

**City of Albany  
Citizens' Police Review Board Public Meeting  
Albany Public Library  
161 Washington Avenue- Large Auditorium  
June 11, 2009  
6:00 p.m. - 8:00 p.m.**

**Present:** Ronald Flagg, Jean Gannon, John Paneto, Andrew Phelan, and Anthony Potenza.

**Absent:** Jason Allen, Daniel Fitzgerald, Marilyn Hammond, and Reverend Edward Smart.

**I. Call to Order and Roll Call**

Acting Chairman Ronald Flagg called the meeting to order at 6:03 p.m.

**II. Approval of the Agenda**

The agenda was reviewed. John Paneto moved to approve the agenda. Jean Gannon seconded the motion. The motion carried unanimously.

**III. Approval of the January 26, 2009 Meeting Minutes**

The January 26, 2009 meeting minutes were reviewed. John Paneto moved to approve the meeting minutes. Jean Gannon abstained from voting on the motion. The motion failed 4-1.

**IV. Old Business**

**CPRB No. 2-07/OPS No. C07- 112 (Presented by John Paneto)**

John Paneto stated that this complaint was extensive. Mr. Paneto reported that there were three (3) to four (4) persons involved in this complaint. Mr. Paneto noted that the complaint was filed with the Board on February 16, 2007. The complaint was initially reviewed by the Board on April 15, 2008. The Board sent a letter to OPS on May 13, 2008 for additional information. The Office of Professional Standards (OPS) replied to the letter on May 27, 2009. Mr. Paneto noted that the monitor Richard Lenihan who was assigned to the case was present.

Mr. Paneto reported that the incident took place on June 20, 2006 around 10:00 p.m. in front of the complainant's residence. Mr. Paneto summarized the complaint. The complainant alleged that while in front of her house her civil rights were violated, she was falsely arrested, subjected to excessive and unreasonable force, racial discrimination, rudeness. The complainant further alleges that excessive and unreasonable force was used against her daughter after neighborhood children were harassing her 13 year old daughter. According to the complainant, while she was being questioned by police, she heard her daughter scream because one of the other kids had yelled something at her. When the complainant started to walk away from the officer, the complainant alleges that

the officer grabbed her by the arm and would not let go. The complainant then heard her daughter yell again and then heard what she believed to be the sound of someone falling to the ground. When she turned to look, the complainant saw her daughter on the ground with an officer on top of her holding both her arms behind her back. The complainant stated that the officer did not allow her to go to her daughter.

Mr. Paneto reported that there are five allegations in the complaint. The complainant has four personal allegations and one allegation on behalf of her daughter, who is a minor. Mr. Paneto summarized the findings of OPS on the arrest authority and procedures allegation of false arrest as **unfounded**. Mr. Paneto reported that based on the OPS investigation, and on the recollection of events by both officers at the scene and the witnesses, it appears the arrest was lawful. The letter for dismissal of the charges indicated that the accusatory instruments were not completed properly and were lacking information, not the fact that the charges were false. The Albany Police Department (APD) officer who filed the report made a clerical error, which resulted in the court dropping the charges. Mr. Paneto stated that based on the OPS investigation, it was a minor clerical error and in no way an indication that the arrest was false. Mr. Paneto noted that in the letter sent by the Board to OPS, the Board questioned whether OPS had conducted enough interviews of the witness. Mr. Paneto stated that he would address that question next.

Mr. Paneto summarized the findings of the OPS on the use of force allegation that the officer grabbed the complainant by her arm and restrained her, as **unfounded**. Mr. Paneto reported that based on the OPS investigation, the officer indicated that she grabbed the complainant when the complainant posed a threat towards a state trooper. The state trooper interacted with the complainant's daughter in an attempt to prevent her from fighting with other individuals. A witness indicated that the complainant started "bugging" and became verbally abusive towards the officers. The trooper instructed the complainant to back up and calm down. The complainant responded in the negative. The trooper repeated the command and further instructed the complainant that if she did not comply she would be arrested. The complainant still refused to comply. The complainant began pulling away from the officers, yelling and screaming. The officers eventually were able to handcuff the complainant.

Mr. Paneto summarized the findings of OPS on the conduct standards allegation that the officer was rude and disrespectful, as **not sustained**. Mr. Paneto reported that based on the OPS investigation, since there were conflicting recollections of events between the officers, witnesses, and the complainant, there was not sufficient information to prove or disprove the allegation.

Mr. Paneto summarized the finding of OPS on the conduct standards allegation that the arrest of the complainant was racially motivated, as **unfounded**. Mr. Paneto reported that based on the OPS investigation, the officers stated that the arrest was not based on race. The witness did not indicate that race played a role and stated that it appeared the officers did not want to arrest anyone; they just wanted everyone to leave. Furthermore, the witness added that the officers remained very calm even though everyone else was still

carrying on. Based on these facts, it appeared that the act of racial discrimination did not occur.

Mr. Paneto summarized the findings of the OPS on the use of force allegation on behalf of the juvenile daughter, that an officer used force which caused the complainant's daughter to fall as **unfounded**. Based on the OPS investigation, the state trooper stated that while he was attempting to prevent the daughter from engaging in a physical altercation with another person, the trooper stood in front of her and she continued towards the other person refusing to follow orders given by the state trooper. Based on the state trooper's statement, while he was attempting to prevent this altercation he walked backwards and fell which caused him and the complainant's daughter to fall down together. Mr. Paneto reported that based on the witness' statement, the daughter's actions caused her and the trooper to fall to the ground while the officers were trying to control the situation. Mr. Paneto further reported that this portion of the complaint has been referred to the New York State Police.

Mr. Paneto read the questions sent by the Board to OPS for further investigation:

*1) What was the forensics or nature of the officer and the complainant's daughter's fall to the ground?*

Mr. Paneto reported that based on the OPS investigation, the trooper reported that the daughter attempted to walk around him and refused to follow the orders being given by the trooper. At this point the trooper stated that he placed his hands on the upper arm and shoulder area of the daughter in an attempt to prevent her from reaching the group. She still refused to follow the orders being given by the trooper and then pushed through the trooper with her body by leaning into him and walking. The trooper began to walk backwards due to this encounter and in doing so he tripped and fell and was unable to regain his balance. Since the complainant's daughter was still leaning on him, she fell forward. The trooper did not see how she fell or what part of her body hit the ground due to the fact that he was trying to break his own fall. Upon hitting the ground, the trooper rolled off the ground and situated himself on top of the daughter and pinned her to the ground. He stated that at the conclusion of the incident he had a conversation with the daughter about the fall. The complainant's daughter acknowledged to the state trooper that it was an accident. At that time, he learned that the complainant's daughter was 13 years old although at the time of contact he believed her to be much closer to 16-19 years old. According to the trooper, the complainant's daughter did not appear to have any physical injury nor did she make any complaint of pain.

Mr. Paneto stated that the teenager involved in this incident was rather large framed and mistaken by everyone present to be an adult, only later on did the officers including the state trooper recognize that she was a minor.

*2) How did the complainant's daughter receive injuries from the fall?*

Mr. Paneto reported that based on the OPS investigation, the trooper stated that he could not see how the daughter fell or what part of her body hit the ground because he was trying to break his own fall.

*3) Did OPS contact the complainant's witnesses?*

Mr. Paneto reported that a second juvenile may have been a potential witness. All the witnesses with the exception of this juvenile were contacted. At the request of the complainant that the OPS speak with the juvenile, numerous attempts were made to speak with him. Neither the complainant nor her attorney contacted the OPS after receiving registered mail requesting to speak with the juvenile. Based on the lack of cooperation by both the complainant and her attorney, the OPS was unable to speak with the juvenile.

*4) What did the investigation reveal in relation to the complainant's allegation that the officer called her daughter an "animal"?*

Mr. Paneto reported that the complainant's initial complaint to the Board did not mention the "animal" comment. Mr. Paneto added that apparently this comment was heard by the monitor at the monitor's interview with the OPS. The complainant's attorney was present at the interview. The attorney was upset about the comment, but it was never in the original report. The complainant's attorney refused to cooperate with the OPS in its investigation.

Mr. Paneto noted that the monitor was present. Mr. Paneto further noted that neither the complainant nor her attorney were present. Mr. Paneto asked if the Board had any questions. The members of the Board replied in the negative.

Acting Chairman Ronald Flagg asked if monitor Richard Lenihan if he had anything to add. Mr. Lenihan replied in the negative.

John Paneto moved to concur with the OPS findings on the authority and procedures allegation of false arrest as **unfounded**. Anthony Potenza seconded the motion. The motion carried unanimously.

John Paneto moved to concur with the OPS findings on the use of force allegation that the officer grabbed the complainant by her arm and restrained her as **unfounded**. Andrew Phelan, Jr. seconded the motion. The motion carried unanimously.

John Paneto moved to concur with the OPS findings on the conduct standards allegation that the officer was rude and disrespectful as **not sustained**. Anthony Potenza seconded the motion. The motion carried unanimously.

John Paneto moved to concur with the OPS findings on the conduct standards allegation that the arrest of the complainant was racially motivated as **unfounded**. Andrew Phelan, Jr. seconded the motion. The motion carried unanimously.

John Paneto moved to concur with the OPS findings on the use of force allegation on behalf of the juvenile daughter, that an officer, now identified as a state trooper, used excessive force which caused the complainant's daughter to fall as *unfounded*. Mr. Paneto noted that this has been referred to the New York State Police. Andrew Phelan, Jr. seconded the motion. The motion carried unanimously.

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

Ronald Flagg reported that this was an old complaint that was initially reviewed at the Board's March 15, 2009 meeting, but returned to the OPS for further investigation. Mr. Flagg summarized the complaint. The incident took place on December 22, 2007 at the Bayou Café, where a gentleman was accused of taking the watch of someone and an altercation ensued as a result. The watch was taken by the bouncer and then given back to the person who alleged the watch was taken from him. Mr. Flagg stated that the Board's concerns were drafted into a letter and sent to the OPS as follows:

*1) The complainant stated that one of the officers confronted him and cursed at him. According to the complainant, the complainant's uncle, who is a retired police detective from NYC, was on the phone with the complainant. The uncle allegedly heard someone on the other end of the phone cursing at his nephew and this is not in the final report. Did OPS interview the uncle?*

Mr. Flagg reported that the detective who investigated this case conducted a phone interview of the uncle, who is a retired detective from NYC. The uncle stated that he heard someone cursing in the background, when his nephew was on the telephone. The uncle acknowledged that his nephew was agitated, but the uncle could not tell who was cursing at his nephew on the other end of the phone.

Mr. Flagg stated that he was concerned that one of the officers was allegedly cursing at the complainant, who apparently was drunk, or had been drinking and was agitated, and probably had been acting inappropriately. Mr. Flagg further stated that he had worked in law enforcement and received training from state police, the Department of Corrections, and other law enforcement agencies. He added that at no time did he hear that it was appropriate for an officer to use this kind of language. Mr. Flagg stated that if he was drunk and acting inappropriately, this type of inappropriate language would inflame the situation. An officer has to be focused about trying to get control of the situation, but to use inappropriate language is unacceptable. Mr. Flagg read the next question.

*2) Why were the videotapes not requested before they were destroyed given that the policy is that they are kept for two (2) weeks and the complainant was within that time frame?*

Mr. Flagg reported that the incident occurred on December 22, 2007. The detective who conducted the investigation did not get the case until January 4, 2008. The detective did

not get to the Bayou Café until February 9, 2008 because of his caseload. The detective did not know that the Bayou Café had an internal regulation to destroy tapes in two weeks. Jean Gannon clarified that it was the Pearl Café and not the Bayou Café. Mr. Flagg stated that was why the police department did not have access to the videotapes. Mr. Flagg read the next question.

*3) Was there an investigation as to whether the current owner of the watch was in fact the legitimate owner of the watch?*

Mr. Flagg reported that in reference to the last concern as to who was the actual owner of watch both people stated that they purchased the watch from Zales Jewelers in Ohio and in Long Island. Based on the investigation, both stores were called. The purchase of the watch by either gentleman could not be confirmed.

Mr. Flagg reported that in the initial complaint, the complainant alleged that the officer told the complainant to “go home.” The officer was dealing with a number of crowds that night. The officer told the complainant to go home to subdue the situation. The officer followed up later on. Based on the investigation, the officer dealing with the crowd told the complainant to “go home” so he could move on to other areas that he was more concerned about. Ronald Flagg moved to concur with the OPS recommendation that the first conduct standards allegation be closed as ***unfounded***. Jean Gannon seconded the motion. The motion carried unanimously.

Mr. Flagg reported that there was no evidence to support the second allegation that the sergeant was agitated and began to yell at the complainant when the complainant asked the officer for his name and badge number. Mr. Flagg recommended that the Board concur with the OPS finding of ***not sustained***. Ronald Flagg moved to concur with the OPS findings on second conduct standards allegation as ***not sustained***. Andrew Phelan, Jr. seconded the motion. The motion carried unanimously.

## **V. New Business**

### **A. *New Complaints***

#### **1. New Complaints Received Since May 12, 2009 Meeting**

Andrew Phelan, Jr. reported that seven (7) new complaints had been received by the Board since its May 12, 2009 meeting. Mr. Phelan read a summary of each new complaint.

#### **CPRB No. 22-09**

The complainant alleges that on March 3, 2009, on the North Side of 9 Trinity, the complainant was arrested for a criminal sale of a controlled substance and unlawful possession of Marijuana. The complainant alleges that he was injured during the arrest by the use of unnecessary force causing the complainant cuts and a back injury.

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

**CPRB No. 23-09**

The complainant alleges that he witnessed a girl getting stabbed by another girl. The complainant further alleges that police officers approached his car and asked for his license and registration. According to the complainant, when the complainant tried to tell them about the stabbing the officers refused to listen and the girl who stabbed the victim ran away. The complainant believes that if the officer had listened to the complainant they could have caught the assailant.

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

**CPRB No. 24-09**

The complainant alleges that on May 19, 2009, sometime after 3:00 p.m., the complainant observed a police officer on a bicycle passing near the complainant. According to the complainant, the officer was looking at the complainant and talking into the radio. Sometime after 6 p.m., the complainant was taking pictures when the complainant heard someone call him an "asshole." When the complainant turned around he saw a white male talking on a cell phone and a police car driving past. Later, as the complainant was walking back home, the complainant noticed the officer standing in front of a laundromat on Delaware Ave., looking at the complainant and talking on the cell phone. The complainant later saw the same officer in the area of the complainant's house talking on his radio and then the officer left. The complainant believes that he has become a target of the police department, politicians, and others because of the complaints he has filed.

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

**CPRB No. 25-09**

The complainant alleges that while he was at an Albany Common Council meeting an officer told the complainant "How I like this circus." The complainant replied that there were more circuses and investigations to come. The complainant alleges that the officer stated that the officer saw the tape of the rape in the Memorial Hospital men's bathroom. According to the complainant, the complainant worked at Memorial Hospital in 2005 and heard the rumor of a camera in the men's bathroom. The complainant further alleges that an officer at the Common Council meeting was joking with his lawyer every time a council member asked a question.

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

### **CPRB No. 26-09**

The complainant believes that a member of the APD should not be taking a vacation when there is crime happening in the city of Albany.

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

### **CPRB No. 27-09**

The complainant alleges that he was approached numerous times by the same two police officers and harassed. On April 20, 2009, the complainant was sitting in his friend's car when the complainant was approached by two officers and arraigned on a narcotics charge. On April 26, 2009, when complainant was released, the complainant was approached by the same two officers again. On April 29, 2009, the complainant was pulled over for a broken taillight and driving without a license and the officer stated "I know you don't have a license because I just arrested you last week." The complainant alleges the officer then illegally searched the complainant's car. The complainant told the officers that he was going to file a complaint against them. When the complainant went to file a complaint against the officers, the complainant saw the two officers pull alongside the police station, laugh, and drive away.

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

### **CPRB No. 28-09<sup>1</sup>**

The complainant was a passenger in a vehicle that was pulled over for a traffic infraction. The complainant alleges that an officer illegally searched the complainant without probable cause. The officer allegedly searched the complainant in the street and cut open the complainant's underwear and found drugs. The driver of the vehicle that the complainant was riding in was also searched by the officer and had his underwear cut open. The complaint alleges that the officer who cut the underwear was told by the other officer present "You sure you want to do this." According to the complainant, there is a camcorder recording the whole process. The officer allegedly replied "I don't give a F\*\*\*."

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

## **2. New Complaints for Review**

### **CPRB No. 2-08/OPS No. C08-160 (Presented by Andrew Phelan, Jr.)**

Andrew Phelan, Jr. stated that on June 4, 2009 and June 9, 2009, he went to the OPS and reviewed the case file. Mr. Phelan reported that the incident in the complaint took place

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<sup>1</sup> This complaint was filed by a third party, the driver of the vehicle in the complaint and not the complainant.



on December 27, 2007. He noted that there are five conduct allegations and one use of force allegation. Mr. Phelan read the complaint verbatim.

*The complainant alleged that members of the Albany Police Department pulled up and said, "Where's the crack man" and started laughing at him. Three to four back up officers allegedly called the complainant a "crack head" and "drug dealer." The complainant alleges that he was searched without a search warrant or without his permission. The complainant further alleges that the officers only found a hammer that the complainant uses for loose dogs. He alleges that the officers told him that they received a call that a black male wearing a black jacket with silver dollars on it was selling drugs and bothering people and that the complainant fitted the description. The complainant further alleges that the officers took the complainant's crutch and kept it for at least a half hour. The complainant claims that three to four other officers started mocking him to the point that he was intimidated and he thought the officers were going to shoot him. The complainant alleges that the officers asked him for his name and then ran his name on the computer for warrant(s).*

Mr. Phelan summarized the findings of the OPS on the first conduct standards allegation that the complainant alleged an officer stated, "what you getting into tonight," "where's the crack man," 3-4 backup officers started mocking and laughing at him, calling him a crack head, drug dealer and then stated, "Lie to us one more time and you will go to jail like the rest of those animals." Mr. Phelan stated that the OPS recommended that this allegation be closed as **not sustained**. Mr. Phelan reported that based on the OPS investigation, the officer stated that he did not mock, laugh, call the complainant a crack head or dealer, nor did he state "What you getting into tonight" or "Where's the crack man." The officer's partner stated that at no point did he call the complainant a crack head or drug dealer. The first officer could not recall if a second unit was at the scene. He believed that another unit rolled by and asked was he okay. The first officer could not recall anybody else getting out and assisting them. The complainant could not provide any further clarification of the officers during a follow up interview that was conducted at his residence on March 4, 2008.

Mr. Phelan summarized the findings of the OPS on the second conduct standards allegation that the complainant alleged three to four back-up cops told his friend to get in the back of their vehicle. Mr. Phelan stated that the OPS recommended that this allegation be closed as **no finding**. Mr. Phelan reported that based on the OPS investigation, the complainant was unavailable to clarify the complaint. The OPS conducted a phone interview of the complainant's witness/friend. The witness/friend did not cooperate with the investigation and wanted nothing to do with it. Additionally, the witness/friend was not very happy that the complainant listed him as a witness. Mr. Phelan further reported that there was no indication that there were additional officers on

the scene. The witness/friend's account may have provided clarification of what occurred at the time of the incident.

Mr. Phelan summarized the findings of the OPS on the third conduct standards allegation that the officer took the complainant's crutch from him and kept it for at least a half hour. Mr. Phelan stated that the OPS recommended that this allegation be closed as **exonerated**. He reported that based on the OPS investigation, both officers stated that they took the crutch away from the complainant for officer safety. The officer specifically stated that he took the crutch away so that it could not be used as a weapon. The officer stated that he normally would have someone with a crutch lean on the vehicle and lean the crutch on the vehicle. Mr. Phelan reported that with respect to the complainant alleging that the officer kept his crutch for at least a half hour, it should be noted that a check of the unit history indicated that at 1904hrs, the officer was dispatched to Lark Street/Orange Street to assist another officer. The unit history indicated that the unit was "dispatched" and "arrived" at 1904hrs, placing him in the immediate area or on the scene at the time of the incident at Lark Street/Orange Street. Based upon the time indicated on the printout, the complainant's name was 'run' at 1842hrs. At 1904hrs, the officer was at the location of Lark Street/Orange Street. The officer's account of the approximate total time of the stop ranged from 3-5 minutes. The OPS attempts to locate additional witnesses of the incident were negative.

Mr. Phelan summarized the findings of the OPS on the fourth conduct standards allegation that the complainant alleged that an officer searched him without warrant or his permission, searched his pockets, his coat pockets, lower pants lifting both right and left, stuck his fingers in his socks and searched his hat. Mr. Phelan stated that the OPS recommended that this allegation be closed as **exonerated**. Mr. Phelan reported that based on the OPS investigation, the officer stated that he has worked the Grand Street area prior, while he was assigned to the Community Response Unit. While on patrol, the officer drives slow to observe the area. The officer indicated that the complainant was facing the police car with his jacket opened, and the officer observed under the shirt, a rigid type object protruding and poking away from the complainant's body. The officer indicated that he recently received training from the APD with respect to "different observations they can make of people carrying concealed weapons, specifically firearms." The complainant was stopped and the officer engaged him in conversation. That was when the officers found out that the complainant had a hammer.

Mr. Phelan summarized the findings of the OPS on the use of force allegation that the officer grabbed both of the complainant's arms and squeezed them tight. It is recommended that this allegation be closed as **not sustained**. Mr. Phelan reported that based on the OPS investigation, the officer stated that he did not recall grabbing the complainant by both arms and squeezing them tight. However, it was in response to a weapon, which the officer thought he observed. If the complainant did not comply when he was told to show his hands, the officer would have gone "hands on" at that point. The officer did not recall grabbing the complainant's arms forcibly or detaining him forcibly. The officer stated the complainant was cooperative and no struggle ensued.

Mr. Phelan summarized the findings of the OPS on the fifth conduct standards allegation that the officer told him that they received a call “that some black guy wearing a black jacket with silver dollars on them was selling drugs and bothering people.” Mr. Phelan stated that the OPS recommended that this allegation be closed as ***not sustained***. Mr. Phelan reported that based on the OPS investigation, both officers indicated that they did not receive information that a black male with silver dollars on his jacket was selling drugs. The officer was not aware of any officers that may have been on the scene who received that information.

Mr. Phelan reported that as a result of the investigation, the officers were found to be in violation of the following sections of the Albany Police Department’s Standard Operating Procedure (SOP) Article #14.1.38, because the officers failed to notify the dispatcher and failed to write a “Field Interview Card.” Mr. Phelan stated that the OPS did a thirteen (13) page report on this complaint. Mr. Phelan noted that monitor Richard Lenihan was assigned to this case. His report was very thorough. Mr. Phelan asked Mr. Lenihan if he had anything to add. Mr. Lenihan responded in the negative. Mr. Phelan noted that the complainant was not present.

Andrew Phelan moved to concur with the OPS findings on the first conduct standards allegation that the complainant alleged that an officer stated, “what you getting into tonight”, “where’s the crack man,” three to four backup officers started mocking and laughing at him, calling him a crack head, drug dealer and then stated, “Lie to us one more time and you will go to jail like the rest of those animals,” as ***not sustained***. Anthony Potenza seconded the motion. The motion carried unanimously.

Andrew Phelan moved to concur with the OPS findings on the second conduct standards allegation that the complainant alleged that three to four backup cops told his friend to get in the back of their vehicle, as ***no finding***. Jean Gannon seconded the motion. The motion carried unanimously.

Andrew Phelan moved to concur with the OPS findings on the third conduct standards allegation that the officer took his crutch from him and kept it for at least a half hour, as ***exonerated***. Anthony Potenza seconded the motion. The motion carried unanimously.

Andrew Phelan moved to concur with the OPS findings on the fourth conduct standards allegation the complainant alleged an officer searched him without warrant or his permission, as ***exonerated***. Anthony Potenza seconded the motion. The motion carried unanimously.

Mr. Phelan moved to concur with the OPS findings on the use of force allegation that the officer grabbed both of the complainant’s arms and squeezed them tight, as ***not sustained***. Jean Gannon seconded the motion. The motion carried unanimously.

Mr. Phelan moved to concur with the OPS findings on the fifth conduct standards allegation that the officer told him that they received a call “that some black guy wearing a black jacket with silver dollars on them was selling drugs and bothering people,” be

closed as **not sustained**. Jean Gannon seconded the motion. The motion carried unanimously.

**CPRB No. 69-08/OPS No. C08-635** (Presented by Anthony Potenza)

Anthony Potenza stated that a monitor was assigned to the complaint. He noted that the complaint took place on October 3, 2008. Mr. Potenza read the complaint verbatim:

*The complainant alleges that he was just about to drive away after leaving his store on Lark/Clinton. An officer pulled up behind him from Clinton. The complainant slightly opened the door to inform the officer that he had just come out of the store. The officer exited his vehicle and asked the complainant to show proof of license and registration. The complainant alleges that the officer instructed him to roll down his window. The complainant complied and opened the window half way. The complainant claimed that the officer for no reason opened the driver's door where the stop initiated. The complainant told the officer "what are you doing you have no right to open the door." Through all of this, the complainant was looking for his I.D. and registration. He is now leaning against the door. As another officer drove by, the officer proceeded to grip his right hand firmly around the complainant's left arm. The complainant suffered a sprained elbow and was released from the hospital with a sling the next day. The complainant alleged that the officer snatched him out of the vehicle. The complainant told the officer to get his hands off of him. The officer had no right to use force since the complainant complied. The officer then asked the complainant to place his hands behind his back, then on top of his head. He was told to stand with his hands on his head until his car was checked and searched and nothing was found. The complainant's car was towed.*

Mr. Potenza stated that he reviewed a number of documents relating to this case. He noted that he reviewed the CPRB civilian complaint form, the OPS confidential report, police intra-departmental correspondence, rules regarding motor vehicle stops and towing and impoundment, call record, field investigation report, conduct report, no standing ticket, vehicle towing report from the call agency, the official release of the complainant's medical records, and the emergency room discharge report.

Mr. Potenza summarized the findings of the OPS on the use of force allegation. The officer gripped the complainant's right hand firmly around his left arm, so firmly that the complainant suffered a sprained elbow. Mr. Potenza stated that the OPS recommended that this allegation be closed as **exonerated**. Mr. Potenza reported that based on the OPS investigation, the complainant was non-complaint, uncooperative and highly aggressive during the stop which was initiated as a result of him being parked illegally. The

complainant was non complaint, very uncooperative, and aggressive. Based on the investigation, the complainant was not physically aggressive. The complainant was verbally aggressive and non-compliant.

Mr. Potenza reported that the officer indicated that as he approached the driver's side window he spoke with the complainant but could not see the complainant clearly due to the tinted windows which were cracked about one inch. The officer stated that the complainant reached down by the console area at which time the officer told the complainant to roll down his window so that he could have a clear view during the interview for officer safety reasons. The complainant refused. Mr. Potenza reported that the complainant, by his own admission, stated the window was "slightly opened," which is consistent with the officer's accounts. The complainant further stated that the officer instructed him to roll down his window; he did exactly what he was asked. The complainant rolled down the window "exactly half way" for the officer to conduct the procedure with no problem. The procedure was to inspect the vehicle and have a clear view through the window into the vehicle. The complainant added that the officer asked him to roll down his window all the way. The complainant told the officer that he did not have to. Mr. Potenza reported that the complainant's actions and response were clearly indicative of his non-complaint behavior during his interaction with the officer. At the time of the stop the complainant was considered to be in custody. It was not for the complainant to determine and/or dictate whether or not the window was rolled down enough for the officer to sufficiently and effectively perform his official duties. The complainant was directed by an on-duty uniformed officer to roll his window all the way down, which is normal procedure during a motor vehicle stop. The officer further stated that the complainant was not physically aggressive, but he was verbally aggressive and non-complaint. Both officers indicated the complainant got out of the vehicle on his own accord. The first officer indicated that he opened the door, however he did not have to physically grab or take the complainant out of the vehicle. The officer stated that at no time did he use excessive force on the complainant nor did the complainant complain of any pain during the stop. The second officer stated that he never saw the first officer use any kind of force on the complainant and he never complained of any pain in his presence.

Mr. Potenza noted that this is all substantiated in reviewing the intra-departmental correspondence that the officers were requested to submit. Mr. Potenza reported that the second officer stated that he never saw the other officer use any force. The complainant's medical documents indicated that he was diagnosed with a sprained elbow; however it also indicated that he had full range of motion. The complainant was offered medication but stated he did not need any medications at this time.

Mr. Potenza reported that the complainant indicated that he had witnesses. Mr. Potenza stated that this is another situation where without any witnesses it is extremely hard to ascertain the validity or the accuracy of the complainant's allegations. The OPS attempted to contact witnesses and look for witnesses in this case and could find none.

Mr. Potenza noted that the monitor concurred with the findings of the OPS. Mr. Potenza stated we have this situation of a person being uncooperative and non-compliant with an officer. The complainant received a ticket for no standing as a result of the stop. The vehicle was towed because the complainant did not have a valid license. The complainant had a permit. Anthony Potenza moved to concur with the OPS finding in the use of force allegation as *exonerated*. Andrew Phelan seconded the motion. The motion carried unanimously.

Mr. Paneto asked if the complainant received a ticket for the tinted windows on the vehicle. Mr. Potenza replied in the negative. He stated that none of the documentation he reviewed stated that the complainant got a ticket for tinted windows.

Monitor George Kleinmeier stated that it was noted in the officer's statement that the officer gave the complainant one ticket because the complainant was such a handful to deal with. Mr. Potenza stated that it was reflected in the documentation that the complainant was more than a handful to deal with.

Coordinator of the Board Sharmaine Moseley stated there was more than one allegation on this complaint. Jean Gannon replied that it was all written up as one on the OPS report but it was broken down further on the monitor's report. Mr. Potenza noted that in the OPS report only one allegation was listed. Detective Hendrick stated that when the information was sent to her she did not get all the information so her report only reflects use of force. Detective Hendrick will resubmit the report with the two conduct standards allegation.

Anthony Potenza withdrew his motion to close the use of force allegation. Acting Chairman Ronald Flagg stated that this complaint will be reviewed again at the Board's next meeting. Mr. Potenza apologized that he read the monitor's report and did not pick up the two additional allegations.

**CPRB No. 11-09/OPS No. CC09- 017 (Presented by Anthony Potenza)**

Mr. Potenza stated that there was no monitor assigned to the complaint. Mr. Potenza summarized the complaint. He reported that the complainant alleged that his case was intentionally being kept open to hold up his insurance claim. The complainant further alleged that the detective stated that he did not believe the complaint about the incident.

Mr. Potenza stated that he reviewed the OPS confidential report, the police officer's IDC, APD incident report, the call printout, the vehicle theft investigation report, stolen vehicle recovery report, APD investigation report, and correspondence to the complainant's insurance company. Mr. Potenza stated that the OPS report mentioned an incident but the incident is not really explained because the incident is not what the complainant is complaining about but what occurred as a result of the incident. Mr. Potenza further stated that the incident was that the complainant was stopped when driving his vehicle by another vehicle that pulled in front of him. The complainant was forced to stop and get

out of his vehicle. The complainant claimed that the passengers who were in the other vehicle stopped the complainant's vehicle and then hijacked his vehicle.

Mr. Potenza summarized the findings of the OPS on the first call handling allegation that the detective stated that he did not believe the complaint about the incident. Mr. Potenza stated that the OPS recommended that this allegation be closed as **exonerated**. Mr. Potenza reported that based on the OPS investigation, the incident took place at two different locations. The complainant initially reported that he took a cab from the incident to his house. Then the complainant stated that he walked home from N. Pearl St. and Loudonville Rd. This is substantiated in the documentation by the officers. The complainant told the detective that he had a cell phone but did not report the incident until 1 ½ hours later. He said that he only contacted police because his wife made him. The audio recording of the 911 call indicates the unwillingness by the complainant to report the incident and provide the necessary facts. The complainant's refusal to take a polygraph indicated that he was unwilling to cooperate with the investigation. The detective admitted to telling the complainant that he did not think the complainant was telling the truth.

Mr. Potenza summarized the findings of the OPS on the second call handling allegation, where the complainant alleged that his case was intentionally being kept open to hold up his insurance claim. Mr. Potenza stated that the OPS recommended that this allegation be closed as **unfounded**. Mr. Potenza reported that based on the OPS investigation, the information obtained from the 21<sup>st</sup> Century Insurance indicated that they were conducting their own investigation into the matter in an attempt to authenticate the facts given by the complainant. Mr. Potenza stated that it was unknown what the status of this case was. The allegation that the APD was keeping the case open so the complainant could not get a settlement from his insurance company was not true because the OPS closed their investigation on March 18.

Ms. Gannon asked if the case was being actively worked on by APD during that whole 3 month period or was it being held up to being closed. Mr. Potenza replied that nothing that he reviewed indicated that the case was being held up. It was being actively investigated.

Mr. Potenza reported that the claims representative for the insurance company indicated that the reason why the insurance company's investigation was ongoing was based on the complainant's many inconsistencies along with his revoked driver's license, lack of reporting the incident in a timely manner, the keys were with the vehicle, and the vehicle was found to have been involved in a property damage auto accident. In addition, they attempted to contact the complainant in order to schedule an examination under oath which had not taken place as of March 31, 2009. The APD case was closed on March 18, 2009 after the investigation was completed. The insurance company is continuing their own investigation which is separate from the police investigation.

Mr. Flagg asked if there was anything to substantiate or support the complainant's allegation that the case was being held up or slowly being investigated. Mr. Potenza

replied that the delay was because the insurance company was investigating the validity of the complainant's claim. Ms. Gannon stated that her question was not what the insurance company was doing, but were there things in the case file that indicated that the police were actively working it up until they closed at on 3/18. Mr. Potenza replied in the affirmative.

Mr. Paneto stated that he found this to be a malicious complaint against the APD. If someone steals his vehicle he would be irritated and would probably call everybody. For someone to wait an hour and a half to make an incident report on a stolen vehicle seemed to be highly suspicious almost to the point of collusion to try to seek an insurance claim. Mr. Paneto stated that he did not see any wrongdoing by the police but by the citizen for making a false allegation.

Anthony Potenza moved to concur with the OPS finding for the first call handling allegation as *exonerated*. Mr. Potenza stated that all the documentation supports this finding. Mr. Potenza would put incident in quotes because the complainant's car being hijacked and the complainant waits an hour and half later to call it in seems improbable. John Paneto seconded the motion. The motion carried unanimously.

Anthony Potenza moved to concur with the OPS finding for the second call handling allegation as *unfounded*. Andrew Phelan seconded the motion. The motion carried unanimously.

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

The following Board members were appointed to the Committee on Complaint Review for July 2009: Ronald Flagg, Jean Gannon, John Paneto, Andrew Phelan, Jr. and Anthony Potenza.

*C. Approval of 2008 Third Quarterly Report*

The 2008 Third Quarterly Report was reviewed. Acting Chairman Ronald Flagg moved to approve the report. Andrew Phelan, Jr. seconded the motion. The motion carried unanimously.

*D. Committee/Task Force Reports*

By-Laws and Rules

Acting Chairman Ronald Flagg noted that Committee Chairman Jason Allen was not present.

Community Outreach

Anthony Potenza reported that a few weeks ago he met with the Center Square Neighborhood Association. He stated that it was a positive meeting. There were seven



(7) people from the neighborhood association present at the meeting. Mr. Potenza stated that he discussed the operations of the Board and what the Board does. Mr. Potenza further stated that one (1) member of the neighborhood association was very surprised that the names of officers were not given to the Board when handling complaints. Mr. Potenza noted that at the meeting there was one person who was familiar with the CPRB operations since that person had attended a few of the CPRB meetings as an observer.

Mr. Paneto commented that any neighborhood association that has more than five (5) people is a crowd. Mr. Potenza stated that it was sparsely attended. Mr. Potenza noted that he submitted a written report to the Government Law Center. Acting Chairman Ronald Flagg reported that Chairman Jason Allen attended a meeting with the Hudson Neighborhood Association. Jean Gannon stated that she also attended that meeting and it went well.

#### Mediation

Acting Chairman Ronald Flagg noted that Committee Chairman Jason Allen was not present.

#### Police Department Liaison

Committee Chairman Andrew Phelan reported that he met with the OPS Commander Ronald Matos to discuss the cameras in the cars and how long it would be until they were installed. They are waiting on the contractors to do some additional work.

#### Public Official Liaison

Committee Chairman Ronald Flagg reported that the committee met with the Common Council's Public Safety Committee to see if they could assist with the mediation program. The members of the Public Safety Committee agreed to talk with the Chief about moving the program forward.

Committee Chairman Flagg reported that the committee also met with Deputy Mayor Phil Calderone, Corporation Counsel John Reilly, and Executive Director of the GLC Bennett Liebman. Chairman Flagg stated that the committee updated the City officials on the Board's initiatives.

#### Task Force on Monitors

Coordinator of the Board Sharmaine Moseley reported that the GLC received correspondence from monitor Al Lawrence informing the Board that he will be on sabbatical from his job until October so he requested a leave of absence from the CPRB until then. Now with monitor's Theresa Belle and Al Lawrence on leave the Board has three monitors on rotation. Therefore the GLC is in the process of putting together a plan for a search for new monitors. Currently, the GLC has a job description and will be in the process of drafting an Ad that will be printed in the Times Union. The GLC will collect

the resumes resulting from that ad and afterwards will reach out to the Board members who are interested in helping out with that process. The GLC is hoping to begin conducting interviews early next month.

*E. Report from the Government Law Center*

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

Complainant Inventory as of Date of Meeting

It was reported that as of today, there are currently fifty-three (53) active complaints before the Board for review. Of those fifty-three (53) active complaints four (4) were reviewed at tonight's meeting, which leaves the Board with forty-nine (49) active complaints. Out of those forty-nine (49) active complaints, eight (8) are ready to go to the agenda for review.

It was further reported that three hundred and thirty (330) 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 eighty-five (385).

It was reported that the Board received six (6) grievance forms since its last meeting. The total number of grievance forms received to date is eighty-nine (89). The GLC has reached out to all eighty-nine (89) individuals, and has received twenty-two (22) CPRB complaint forms.

Board Vacancies

It was reported that unfortunately due to new job commitments, Board member Daniel Fitzgerald resigned from his position on the Board. It was noted that included in the Board's packets is a copy of his resignation letter. The GLC wished Mr. Fitzgerald success and thanked him for serving on the Board.

It was further reported that the GLC drafted a letter to the Mayor's office regarding this vacancy. The GLC has also drafted a letter to the Common Council regarding John Paneto's position on the Board. Ms. Moseley stated that Mr. Paneto asked that he not be considered for a second term on the Board. Ms. Moseley asked Mr. Paneto if he sent a letter to the Common Council. Mr. Paneto replied in the negative. Ms. Moseley asked Mr. Paneto to draft a letter to the Common Council and send it to her. Mr. Paneto agreed to draft the letter.

### NACOLE Conference

Ms. Moseley reported that the 15<sup>th</sup> Annual NACOLE conference this year will be held in Austin, Texas from October 31<sup>st</sup> – November 3<sup>rd</sup>. Ms. Moseley reported she would be attending the NACOLE conference along with board members Jean Gannon and Marilyn Hammond. The GLC received correspondence from the NACOLE election committee requesting the name of the member who will be designated to exercise his vote in the conference. Ms. Moseley will check with Marilyn Hammond to see if she would like to be the voting member.

### Next Board Meeting

It was reported that the next Board meeting is scheduled for Thursday, July 9<sup>th</sup> at the Albany Public Library.

#### *F. Report from the Office of Professional Standards*

Commander Ronald Matos stated that he had nothing new to report.

#### *G. Report from the Chair*

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

#### *H. Summer Meeting Schedule*

Acting Chairman Ronald Flagg reported that the Board had eight (8) cases in backlog. He stated that generally the Board did not meet during the summer but the Board would like to close these cases. He recommended that the Board have another meeting in June or early July. Ms. Moseley stated that she will send an email to the Board to determine the availability of the members.

### **V. Public Comment**

Melanie Trimble, Director of the New York Civil Liberties Union (NYCLU) stated that she wanted to make some recommendations to the Board. Ms. Trimble submitted a written copy of the recommendations to the Board. She thanked the Board for all that they do because the Board thoroughly looks into the complaints and listens to the people who have concerns about the police department's behavior.

Ms. Trimble stated that the NYCLU was involved with the CPRB since its inception. Ms. Trimble further stated that complainants should be encouraged to attend the meeting when their complaint is going to be heard. It would be very helpful to all of the Board members to see face to face the person complaining and check out their veracity versus what the police department has told the Board. The APD gets to see these people and speak to them and the Board should encourage that as well. The NYCLU suggested that two weeks ahead of time the complainants be notified in writing that their complaint is

going to be reviewed and then a telephone call before the meeting to encourage them to attend would be very helpful. It would show how open the Board is to the process. The Board is here for the citizens of Albany and not just the police department.

Ms. Trimble suggested the CPRB should hire its own counsel. Currently, the Board uses the counsel for the City. The counsel is also counsel for the police department and that is a conflict of interest. The CPRB should hire its own independent counsel. Ms. Trimble stated that the Board should have the power to subpoena materials. Currently, the political climate is very comfortable. If the Board needs to investigate a case, it has the support of the Common Council. It was not like that when the Board originated. Ms. Trimble stated that the NYCLU suggests that the Board empower themselves with changing the legislation so that they can have their own subpoena power. She further stated that the NYCLU likes that the committee is becoming more involved in camera implementation and looking into other policies that the police department is now dealing with for early detection of bad police behavior.

Ms. Trimble stated that the NYCLU encourages the Board to continue educating the public by presenting at community meetings. The NYCLU feels that reporting is very important to help the public to understand the job that the Board does, the scope that it covers, and all the good work that the Board does. The NYCLU encouraged the Board to conduct a year end analysis on the *not sustained* complaints. Most civilian review boards that have looked at their not sustained complaints found a certain pattern that exists in the not sustained reports. When we look at the progress of the police review board eventually we would like to see it as an oversight agency that is able to develop its own independent investigation. To do that will take a lot of work with the legislation and a lot of work with the political powers in Albany. Once the Board has that kind of power, the Board's veracity with the public improves, and people will understand that the Board is really being the checkpoint for the police department and making the police department accountable for its own actions, to have a truly independent civilian review process.

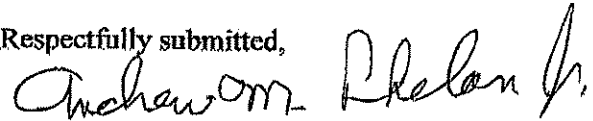
Ms. Trimble stated that the NYCLU recommended that the CPRB re-establish an Advisory Board to look at best practices of civilian police review boards across the country. Ms. Trimble further stated that these recommendations came from a 1993 report on four different civilian police review boards. The NYCLU would like to look for an advisory board that would work closely with the GLC and come up with suggestions for best practices for the CPRB to participate wholly in the process and really increase the integrity of the Police Department and the CPRB.

Ms. Trimble asked if the Board had any questions for her. Mr. Flagg replied in the negative. He explained that this is public comment. Ms. Trimble stated that it is alright if the Board asks her questions. It was noted that the Board had no questions for Ms. Trimble.

**VI. Adjournment**

Acting Chairman Ronald Flagg moved to adjourn the meeting. Andrew Phelan, Jr. seconded the motion. The motion carried unanimously. The meeting adjourned at 7:35 p.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Andrew Phelan, Jr.", written in dark ink.

Andrew Phelan, Jr.  
Secretary