that four (4) new complaints had been received by the Board since its February 12, 2009 meeting. Andrew Phelan read a summary of each new complaint.

CPRB No. 8-09

The complainant alleges that on November 30, 2008, after the complainant jumped a fence on Orange Street, several officers broke down the fence and told complainant to freeze. The complainant further alleged that after lying down on the ground, two officers began assaulting him. According to the complainant, one officer put his knee on the complainant's shoulder and neck and punched the complainant in the face while the other officer hit the complainant in the head twice with his gun. According to the complainant, he was treated at Albany Medical Center and continues to have headaches and nightmares from the event.

It was noted that a monitor was appointed to investigate this complaint.

CPRB No. 9-09

The complainant alleges that an Albany Police Department (APD) officer committed perjury. According to the complainant, he is a neighbor of the APD officer. The

complainant and the APD officer have a long history of disputes dating to 2004. In April 2008, the Guilderland Town Police arrested the complainant on reckless endangerment and criminal mischief charges after the complainant's tree fell down on the APD officer's shed. The officer claimed that the complainant purposefully cut down the tree. According to the complainant, the tree fell down from heavy winds, and the complainant cut the remaining part of the tree after it had fallen. The judge threw out both charges against the complainant. The complainant filed a small claims suit because he believes that he should have never been arrested or had to pay attorney fees to get this case dismissed.

It was noted that a monitor was not appointed to investigate this complaint.

CPRB No. 10-09

On March 4, 2009, the complainant alleges that when he was waiting for traffic to clear so he could make a legal u-turn and park in front of his store, a parking enforcement officer approached his vehicle. At the same time she approached the complainant's vehicle, the traffic cleared, and the complainant made a legal u-turn in front of his store. According to the complainant, there were no parking spots available in front of the complainant's place of business. An employee had been waiting outside of the store with his two year-old son for 15 minutes so the complainant turned on his flashers and handed his employee the key so he could unlock the door quickly. The complainant remained in the driver's seat. The process did not take more than 15 seconds. According to the complainant, as he started to pull away, someone started to scream at him from across the street. The complainant stopped his vehicle, looked, and realized that it was the parking enforcement officer. The complainant claims to have a history with this parking officer repeatedly harassing him and his customers. The complainant alleges that he and fellow business owners took this particular parking enforcement officer to court before and won the case. After the case, the parking enforcement officer continued to harass the complainant stating that she is above the law.

The previous incident to which the complainant refers to occurred on January 6, when the complainant was arrested after an altercation with the same parking enforcement officer. A complaint was logged with OPS in regards to the January 6 incident.

It was noted that a monitor was not appointed to investigate this complaint.

CPRB No. 11-09

The complainant alleges that an officer refused to close a case following an incident that occurred on December 15, 2008. The complainant further alleges that the officer stated that he intentionally refused to close the case so that the complainant's insurance claim would be delayed. The complainant claims that the officer is doing this because the officer does not believe the complainant with regard to the incident but has no information to prove otherwise.

It was noted that a monitor was not appointed to investigate this complaint.

2. New Complaints for Review

CPRB No. 12-08/OPS No. C08-177 (Presented by Anthony Potenza)

Anthony Potenza summarized the complaint. Mr. Potenza reported that the complaint occurred on January 22, 2008. The complainant alleged that the U.S. Marshalls and members of the Albany Police Department surrounded her car with their guns drawn. She alleges the officers were telling her to “get the f**k out of the car.” Her boyfriend opened his car door and was thrown down on the ground while two other officers had their guns drawn on the complainant and her son. The complainant’s seven year-old son began to cry, and the complainant was asked to get out of the car as well. She alleges she was then thrown to the back of the car and frisked between her legs and buttocks. She reported that an officer began to search the car while her son sat in his car seat in the back seat of the car, and an officer held her by her jacket preventing the complainant from getting to her son. After her boyfriend was identified, he was un-cuffed, the complainant’s son was brought to her, and they were released.

Mr. Potenza stated that this complaint involves a stop by the U.S. Marshall’s Fugitive Task Force of a vehicle in which the complainant and her seven year-old son were passengers, and the complainant’s companion was driving. The vehicle matched the description of a vehicle of a possible murder suspect. The officers had their weapons drawn because the complainant’s companion was wanted for criminal possession of a weapon. Mr. Potenza noted that based on the monitor’s report “stopping a murder suspect is considered a hazardous felony stop, thus necessitating the action taken by the officers.” Mr. Potenza further noted that after he reviewed the officer’s inter-departmental correspondence (IDC), it could be reasonably concluded that the APD played more of a supporting role to the U.S. Marshalls. The U.S. Marshalls were actually conducting the stop and going through the process on the scene. The APD officers were charged with securing the scene, explaining the reason for the stop to the complainant and the complainant’s companion, and also calming down the complainant’s seven year-old son.

Mr. Potenza reported that although the complainant and her companion were justifiably upset with the stop and the consequences, the evidence points to an understanding of the nature of this stop by the parties once it was explained to them by the police officers. Mr. Potenza further reported that based on the OPS investigation, the OPS reached out to the U.S. Marshalls. According to the U.S. Marshalls, they did not participate in departmental investigations. Mr. Potenza added that based on the monitor’s report, the U.S. Marshall did not remember any particulars of this incident.

Mr. Potenza summarized the findings of OPS on the first allegation of call handling as ***no finding***, where the investigation revealed that another agency was responsible and the complaint or complainant has been referred to that agency. Based on the OPS investigation, the complainant was upset about the officers displaying their weapons and

removing them from their vehicle during the course of the traffic stop. It was explained to the complainant that it was based on the nature of the stop. Mr. Potenza reported that no member of the APD reported having their weapons drawn or removing the complainant from the vehicle. All members involved reported that upon their arrival, the vehicle was already stopped and the complainants were taken out of the vehicle by members of the U.S. Marshall Fugitive Task Force. The OPS is unable to determine if they had their weapons drawn during the contact because the U.S. Marshalls involved will not give a statement regarding the incident. Mr. Potenza noted that based on the IDCs that were submitted, no APD officers had their weapons drawn in the matter. The APD officers played more of a supporting role in the stop.

Mr. Potenza summarized the findings of the OPS investigation 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 that an officer yelled, "Get the f**k out of the car." Based on the OPS investigation, OPS was unable to determine if any member of the APD made the alleged comment. Mr. Potenza stated that it was possible that the U.S. Marshalls conducted the traffic stop and the U.S. Marshalls could have been confused with Albany Police Officer officers.

Mr. Potenza stated that the monitor assigned to the case gave an extensive report and the monitor concurred with the findings of OPS with regard to the result of *no finding* in the call handling allegation and *not sustained* with regard to the conduct standard allegation.

Mr. Potenza moved to concur with the findings of OPS and the monitor in this matter. It was acknowledged that the complainant was present. The complainant stated that all the police officers had guns, and that the Albany police officers not the U.S. Marshalls initiated the stop.

Reverend Edward Smart interrupted the complainant stating that a motion had been made and according to the parliamentary rules, the motion should be voted on before the complainant was allowed to speak. Mr. Potenza withdrew his motion.

Mr. Potenza encouraged the complainant to continue her statement. The complainant stated that the report was false and that the APD initiated the stop. She explained that there was a cop driving up on the sidewalk facing her, and that was the cop that had the gun out first. The complainant reiterated that the U.S. Marshalls did not initiate the stop, and maybe that is why they do not agree with the APD officers: because they may know that these officers are telling lies. The complainant stated that the police report is false and not true.

Reverend Smart stated that he had read the case and found it to be the most outrageous acts of conduct. He explained that the APD was involved because the report of the license plate came from a retired Albany policeman. Reverend Smart commented that this retired police official may have been 70, 80, 90, or 100 years old, but he initiated and gave the police that report. Reverend Smart stated that the APD is responsible and even if they did not give that license plate, the duty of the APD is to protect and serve the

people. If this young lady and whoever was involved in this got frisked in an unprofessional manner, then the APD should have stepped in and protected her because they work for us.

Reverend Smart stated he will not concur with the OPS finding of *no finding*. Reverend Smart reiterated that he found this case outrageous. He explained that when a person is falsely stopped and arrested by U.S. Marshalls in Albany, the U.S. Marshalls cannot do that unless they first come and notify the APD. Reverend Smart stated that based on the investigation, it was a retired Albany policeman who sent in the wrong tag number. He asked how the APD could not have anything to do with this incident. Reverend Smart stated that they sent in the wrong tag number and now they are saying that it was the U.S. Marshalls. Reverend Smart commented that he disagreed with this, and this case should be sent back to the OPS for further investigation. He added that if the monitor concurred with this finding, then perhaps the Board should assign a different monitor to this case.

Mr. Potenza suggested that the monitor be given an opportunity to be heard. Monitor George Kleinmeier stated that it was a retired officer who generated the information that there might be a possible suspect in the vehicle, which was transmitted to the U.S. Marshalls' office. He added that it was the U.S. Marshalls who got behind this vehicle and told the APD where the vehicle was and that they were going to stop it. Mr. Kleinmeier stated that the problem is that they are not both on the same radio frequency, so everybody was getting there at the same time. Mr. Kleinmeier further stated that it was just the facts of the case that a murder suspect was in the vehicle so even if the APD officers had their guns drawn it is Standard Operating Procedure for a murder suspect.

Reverend Smart stated that he believed that as with these particular persons, officers are quick to stop people because they believe that in certain areas all people look the same. He added that this is not the first time that the Board had reviewed cases where it was the wrong person. Reverend Smart stated that it is not enough for the Board to dismiss this if these people have been violated. He commented that the retired officer inconvenienced and embarrassed the individuals who were in the vehicle. The complainant stated that she was embarrassed in front of her son.

Mr. Kleinmeier stated that if you take the retired APD officer out of the equation and it was an ordinary citizen who called in the plates, then they would have had to act in the same manner. Mr. Kleinmeier further stated that they were acting on a tip that this might be a murder suspect. Reverend Smart stated that this was because the retired police officer gave them the wrong tag numbers. He asked what right that retired police officer had to send in the tag number in the first place. Reverend Smart asked the age of the retired police officer. Mr. Kleinmeier responded that it was a retired young female who was trying to contribute as a citizen in finding a murder suspect. Reverend Smart responded that this retired officer was wrong. Mr. Kleinmeier responded that some citizens are wrong. Reverend Smart replied that when citizens are wrong they must pay the consequences for their actions. He stated that he believes that everyone in this community including children, and young people, and parents need to take responsibility

for their actions and somebody needs to do something about this; especially if you are a police officer and you are not sure that it is the tag number, then you should not call it in.

Jean Gannon stated that there was a witness who was the male driver of the car, who might have seen whether or not the APD did have guns drawn. Ms. Gannon agreed that while it may be SOP for officers to have their guns drawn, her concern was that the reports say the officers' guns were not drawn. She added that if there is an inconsistency with that, then it should be cleared up. Ms. Gannon stated that she wondered whether that witness was interviewed. Ms. Gannon further stated that she had two other concerns. Her first concern was that the male complainant mentioned that there was a 2000 Ford Explorer. Was that an APD vehicle? Ms. Gannon stated that there was another squad car that the complainants identified that allegedly approached from the front. Ms. Gannon stated that if that is one of the APD numbers, then it would lend credibility to the complainant's case. Ms. Gannon asked if those facts were investigated at all.

Mr. Kleinmeier responded that there was not any doubt that the APD arrived. Ms. Gannon stated that the complainants indicated that the APD was the first to pull them over, and that is where the officers came from, if she recalls correctly. Mr. Kleinmeier stated that the complainant's passenger's statement was that someone in a tan jacket pulled them out of the car which indicated that it was a U.S. Marshall. Ms. Gannon reiterated that her concern is that we are saying that APD did not have guns drawn, so there is conflict. It may not be a procedural error with how the police responded, but it is an issue if we are not getting the accurate facts from the police. Mr. Kleinmeier stated that there were 17 consistent IDCs.

Ms. Gannon asked Mr. Kleinmeier whether the witness had anything to add. Mr. Kleinmeier responded that he asked about the witness, and the OPS detective did not contact the witness for whatever reason.

Chairman Jason Allen asked Reverend Smart if the Board were to send this back to OPS for a further investigation, what specific questions they should ask. Reverend Smart stated that he thought Ms. Gannon made an acute observation about the APD number. He asked why the U.S. Marshalls did not give a statement. In court, when people don't give a statement everyone believes that they are protecting something or not saying something. Reverend Smart stated that there was some substance as to what took place and thinks that there is responsibility and procedures that need to be implemented about a retired police officer who is all up in everybody's business and because of her actions the complainant and her passengers rights were violated. Reverend Smart further stated that there are some other facts in here that are just not being said.

Chairman Allen asked if any efforts were made to speak with the complainant or at least get some of the officers who were there to sit with the complainant and talk it through. The gentleman who was present with the complainant was acknowledged. The gentleman stated that they did not hear anything from anyone about this complaint for a year now, and this is the first time he has heard anything about the complaint. The gentleman stated that the complainant was inappropriately searched, and there were no

female officers on site. He added that the complainant was searched by Albany police, not the U.S. Marshalls. There was no backup role here for the APD. It was a combined role here which usurped her constitutional rights and made her a victim. He reiterated that the complainant was not a murder suspect, and the Board has to realize that they got it wrong. The complainant stated that neither she nor the driver had a criminal record. The gentleman stated that this is an outrage. They all had their guns drawn, and this has been swept under the rug for over a year. The gentleman concluded that the Board should address this matter.

Chairman Allen asked for the questions to be repeated. Reverend Smart stated that the case should be reviewed again, and all of the witnesses should be interviewed. Secondly, the vehicle tag number should be investigated. Thirdly, there is a procedural matter involved when an off-duty or retired APD officer calls in a U.S. Marshall. How did the retired APD officer know that the U.S. Marshalls were looking for this particular suspect? If the retired APD officer was at home how did she get this information? Reverend Smart explained that he did not understand how the retired APD officer got involved in this case at all and would like an explanation.

Mr. Kleinmeier stated that from what he understands there was a gun that was recovered. He further stated that the information was generated to the detective from the retired APD officer that linked this car in some way.

Reverend Smart asked how the retired officer got involved in this case. Mr. Kleinmeier replied that the retired officer got involved because the suspect who was wanted for murder was on TV. The suspect was known to have a son at this school, and the retired officer thought that this was the same person picking up his son. Like a citizen, the retired officer thought this might be the person that she saw on Fox 23 "America's Most Wanted." Chairman Allen asked if the murder suspect was ever caught. Reverend Smart asked where the murder suspect was caught. Mr. Kleinmeier replied that the murder suspect was caught out in Long Island.

John Paneto stated that there appeared to be information that was not in the report. Mr. Paneto noted his concern that when state police are involved in Albany, the Board has no jurisdiction to oversee the state police. Mr. Paneto asked what the protocol was when an outside police force is brought in to patrol the streets of Albany. Who has primary control? Who is the incident commander, or do they just relinquish all power? Is there a protocol on who has jurisdiction? If an incident occurred in Albany, which agency is in command over the situation? Mr. Paneto added that he is inclined to believe that if the complainant were not present tonight, the Board would have voted differently.

Chairman Allen stated that he disagreed with Mr. Paneto's last remark. Chairman Allen stated that one thing that everyone present can agree to is that a mistake was made, and the wrong people were pulled over and searched. Chairman Allen asked whether it would be inappropriate or out of order to at least get a representative from the APD to sit with the complainant and discuss the issue.

Marilyn Hammond stated that the complainant deserves an apology. Chairman Allen stated that in the past the Albany police have met with complainants to discuss complainant issues. Ronald Flagg stated that there are some procedures, protocols, and other details that need to be resolved with the OPS report before the Board gets into whether an apology is in order or whether we should get into some verbal discussion with the complainants. Mr. Flagg stated that the Board needs to resolve the content issues around what happened, whether all the statements from witnesses were taken, and so forth. Mr. Flagg stated that needs to be resolved first. He further stated that he supported Reverend Smart's position that there may have been other issues between the APD and the complainants. Mr. Flagg stated that at this time he would like to know what happened.

Chairman Allen stated that the complainant stated that this would help a lot. Ms. Hammond asked the complainant if she would be willing to sit and talk with someone. The complainant replied in the affirmative. Mr. Flagg stated that he did not want to stop that from happening, but he wanted to know what happened and whether the OPS got the statements of all the witnesses who were at the scene, were the APD officers' guns drawn, and all the other inconsistencies? Chairman Allen asked Coordinator of the Board Sharmaine Moseley to draft a letter to the OPS with the Board's questions and concerns.

Anthony Potenza moved to send this case back to the OPS for further investigation. Reverend Edward Smart seconded the motion. The motion carried unanimously.

CPRB No. 13-08/OPS No. C08-164 (Presented by Ronald Flagg)

Ronald Flagg reported that the complaint occurred on December 22, 2007. Mr. Flagg noted that the OPS agreed that this complaint be returned to them for further investigation. Mr. Flagg stated that his primary question was that the complainant stated that one of the officers confronted him and cursed at him. Mr. Flagg commented that he was not sure whether it was the officer or the sergeant. The officer and sergeant denied that this occurred. Mr. Flagg explained that the complainant had an uncle who was on the telephone with the complainant at the time. The complainant's uncle was a retired police detective from NYC. According to the complainant, his uncle heard someone on the other end of the phone cursing at his nephew. Mr. Flagg noted that this was not in the report and should have been included. Mr. Flagg stated that the OPS has agreed to add this information to the report.

Jean Gannon asked why the videotapes were not requested before they were destroyed. She asked what the policy was if they kept it for two weeks and the complaint was within that time frame. Ms. Gannon stated that it seemed reasonable that the videotapes would have been requested. Ms. Gannon further stated that although the complainant could not give a description in the complaint, the bartender was certainly involved. She asked if there was an investigation as to whether the current owner of the watch was in fact the legitimate owner of the watch.

Mr. Flagg replied that some of the details of the incident are in the OPS confidential file that he reviewed. Mr. Flagg believes that to be some of the information that needs to be sent to the Board.

Ronald Flagg moved to have this complaint sent back to OPS for further investigation. Marilyn Hammond seconded the motion. The motion carried unanimously.

CPRB No. 46-08/OPS No. C08-422 (Presented by Andrew Phelan, Jr.)

Andrew Phelan summarized the complaint. Mr. Phelan reported that this incident happened on July 2, 2008 on North Lake Avenue and Third Street. He stated that the reason for the stop is that the complainant allegedly did not stop for a stop sign on the corner of Quail and Third Street. The complainant allegedly asked the officer why she was being pulled over, and he refused to tell her. According to the complainant, the other officer walked around to the driver's side and told her to give them her information and then they will explain why she was pulled over. After taking her information, the officer went to his vehicle. The officer returned to the complainant's vehicle and told her that she ran through a stop sign a couple of blocks up the street.

Mr. Phelan stated that he went to the OPS to read the complaint case file on February 24, 2009 and March 5, 2009. Mr. Phelan noted that in the complaint, there is one count of conduct standards where the complainant felt that the officer was being rude when he would not tell her why she was being stopped, would not allow her to plead her case, and spoke in a loud voice trying to intimidate her. Mr. Phelan reported that based on the OPS investigation, the officer stated that he explained to the complainant that the traffic stop was initiated because she ran the stop sign at the intersection of Third and Quail street. The officer further stated that he requested the complainant's information, and she was claiming that she didn't run the stop sign. Based on the OPS investigation, when the officer was asked why he did not tell the complainant why she was stopped, the officer stated that he had done this before, and his training dictated to him to obtain the driver's information and in exchange he would tell the driver why they were stopped. The procedure was to get the driver's information first so the officer would know who he was dealing with. According to the officer, he stated that he did not recall specifically what the complainant said, but he remembered that the complainant was adamant about not running the stop sign. Mr. Phelan further reported that the officer explained to the complainant her options which were to mail the ticket in and plead guilty, or fill out the back of the ticket, plead not guilty, and mail it in, or they can look at the date below, plead guilty, and show up at traffic court on that date. Based on the OPS investigation, when the officer was asked if he explained to the complainant her options, the officer replied "I would imagine so, I've done it probably 99% of the time I have issued tickets, unless I arrest them and they have to appear in court the next day." The officer stated that he used a command presence when speaking with the complainant which may have been misconstrued that he was trying to intimidate the complainant.

Mr. Phelan reported that the traffic stop happened on July 2, 2008 at 17:07 hours and the officer returned to service at 17:16 hours. Mr. Phelan added that the complainant also

went to court on September 2, 2008 for the summons and it was reduced to a parking ticket. Mr. Phelan stated that he agreed with the OPS investigation that the allegation should be closed as *unfounded*. It was noted that the complainant was not present.

Chairman Jason Allen stated that the Board sent out a press release informing the community of four recommendations made by the Board last year. One of those recommendations was for audio and video cameras to be installed in police cars. A second recommendation was for the mediation program to address those allegations of rudeness. Chairman Allen explained that mediation would have certainly helped in this case, instead of an investigation. He added that everybody would come out ahead if those two tools were in place. Mr. Phelan stated that he agreed with Chairman Allen.

Reverend Edward Smart asked for the definition of command presence versus non command presence and if those definitions were in the SOP. Chairman Allen stated that if they had a video tape of the event they could probably interpret that. Mr. Paneto stated that command presence, from a military perspective is when you stop somebody, you tense up and your words are clearer and sometimes they race out, but the person knows clearly you are not happy with them. Mr. Paneto further stated that sometimes a command presence is that the officer has to take control of the situation and does not care what the individual has to say. Mr. Paneto explained that the officer's voice may be louder and sterner such as "Get out of the car now." Mr. Paneto further explained that as the situation continues to escalate some officers would continue to increase their voice and also continue to escalate the situation, rather than back off and say "Ok Ms., do you understand why you're here?"

Ronald Flagg commented that ever since he has been on the Board, the Board has received cases like this. He added that the Board heard three cases tonight where the citizen feels that the officer was being rude and it is a he said/she said kind of thing. Mr. Flagg stated that a police officer has command presence because of his uniform, badge, a gun, and other gear. He further stated that it is inappropriate for a police officer to engage in disrespectful dialogue with a citizen. Mr. Flagg commented that this issue has been discussed over the last three or four years with the chief as well as assistant police chiefs in the past. He stated that there is a concern that there may be officers who think that they can use a certain tone and language with certain citizens, but there is no way of getting supportive evidence that that has occurred. Mr. Flagg emphasized that when there are video cameras there should be audio as well. Mr. Flagg stated that consistently over the years, for example, if you take away the more graphic part of the first case, there is a tone of disrespect that is just not necessary. Mr. Flagg further stated that with the people that he supervised at work, he made sure that they respected the clients they worked with, whether it was in adult or juvenile correctional facilities.

Chairman Allen added that a third tool is the early warning system. If the officer has multiple complaints against him for rudeness, then perhaps that is a trend. It would be helpful not only for us but for the police to retrain and to take appropriate measures.

Andrew Phelan moved to concur with the OPS' finding of *unfounded*. Reverend Smart seconded the motion. The motion carried unanimously.

CPRB No. 49-08/OPS No. C08-454 (Presented by Andrew Phelan, Jr.)

Andrew Phelan summarized the complaint. Mr. Phelan reported that the complainant alleged that during trial testimony the detective testified that he did not know the informant used during the complainant's arrest prior to September 26, 2007, thereby perjuring himself.

Mr. Phelan stated that he reviewed the case at the OPS on February 24, 2009 and March 5, 2009. Based on the case file, the detective stated that he believed that September 26, 2007 was the first day that he dealt with the informant. The detective stated that he used the informant on three individuals in the past month prior to the time that he was asked that question. At the time, the detective could not remember who had been the first one and at the time he thought the complainant had been the first one when actually he had been the third one. The detective stated that when he gave the testimony in court he was mistaken and that a short time later during the trial the mistake was brought to the detective's attention. The detective was questioned as to whether he lied during testimony and the detective stated that he did not. Mr. Phelan stated that if the detective had in fact perjured himself on the stand, the facts would have surfaced. The prosecutor, defense attorney, and the judge would have all had access to the evidence and the evidence would have caused perjury charges to have been brought up against the officer.

Mr. Phelan reported that the OPS finding regarding the conduct standards allegation was *unfounded*. Mr. Phelan noted that he reviewed the court transcripts where the detective stated that he only knew the informant that first day, but then the detective corrected his statement. However, the first time the detective met the complainant was not material to the proceedings.

John Paneto stated that this is a case that goes into court findings and second guesses the defense attorneys, prosecution, and even the judge. He added that he did not believe that the CPRB had any jurisdiction on this case. Chairman Allen stated that he agreed with Mr. Paneto. He further stated that he believed that the court had better tools and resources available, and if they did not act on it, then why should the Board.

Andrew Phelan moved to concur with the OPS finding of *unfounded*. Marilyn Hammond seconded the motion. The motion carried 7-1. John Paneto voted against the motion. Mr. Paneto explained that he voted against the motion because he believed that the Board should not have accepted the case because it was already handled by another jurisdiction. Chairman Allen asked Mr. Paneto if he meant that the Board had no standing. Mr. Paneto responded in the affirmative.

Marilyn Hammond summarized the complaint. Ms. Hammond reported that the complainant alleged he was assaulted by another gentleman, and the officer failed to recognize the injury to the complainant's neck. The complainant alleged that the officer told him that if an old man with a cane poked him, the complainant should be able to deal with it. The complainant further alleged that he was not allowed to file a police report and was treated like he broke the law. According to the complainant, he called the police because this was the second time that this gentleman put his hands on the complainant. The complainant claims that he went to the south station and spoke with the desk clerk. The complainant further claims that the desk clerk stated that she could see the injuries to his neck. Ms. Hammond reported that witnesses were interviewed, and a photo was obtained.

Ms. Hammond stated that she reviewed the case file. She reported that a call ticket was obtained, which indicated that the caller hung up, and officers responded to a person annoying someone else. Ms. Hammond stated that the complainant got into a pushing and shoving match with an elderly gentleman in the community garden. The reason the complainant was not allowed in there was because he had not paid his fee for the garden yet the complainant had put some plants in there anyway. The gentleman was not going to let him in. The gentleman was elderly, frail, and feeble, and the complainant was about 40 years old. The complainant claimed that he flagged down the officer, and the old man went into his apartment to get the voucher to show the officer. The complainant stated that he had a witness but he did not know her name or where she lived. The officers went to Albany Housing Management, and the Albany Housing Management claimed that they took away the complainant's rights to the garden because of his behavior. When talking to the officer the complainant said "Look see my neck [pointing to the area] see that mark." According to the officer, there was no mark and no sign of injury. Ms. Hammond reported that based on the OPS investigation, the officer told the complainant that it was not an assault, and if anything, he may be at risk of injuring one of the old men if he tried to physically push past them to get to a garden that he had no right to be in. The old men were frail and could break a hip. On January 8, 2009, the officers spoke to a staff person of the Albany Housing Management. The staff person referred the officers to someone else at the Albany Housing Management who stated that the complainant was taking bottles and chucking them at the elderly gentlemen in the garden. Last year, the complainant stole watermelon from someone's plot so the locks were changed. The complainant got angry and tried to attack the gentleman. The officer saw no marks on the complainant's neck when the complainant went to the station the first time. However, the complainant returned two hours later with marks on him. Ms. Hammond reported that if the gentleman wished to file a complaint, the complainant could have been charged with harassment.

Ms. Hammond reported that she viewed an email sent to Detective Kathy Hendrick. The email stated that the officer said if an old man attacks you should be able to handle it. It might not have been his exact words. Ms. Hammond further reported that she also

reviewed the photos of the complainant's neck and they were inconsistent with marks that a hit with a cane may leave, but looked more like finger marks.

Ms. Hammond stated that she concurred with the OPS finding of *unfounded* because the complainant has been a problem for the past couple of years in the garden. The complainant would not pay for the plot and he was stealing people's vegetables, so they changed the locks on him. The complainant was angry and wanted to get in, and the gentleman would not let him in. It was noted that the complainant was not present.

Marilyn Hammond moved to concur with the OPS finding as *unfounded*. Ronald Flagg seconded the motion. The motion carried unanimously.

CPRB No. 59-08/OPS No. C08-546 (Presented by John Paneto)

John Paneto summarized the complaint. Mr. Paneto reported that the complainant was under the jurisdiction of the Albany County Correctional Facility and Albany County Sheriff's Department, so any issues that this complainant has would be taken up with that organization and not the APD. Chairman Allen clarified that there was no standing for the case.

Jean Gannon stated that when the CPRB receives complaints like this that are not against the APD she understands that the Board is hesitant to decline the complaints. Ms. Gannon asked if the Board should look at developing a policy, like in this case, to refer somebody to the Albany County Sheriff and not accept the complaint because it isn't ours. Ms. Gannon stated that the Board is voting on this now and the complaint happened in August of last year and it makes it untimely to now go to the Albany County Sheriff's department.

Chairman Jason Allen stated that he was not sure why it took so long to be closed out, especially since there is no standing. Chairman Allen asked whether traditionally the Board forwards the complaint themselves. Detective Hendrick stated that the complaint happened in August 2008 and OPS looked at in October 2008 and prior to their completion the Sheriff's department was notified and sent the complaint. Detective Hendrick stated that as soon as they know it involves another department that does not involve the APD, they send it out. Ms. Gannon asked why they should review the complaint.

Chairman Allen stated that thinks the board should err on the side of caution. He would rather have the Board review the case.

Ronald Flagg stated that he remembered years ago when the Board had a case involving a mother and a young woman in Guilderland or Bethlehem in which the mother had stolen credit cards from her daughter. The Board sent a letter to the Guilderland Police stating that this was not a CPRB case because it did not involve the APD. Mr. Flagg acknowledged that the OPS sent a letter regarding this case.

John Paneto moved to concur with OPS' findings on the allegation as *no finding* because this complainant's action did not involve an encounter with the APD. Marilyn Hammond seconded the motion. The motion carried unanimously.

CPRB No. 61-08/OPS No. C08-819 (Presented by Reverend Edward Smart)

Reverend Edward Smart summarized the complaint. Reverend Smart reported that this incident took place on Clinton Avenue

*The complainant alleged an argument between two individuals occurred and there was fighting, yelling, and screaming. The complainant stated that an officer in a white shirt was sitting across the street observing the argument. The complainant stated that he left, so he wouldn't be involved with the situation. The complainant stated that his brother intervened in the fight while the officer in the white shirt observed from across the street. People involved in the argument had broken up at this point when three officers and the officer in the white shirt arrived. The complainant's brother was standing by his vehicle that was running but not attended. The officers demanded that the vehicle be shut off and two of the officers approached the complainant who was sitting on his porch on Clinton Avenue. The officers requested ID, and everyone refused to show ID. The officers then attempted to forcefully remove everyone from the stairs. The complainant reported that being noticeably upset, there was little resistance, and words of regret were thrashed at the officers. The complainant reported that there was never any forceful or abusive gestures displayed towards the officers that would cause the use of the taser. The complainant stated he was then tased because of the gestures he was voicing. The complainant stated that he was tased while on the ground being held by two officers. Upon seeing this, the complainant's brother who was obviously upset, began to scream. The complainant stated they were all arrested and charged as co-defendants for being involved in a fight that never took place. The complainant added this is an expression of "racial classification" and that he hopes that the residents of Arbor Hill are awarded the same respect and laws governed to suburban, mostly white areas. He stated an officer refused to give his fiancé his name and referred to her as a "b***h" and ignored her while talking on his cell phone.*

Reverend Smart stated that he reviewed the following documents: the citizen's complaint form; APD initial report; monitor's report; commander's report; timeline report; fifteen officer's unknown report investigation statements; dispatch timeline report; taser procedure; taser training reviewed; taser officers interviewed; timeline review by OPS; two patrol officer statements; medical reports; evidence booking reports; item by item

report of contents; review of residents in area statements; statements of other persons arrested; mug shots; use of taser form report; timeline of tasers; police admission and photo screening reports; prisoners evidence of marijuana; monitor's report; visual report of scene; and state trooper's statement.

Reverend Smart noted that the complainant was not present at tonight's meeting.

Reverend Smart summarized the OPS finding regarding the use of force allegation where the complainant stated that he was tased for no reason. Based on the investigation, the OPS found that the allegation was *unfounded*. Based on the OPS investigation, the complainant was being placed into custody when he refused his lawful arrest. The officer used the taser three times on the complainant due to the fact that the complainant was still combative and uncooperative after being tased twice. After each tasing episode, the complainant continued to fight with the officers which required the taser to be deployed again. Finally, the complainant was handcuffed and placed into a police car. Reverend Smart stated that the complainant's actions warranted the use of the taser and was within departmental guidelines.

Reverend Smart noted that the complainant's statement indicated that when the complainant was ordered by the officers to show ID and move on, the complainant refused. According to the complainant, there was yelling and screaming, and little resistance was offered. The complainant stated that words of regret were offered. Reverend Smart stated that these actions justify the actions of the SOP that use of force by the officers is uncommon. Reverend Smart further stated that he agreed with the OPS finding.

Jean Gannon asked what was the probable cause for the police officers to ask for their ID. Reverend Smart replied that he believed that there was a supervisor who watched the entire incident, and the officers wanted to control the situation and find out if these particular persons lived at that particular building at that particular time. The individuals refused to do so, and then used gestures of disrespect to the officers. Reverend Smart noted that there was a state policeman on the scene who told those individuals if I were you, I would cooperate with the officers.

Ms. Gannon stated that she was still confused to as whether the individuals were involved in the altercation. Ms. Gannon further stated that the complainant in his statement said that he was not involved in the altercation and was just sitting there. Reverend Smart stated that the problem was that the complainant left and then came back. The complainant's brother understood that he should not be there so his brother left. Ms. Gannon asked if the complainant remained on the stairs. Reverend Smart responded not the whole time. The investigation showed that the complainant went inside and came back out. Reverend Smart stated that if an individual had nothing to do with a situation and an officer asks him/her for their ID, the officer has that right.

John Paneto stated that he was not convinced that the use of the taser was appropriate especially three times. Mr. Paneto further stated that he was under the assumption that

once a person is tasered once, then they are out. Reverend Smart responded that he had thought about that and went to find out what the tasing procedures are. He stated that he found that all of the officers did not carry tasers, because before the officers can carry tasers they would need to be tasered. Reverend Smart explained that the officers undergo this experience so they would know what it feels like. Reverend Smart stated that this officer understood what he was doing and how it felt. Reverend Smart further stated that he was not very pleased with the comments made about the size of the individual, but APD officers do not want to carry tasers mainly because part of the training is to get tasered.

Mr. Paneto commented that this was not the first time the person was tased enough to handcuff the person while the person was down. Reverend Smart responded that according to the testimony of the officers, they were handcuffing the complainant, he resisted, and then he was tasered. Reverend Smart added that another reason that officers do not like to use a taser is because they have to fill out a whole stack of paperwork. When an officer tasers a person not only is there a transparent record, but there is a timeline of how long the person was tasered.

Chairman Jason Allen stated that it is almost as significant as discharging a firearm. Reverend Smart added that the only thing that he thinks is less than tasing is pepper spray. Reverend Smart stated that you have to fill out this big stack of paper which he read when he reviewed the case file.

Reverend Smart noted that Monitor Richard Lenihan was present. Richard Lenihan stated the physical size of the complainant should be an issue. Mr. Lenihan reported that the complainant was 6 feet 4 inches tall and weighs 240 pounds. The idea of the taser is to supplement something else. Mr. Lenihan stated that he did not know the sizes of the officers who were involved. Mr. Lenihan commented that he understood that the use of the taser was unpleasant.

Reverend Edward Smart moved to concur with the OPS's finding of *unfounded* on the use of force allegation. Andrew Phelan, Jr. seconded the motion. The motion carried unanimously.

Reverend Smart reported that the complainant alleged a violation of the arrest authority and procedure when he was falsely arrested. He further reported that the OPS investigation found this allegation as *exonerated*. Based on the OPS investigation, the officer stated that the complainant engaged in a large fight and requested ID from him. The complainant refused to give his ID, and furthermore began becoming publicly defiant towards the officers. The complainant threw a cigarette butt onto the public sidewalk. The complainant refused to comply with a lawful order to disperse and further resisted his lawful arrest causing the officer to have to utilize the taser three (3) times in order to take the complainant into custody.

Reverend Smart stated that based on the OPS investigation, the complainant was arrested for disorderly conduct, or loitering, and obstructing governmental administration. These charges were based on the observation and constitute the proper actions of the officers. Reverend Smart moved to concur with the OPS finding of **exonerated**. Andrew Phelan, Jr. seconded the motion. The motion carried unanimously.

Reverend Smart reported that the complainant alleged that an officer was rude to the complainant's fiancé while at the South Station desk when he referred to her as a "b***h" and refused to give her his name. He further reported that the OPS found this allegation as **not sustained**. Based on the OPS investigation, the officer stated that he had no contact with the complainant or his fiancé or any family member. The officer also stated that he did not call her or anyone a "b***h." Reverend Smart moved to concur with the OPS finding of **not sustained**.

Reverend Smart reported that the complainant alleged discrimination and ignorance on behalf of the officers involved. He further reported that the OPS found this allegation as **unfounded**. Based on the investigation, the officers involved were acting in response to the fight that a supervisor observed and were not being discriminatory. Reverend Smart moved to concur with the OPS finding of **unfounded**.

Andrew Phelan, Jr. seconded the last two (2) motions. The motions carried unanimously.

CPRB No. 62-08/OPS No. C08-557 (Presented by John Paneto)

John Paneto read the complaint verbatim.

*The complainant alleges that she called 911 to have her boyfriend removed from the residence. Allegedly an officer stated that if the complainant did not keep taking her boyfriend back and speaking to him that a "b***h" like her wouldn't have to call 911 in the first place. The officer allegedly would not shake the complainant's hand stating he is not her friend and she got what she deserved and he is not for all that crying stuff. Another officer on the scene talked the boyfriend into removing his belongings. The complainant allegedly told the officer that it was fine for him to come into the residence but the other officer is not permitted in her home, halfway through the removal the other officer entered the residence and was asked to leave which he did and allegedly stated to the complainant that she was mad because he would not have an interest in her. The complainant alleged that she had to have a sergeant respond to her residence to file a complaint against the officer for making a false statement in his report indicating that she was intoxicated.*

Mr. Paneto reported that there were three allegations in this complaint. There was one allegation of a violation of conduct standards and two allegations of call handling.

Mr. Paneto stated that he had an issue with why the complainant called 911 and also when the officers arrived why the complainant wanted to decide which officer would actually enter the premises. Mr. Paneto reported that the complainant let one officer in and refused to let in the second officer. Clearly the second officer had a problem with that, but the second officer did manage to fall back. Mr. Paneto further reported that the second officer decided to go back into the residence. The complainant told the second officer that she did not want him in the residence. Mr. Paneto stated that the complainant called the police to have a gentleman removed from her home and then she was trying to tell the police who can and cannot enter the residence.

Mr. Paneto reported that the officers did not remember making any inappropriate statements to the complainant, but they did try to calm her down. Neither officer on the scene recalled saying anything inappropriate other than them trying to help the gentleman get his stuff out of the residence. A sergeant arrived on the scene so it appeared that the complainant must have called the police again.

Mr. Paneto stated that he did not see any harm by the officer noting that the complainant was intoxicated on the report. Additionally, the complainant claimed to have witnesses. Unfortunately the two neighbors contacted by OPS did not want anything to do with the complainant. Mr. Paneto noted that a monitor was not assigned to this case.

Mr. Paneto moved to concur with the OPS findings. Mr. Paneto reported that the OPS finding regarding the conduct standards was *unfounded*, where the review shows that the act or acts complained of did not occur. The complainant alleged that the officer made inappropriate statements to her such as a b***h like her would not have to call 911 in the first place, she got what she deserved, and that she was mad because he wouldn't have any interest in her. Based on the OPS investigation, the officer denied making any derogatory statements towards the complainant. The other officer on the scene further stated that he did not hear the officer making those statements and witnesses indicated that the complainant herself has "got a mouth and was being very disrespectful to the officers." The one witness stated that she did not want to get involved in being a witness for the complainant. Mr. Paneto further reported that when the Sergeant was speaking to the complainant on the scene, she did not indicate to him that the officer made any inappropriate statements while filing her complaint about the officer putting intoxicated in the report.

Mr. Paneto reported that the OPS finding regarding the first call handling allegation was *exonerated*, where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper. The complainant alleged the officer came into her residence and she told him to leave, which he refused to do. The complainant further alleged that she had to have a sergeant respond to her residence to file a complaint against the officer for making a false statement in his report which indicated that she was intoxicated. Mr. Paneto reported that based on the OPS investigation, the officer is required to complete a DIR (Domestic Incident Report) as per department policy. The officer completed the report. The officer stated that the complainant refused to give him

any pedigree information on her boyfriend, which is needed for the report and further refused to sign the report because he indicated that she was intoxicated. The officer stated that he detected an odor of an alcoholic beverage when speaking with the complainant. Neighbors stated that the complainant is drunk every day. Both officers indicated that the complainant was having mood swings while they were dealing with her. Both officers believed that the complainant was under the influence of some type of substance. Mr. Paneto stated that by the officer indicating "intoxicated" in the report, it provides hindsight into the complainant's demeanor at the time of the incident as well as provides the same information to anyone accessing the report for further investigation to give that person a clearer understanding of what was occurring at the time. Mr. Paneto reported that the sergeant stated that the complainant was acting irrational when he was speaking to her. The sergeant stated that he did not feel that putting intoxicated was pertinent to the report; however, he did admit that the information would be helpful for future reference of the officer.

Mr. Paneto reported that the OPS finding regarding the second call handling allegation was *exonerated*, where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper. The complainant alleged that she did not want the officer in her apartment and he refused to leave. Mr. Paneto further reported that based on the OPS investigation, with regard to the officer entering the apartment and refusing to leave, the officers were trying to assist the complainant with her domestic incident. The one officer was inside the apartment, along with the complainant. Mr. Paneto stated that for the safety of the officer inside and any other occupants in the apartment, the officer was well within his authority to be in the apartment to investigate the domestic incident and to ensure the safety of the officer as well as any occupants.

John Paneto moved to concur with the OPS findings on the first conduct standards allegation as *unfounded*. Marilyn Hammond seconded the motion. The motion carried unanimously.

John Paneto moved to concur with the OPS findings on the call handling allegation as *exonerated* because the officer on the scene had to complete the domestic incident report. Marilyn Hammond seconded the motion. The motion carried unanimously.

John Paneto moved to concur with the OPS findings on the second conduct standards allegation as *exonerated* because the complainant called 911 and two (2) officers arrived. Ronald Flagg seconded the motion. The motion carried unanimously.

CPRB No. 64-08/OPS No. C08-568 (Presented by Chairman Jason Allen)

Chairman Jason Allen summarized the complaint. The complaint was received on September 8, 2008. The complaint had two allegations of call handling. Chairman Allen noted that a monitor was not assigned to this case. Chairman Allen reported that the complainant alleged that an officer slammed the passenger door of her car several times while her shoe was stuck in the door. The officer then issued the operator of the vehicle a

ticket for parking on the pavement. The complainant claimed that she was not blocking any traffic and felt the ticket unwarranted.

Chairman Allen noted that he reviewed the following: OPS confidential report, synopsis of recorded interviews with the complainant, recorded interview with vehicle occupant on October 27, 2008, intra-departmental correspondence (IDC) from October 27, 2008 from the target officer, and a synopsis of interviews with the owner of Sneaky Pete's on October 27, 2008 which showed that there was no camera in the parking lot and the owner had no recollection of any confrontation going on. Chairman Allen reported that the OPS interviewed the security manager of Sneaky Pete's on October 29, 2008 and followed up on November 3, 2008. There were no witnesses to the event outside of the car. Chairman Allen noted that he also reviewed the ticket that was issued to the complainant, the actual IDC memo, and the call report that the officer logged.

Chairman Allen stated that his motion at the time was to concur with the OPS findings. He reported that the OPS finding regarding the first call handling allegation was *not sustained*, where the review fails to disclose sufficient facts to prove the allegations made in the complaint. He noted that both of the complainant's alleged that the officer slammed the passenger door of the vehicle on the complainant's flip flop. Based on the OPS investigation, the officer stated that he closed the passenger door of the vehicle because the complainant was blocking traffic. The officer further stated that the complainant opened the door again and requested an apology from the officer for touching her door, making no mention of her shoe being in the door. The officer again closed the door and instructed the driver to move the vehicle which she refused to do. Chairman Allen reported that the complainant alleged that the officer closed the flip flop in the door 5 times, which is hard to believe because the complainant would have removed her flip flop after the first or second time it occurred. Chairman Allen stated that the OPS checked with Sneaky Pete's and OTB regarding any video covering the incident, which was unsuccessful. The OPS talked to Sneaky Pete's security. The security officer stated that neither he nor any of his employees witnessed the incident. Chairman Allen stated that based on the conflicting recollection of events between the complainants, the officer, and the lack of independent witnesses, OPS was unable to prove the allegations in the complaint.

Chairman Allen reported that the OPS finding regarding the second call handling allegation was *exonerated*, where the acts which provide the basis for the complaint occurred but the review showed that such acts were proper. The complainant felt that the ticket she received was unwarranted. Based on the OPS investigation, the officer reported that the complainant was blocking traffic and after being instructed several times to move her vehicle she refused, which caused the officer to issue the ticket. Chairman Allen reported that the complainant acknowledged the validity of the ticket by pleading guilty to the charge in Albany Traffic Court.

John Paneto stated that the Board receives a lot of complaints regarding traffic tickets. He added that just because the complainant pleaded guilty to some kind of motor vehicle infraction in traffic court does not make the complainant guilty. Mr. Paneto stated that

when he took a friend to Albany traffic court, he was shocked by the number of people in the court. Mr. Paneto further stated that he did not understand how any rational person would want to go to traffic court to fight a ticket. Chairman Allen stated that he believed that the OPS recorded the information of the ticket because the Board would inquire if they did not.

Chairman Jason Allen moved to concur with the OPS findings on the first call handling allegation as *not sustained*. He noted that the complainant was not present. Reverend Edward Smart seconded the motion. The motion carried unanimously.

Chairman Jason Allen moved to concur with the OPS findings on the second call handling allegation as *exonerated*. Anthony Potenza seconded the motion. The motion carried unanimously.

CPRB No. 65-08/OPS No. C08-614 (Presented by Anthony Potenza)

Anthony Potenza summarized the complaint. Mr. Potenza reported that he reviewed the complaint form, civilian complaint report, OPS report, and general city code Chapter 363-4-B and 363-6-A. Mr. Potenza further reported that based on the investigation, the complainant appeared to be very cooperative and provided the documentation necessary to prove that he was a licensed legal vendor and authorized to collect sales tax. Mr. Potenza stated that the complaint was not about the complainant being a vendor. The complainant believed that there were conflicting opinions from the police department as to whether or not he was allowed to set up a stationary stand to sell soaps and fragrances. Mr. Potenza added that this case had nothing to do with vending refreshments since there is a second code governing refreshments, this is a merchandise case. He explained that based on the OPS investigation, the code was quite clear in stating that it would be unlawful to vend merchandise, other than flowers and balloons and other than from door to door. The complainant could have gone from door to door selling his soaps and fragrances but could not sell them while stationary. Mr. Potenza noted that the code might have been established because selling products while stationary might have interfered with pedestrian traffic and other legitimate businesses in the city of Albany. Mr. Potenza stated that he was unsure whether Rite Aid complained.

Mr. Potenza reported that the complainant alleged he was selling incense, fragrances and soaps on North Pearl Street when two Albany Police Officers approached him and informed him he could no longer sell them due to the fact that his license and tax identification number were no good.

Mr. Potenza reported that the OPS finding regarding the call handling allegation was *exonerated*, where the acts which provide the basis for the complaint occurred but the review showed that such acts were proper. The complainant is alleging that he was not allowed to sell his goods in front of Rite Aid on North Pearl Street where he had set up a table even though he was in possession of a vending permit. Based on the OPS investigation, the officer's actions were proper based on the fact the complainant was in violation of the General Code section 363-4-B which states that it shall be unlawful to

vend merchandise, except flowers and balloons, other than door to door and section 363-6-A which stated that all vendors prohibited from vending in a manner that interferes with pedestrian or vehicular traffic or other legitimate business in the city of Albany. The complainant also provided copies of these General Codes to the reporting detective.

Mr. Potenza noted that the complainant was present. The complainant stated that this issue began in 2004, when the complainant wrote a letter to his Assemblyman. The complainant presented to the Board the return letter he received from the Assemblyman. The letter stated that the complainant could sell his products anywhere in the state. Mr. Potenza stated that he saw the complainant's license and it in fact stated that. The complainant stated that he did not understand why he could not sell when his license was also stamped by the county. According to the license, any veteran that serves 180 days and has an honorable discharge can do this in New York State. The City of Albany is the only place that did not honor that. The complainant handed the board the license pointing to where it had been signed by the county and issued by the state. Mr. Potenza noted that a copy of that license was submitted for the Board to review.

The complainant stated that he thought that it is really unfair that veterans are treated this way. The complainant further stated that he appreciated that the Board took the time to listen to him.

Mr. Potenza asked why, if someone has a valid license and a valid authorization to collect sales tax and in the case of the complainant because he is a veteran it is a statewide license, is the vendor still subject to the rules and regulations of the locality in which he is operating. Board Counsel Patrick Jordan answered in the affirmative and stated that different counties have different rules regarding seatbelts, cell phones, etc. Mr. Jordan explained that in Albany vending is from door to door only. He suggested that the complainant talk to the city council asking them to amend city code to allow for that specific exemption for veterans.

Chairman Jason Allen clarified that since this is a state license the complainant could sell soap in Rochester or Poughkeepsie but because Albany had an ordinance stating that only flowers and balloons can be sold stationary, those are the only things that you can sell. Mr. Jordan replied that if you walk down any street in Albany you will not see any wares on the street unless they get a special permit for that day.

Reverend Edward Smart thanked the complainant for coming and for making sure that all his paperwork was in order. Reverend Smart noted that the complainant was not given a ticket. Reverend Smart asked if this was the first day that the complainant had been selling at that location. The complainant stated that he previously sold the same kind of merchandise right across from the Pepsi Arena [Times Union Center], and moved up to Rite Aid. The complainant stated that he was born and raised in Albany and will be 65 years old next April. He added that he got the idea to sell in front of Rite Aid from seeing another gentleman selling in front of Rite Aid a couple of years ago. The complainant stated that the police never bothered him when he was selling right across from the Pepsi Arena until he moved to the location by Rite Aid. The complainant stated

that he was annoyed that the police told him his tax ID number was no good because it was from Schenectady, and he knew that not to be true. Mr. Potenza stated that with regard to that particular matter, the complainant took it upon himself to get that question answered satisfactorily. The complainant stated that he knew that his tax ID number was good because he was in New York State, but he did not like the way the big police officer approached him.

Anthony Potenza moved to have the board not concur with OPS findings in this matter and allow the complainant to pursue the appropriate measures. Mr. Jordan stated that the complainant was in violation of the general city ordinance, and OPS did a thorough investigation since the exception in the city code did not exist. Chairman Allen noted that the positive thing that came out of this is that the complainant knows that he should talk to his councilman and try to get the ordinance changed.

Anthony Potenza amended his motion to concur with the findings of the OPS on the call handling allegation as *exonerated*. Reverend Edward Smart seconded the motion. The motion carried unanimously.

Reverend Smart offered his business card to the complainant. He stated that the complainant is a revolutionary war soldier from Albany and Albany has a tradition of veterans. He added that he would help the complainant petition the common council. The complainant thanked the Board.

B. Appointment of New Members to the Committee on Complaint Review for April 2009.

The following Board members were appointed to the Committee on Complaint Review For April 2009: Chairman Jason Allen, Ronald Flagg, Marilyn Hammond, John Paneto, Andrew Phelan, Jr., Anthony Potenza and Rev. Edward Smart.

C. Committee/Task Force Reports

By-Laws and Rules

Chairman Jason Allen noted that there was no update.

Mediation

Chairman Jason Allen noted that he mentioned at the last meeting of the Board that the LAPD is focusing on mediation right now. He stated that he read an article about the importance of mediation in resolving disputes and more clearly defining police bias. Chairman Allen reported that he sent the article to the Chief to guide the APD rank and file to accept mediation. Chairman Allen stated that he hopes to hear from the APD regarding this.

Community Outreach

Reverend Edward Smart noted that he and Anthony Potenza went to the Gay, Lesbian, Bisexual, and Transgendered (GLBT) meeting and represented the Board quite well. He added that they were looking forward to working more with the community. Chairman Jason Allen added that this was discussed at the last meeting.

Chairman Allen noted that a meeting was scheduled with the New York Civil Liberties Union (NYCLU) on April 29th. Coordinator of the Board Sharmaine Moseley added that the Board was awaiting a response from NAACP regarding scheduling a meeting with the outreach committee.

Chairman Allen noted that more community outreach meetings needed to be scheduled. Reverend Smart stated that they have visited Hudson Park, Center Square and Park South several times.

Ronald Flagg stated that last week he met with Mr. Ratton, a professor from Brazil, who was looking into civilian review boards and trying to replicate it in the town where he resides in Brazil, which is a very large town of millions. The professor asked how many homicides there were in Albany this year and Mr. Flagg replied around two and the professor stated that there were 999 in a year in this town in Brazil. Mr. Flagg noted that the professor also met with District Attorney Soares and had been in other cities across the country and appreciated the interchange.

Police Department Liaison/Policy Review/Recommendations

Andrew Phelan reported that he met with the OPS and was given a good overview of the early warning system and the direction in which it was going. He added that he met with the OPS to learn about the new program early warning system called IAPRO. Mr. Phelan stated this system would include information on the complainant, the police officer, and how many times these incidents happened.

Chairman Jason Allen asked when the program would be running. Detective Kathy Hendrick responded that they began inputting information in the beginning of the year so they already have two and a half months of information in there. Chairman Allen requested that Mr. Phelan schedule a meeting so the board could learn more about the program.

Chairman Allen stated that he was told that there was going to be a review of the camera SOP coming up soon and wanted to know if it was done. Commander Ronald Matos stated that the SOP is still being hammered out, and there is different equipment that the OPS purchased. The OPS did have the opportunity this week to do some live demos of the system.

Public Official Liaison

Committee Chairman Ronald Flagg noted that there was nothing new to report.

Task Force on Monitors

Task Force Chairman Jason Allen noted that there was nothing new to report.

D. Report from the Government Law Center

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-two (52) active complaints before the Board for review. Of those fifty-two (52) active complaints, eight (8) were reviewed at tonight's meeting, which leaves the Board with forty-four (44) active complaints. Out of those forty-four (44) active complaints, six (6) are ready to go on the agenda for review.

It was further reported that three hundred and ten (310) complaints have been closed. The total number of complaints that remain suspended from review is six (6). The total number of complaints filed to date is three hundred and sixty-eight (368).

It was reported that since the Board's last meeting, the GLC received seven (7) grievance forms, bringing the total number of forms received to seventy-four (74). The GLC has reached out to all seventy-four (74) individuals, and has received eighteen (18) CPRB complaint forms.

Board Vacancies/Re-appointments

It was reported that new board member Jean Gannon completed her orientation with OPS and GLC. Marilyn Hammond and Ms. Gannon have been enrolled in APD Citizen Police Academy. It was further reported that Ms. Hammond and Ms. Gannon will serve on at least one of the board's committees. Ms. Hammond stated that she would like to serve on the Public Official Liaison Committee.

Business Cards

It was reported that business cards have arrived for board members who requested them and will be distributed.

Next Board Meeting

It was reported that the next Board meeting is scheduled for Thursday, April 9th at the Albany Public Library.

E. Report from the Office of Professional Standards

Commander Ronald Matos reported that Chief Stephen Reilly was unable to make it to tonight's meeting. Commander Matos stated that he worked in criminal investigations for most of his career as a detective, then as a sergeant and just left the rank of lieutenant. Commander Matos further stated that he just started working last week with the OPS and a lot of this is new to him.

Commander Matos reported that the OPS underwent a staff change. Detective Michael Romano is no longer with the OPS. Detective Michael Dougherty is now one of the OPS detectives. Commander Matos noted that Mr. Dougherty is a 12 year police veteran, has been with the APD for seven years and now works as one of the detectives for the OPS. Commander Matos stated that they look forward to working with the Board.

F. Report from the Chair

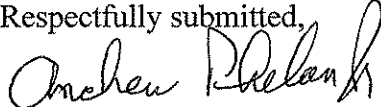
Chairman Jason Allen noted that there was nothing new to report.

V. Public Comment

The complainant who filed CPRB No. 65-08 thanked everyone especially for the idea to seek advice from common council.

VI. Adjournment

Chairman Jason Allen moved to adjourn the meeting. Ronald Flagg seconded the motion for adjournment. The motion carried unanimously. The meeting adjourned at 8:05 p.m.

Respectfully submitted,

Andrew Phelan, Jr.
Secretary