

**City of Albany  
Citizens' Police Review Board Public Meeting  
Albany Law School  
80 New Scotland Avenue-Dean Alexander Moot Courtroom  
July 23, 2009  
6:00 p.m. – 8:00 p.m.**

**Present:** Ronald Flagg, Jean Gannon, Marilyn Hammond, John Paneto, and Anthony Potenza.

**Absent:** Jason Allen, Andrew Phelan, Jr., 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. Marilyn Hammond seconded the motion. The motion carried unanimously.

**III. Approval of the January 26, 2009 and February 12, 2009 Meeting Minutes**

The January 26, 2009 meeting minutes were reviewed. Anthony Potenza moved to approve the meeting minutes. Jean Gannon abstained from voting on the motion. Acting Chairman Ron Flagg stated that approval of the January and February minutes be tabled until the next meeting of the Board since there were not enough members present for the motions to pass.

**IV. Old Business**

**A. CPRB No. 16-08/OPS No. C08-327 (Presented by John Paneto)**

John Paneto summarized the complaint. Mr. Paneto reported that the complainant alleged that as she was leaving Corporate Circle, she encountered an off-duty officer. The complainant alleged that she was in her 2002 Hyundai and was in the yield zone ready to make a right hand turn. According to the complainant, the road consisted of two lanes, one directly on the right which she was in, and the left lane which is for drivers who wanted to pass. The complainant alleged that she turned into the right lane and continued to drive up, when a gray ford pick-up truck with dark tinted windows came up on the left side of her, "laid on the horn," and then cut her off to pass her. The complainant further alleged that she was now directly behind the pick-up truck and the driver began to apply his brakes so the complainant did the same. The complainant alleged that the driver began to slow down and continued to brake. The complainant alleged that because of the driver's erratic driving, the complainant attempted to pass him on the right side of the road. The truck moved all the way over so she could not get by. The complainant alleged that she then attempted to pass the truck on the left side of the

road. The driver sped up so she could not get over and only let her in when the oncoming traffic forced him to do so. At the next light, the driver flashed a metallic object which looked like a badge and began swearing at the complainant to "pull the f\*\*k over." The complainant alleged that the driver began berating her. The complainant claimed that the driver told her that she would be arrested, her car towed, and she would be issued four tickets for cutting him off. The complainant alleged that the officer displayed every element of road rage and then ticketed her. The complainant believed that the officer should be charged with road rage and that she was ticketed when she questioned his authority.

Mr. Paneto stated that the first allegation of conduct standards was where the complainant alleged that the officer had road rage and tried to drive her off the road.

Mr. Paneto stated that the second allegation of conduct standards was where the complainant alleged that the officer used foul language and gave the complainant the finger.

Mr. Paneto stated that the third allegation of conduct standards was where the complainant alleged that the officer's erratic behavior forced the complainant into the wrong lane as she attempted to pass the officer on the left.

Mr. Paneto stated that the fourth allegation of conduct standards was where the complainant alleged that the officer flashed a metallic object which looked like a badge and the officer began swearing at her to "pull the f\*\*k over."

Mr. Paneto stated that the fifth allegation of call handling was where the complainant alleged that the officer stated "you are actually very lucky that I wasted enough of my day off or I'd be towing your car and you would be heading down to police court."

Mr. Paneto stated that the sixth allegation of conduct standards was where the complainant alleged that the officer referred to her as Mario Andretti.

Mr. Paneto acknowledged that monitor George Kleinmeier was present at the meeting.

Mr. Paneto stated that when he first took the complaint in January 27, 2009 he was concerned about the reason for the stop. He further stated that although the officer had the authority and discretion to initiate the stop, his conduct and encounter with the complainant was inappropriate. Mr. Paneto stated that the officer's conduct was unwarranted and unnecessary and that the reason for the stop was questionable. Mr. Paneto added that the officer could have just as easily written down the vehicle's license plate information and called it in through the system. He commented that the allegation of the officer's road rage was difficult to refute when the officer was knocking on the complainant's automobile window at a red traffic light. Mr. Paneto stated that in January the Board was concerned with police encounters and non-uniform officers and non-uniform troopers. In the newspapers, State Police Trooper Maureen Tuffey had stated that motorists should expect police officers to carry an identification card and be wearing a full uniform. State Trooper Maureen Tuffey stated that State troopers rarely if ever stop drivers in unmarked cars. Mr. Paneto stated that the issues the Board had were that the officer was not in a police vehicle and was not in uniform when he made the encounter. Mr.

Paneto stated that the officer's behavior may have put the officer in a dangerous situation. Mr. Paneto further stated that the officer had a child in his vehicle when the encounter was made with the complainant. The officer admitted to leaving the child unattended in the truck while the encounter transpired. Mr. Paneto added that based on the investigation, the encounter took anywhere from five (5) to fifteen (15) minutes.

Mr. Paneto stated that the Board was also concerned that the officer's truck had tinted windows. Mr. Paneto noted that although the complainant stated that she was concerned about the tinted windows, the Albany Police Department (APD) did not consider the officer's tinted windows an issue in its report. Mr. Paneto reported that the Board sent correspondence to the APD asking the APD why a citizen would stop for a truck with tinted windows and no siren or police lights. Mr. Paneto stated that the traffic stop was made with no backup. The Board is concerned that the officer put himself in harm's way by not calling for assistance until after initiating the stop. Mr. Paneto commented that he believed the APD missed an important opportunity to review the officer's conduct in this police encounter with a citizen. Mr. Paneto summarized the recommendations of the Board regarding this complaint as follows: improved training, improved reporting, and relationships with citizens especially when officers are not uniformed and are making an encounter in an unmarked police car.

Mr. Paneto read a letter from Deputy Chief of Police Stephen Reilly in response to the Board's concerns:

*Dear Mr. Allen:*

*I have received your letter dated February 12, 2009 regarding this complaint filed by the complainant. The Citizens' Police Review Board recommends the Department review its SOP regarding off-duty officer initiated traffic stops and recommending all officers receive training on how to better handle these types of situations. The officers' action on the day of this incident has been reviewed and addressed with the officer. Upon review of the incidents involving officers there is no indication that officers are initiating stops while off-duty aside from this particular incident. There is no need at this time for all officers of the Albany Police Department to receive training with regard to these types of situations. It should be noted however, that our Department has a rigorous training schedule that is scheduled well in advance and most recently the entire Department received training involving the proper manner to initiate traffic stops while providing safety for the officers and anyone in the area. This training involves a lecture portion, tactic development, physical skills, and practical application. Please contact me should you have any questions or concerns.*

*Signed,  
Stephen M. Reilly, Deputy Chief of Police*

Mr. Paneto asked the Board if they had any questions. It was noted that the Board had no questions.

Mr. Paneto stated that he agreed with the OPS finding of *unfounded* on the first allegation of conduct standards, where the pickup truck with tinted windows came to the left side of the complainant and laid on the horn in order to pass her. Based on the OPS investigation, there is no evidence to collaborate the complainant's allegation. Mr. Paneto moved to concur with the OPS finding of *unfounded*. Acting Chairman Ron Flagg asked if there were any witnesses. Mr. Paneto replied in the negative. Mr. Paneto moved to concur with the OPS finding on the first allegation as *unfounded*. Anthony Potenza seconded the motion. The motion passed unanimously.

Mr. Paneto stated that he agreed with the OPS finding of *not sustained* on the second allegation of conduct standards, where the complainant alleged that the officer began to apply his brakes and continued to do so while the complainant was behind him. Based on the OPS investigation, there is no evidence to corroborate the complainant's allegation. Mr. Paneto moved to concur with the OPS finding of *not sustained*. Jean Gannon seconded the motion. The motion passed unanimously.

Mr. Paneto stated that he agreed with the OPS findings of *not sustained* on the third allegation of conduct standards, where the officer was driving erratically and refused to let the complainant pass him. Based on the OPS investigation, there is no evidence to collaborate the complainant's allegation. Mr. Paneto moved to concur with the OPS finding of *not sustained*. Marilyn Hammond seconded the motion. The motion passed unanimously.

Mr. Paneto stated that he agreed with the OPS findings of *not sustained* on the fourth allegation of conduct standards, where the officer flashed a metallic object and told the complainant to "move the f\*\*k over." Based on the OPS investigation, there is no evidence to collaborate the complainant's allegation. Mr. Paneto moved to concur with the OPS finding of *not sustained*. Marilyn Hammond seconded the motion. The motion passed unanimously.

The Board agreed that at the Board's last meeting they voted on the last two allegations, so there was no need to vote on the final two allegations. Mr. Paneto stated that at the last meeting there was a great deal of discussion regarding the incident. Acting Chairman Ronald Flagg asked if there was a discussion at the last meeting. Mr. Paneto replied that there was a lot of discussion. He reiterated that most police do not stop vehicles unless they are in full uniform or have their lights or a siren on. Mr. Paneto stated that though the officer had the discretion to make the stop, it was not a smart thing to do to knock on someone's window with no uniform, no police vehicle, and no lights or a siren. Mr. Paneto stated that it was this discussion at the previous meeting that generated the letter to the police department.

Monitor George Kleinmeier stated that he believed that the Board did not vote on any of the allegations at the Board's January meeting. Mr. Paneto explained that the Board voted on the allegations but some of the motions failed due to a lack of a majority vote.

Acting Chairman Ronald Flagg stated that he would be concerned for any citizen, when a vehicle with no identification was honking and telling the driver to pull over, specifically, if it was not a serious infraction that the female engaged in. Acting Chairman Flagg asked if the complainant received any tickets. Mr. Paneto replied that the complainant did receive a ticket. Mr. Paneto

also stated the record revealed that the complainant had a history of police encounters but the officer did not have that information when he made the stop.

**B. CPRB No. 39-08/OPS No. C08-346 (Presented by Marilyn Hammond)**

Marilyn Hammond summarized the complaint. The complainant alleges that on Saturday, May 17, 2008, she had just departed the YMCA program with her cousin and a friend. According to the complainant, they were walking along Washington Avenue when she threw a soda can at her cousin. This was observed by a passing Albany police car. Apparently the complainant did not pick up the can and was requested by the patrol officer to do so.

Ms. Hammond reported that at this point, the complainant's version as to the actual events differs from that of the police officer. The complainant alleged that the police officer jumped out of his patrol car, ran over to the complainant, and grabbed her by her arm. In addition, the complainant alleged that she was handcuffed, thrown up against the wall, hit in her stomach, and eventually thrown to the wet pavement. The complainant further alleged that she was thrown into the back seat of a police car. The complainant claimed that her cousin called the mother of the complainant.

Ms. Hammond stated that when the Board reviewed the case previously, the Board did not vote on it because there was some concerns about the officer making the complainant pick up the can. Ms. Hammond stated that she reviewed the case and agreed with the OPS findings. Ms. Hammond reported that she reviewed the call sheet and the St. Peters Hospital medical report. She stated that based on the OPS investigation, the complainant's mother had stated there had been many problems with the complainant and the complainant was now on probation. Ms. Hammond further reported that there was an independent witness but the OPS detectives were unsuccessful in contacting the witness. The two young ladies who were with the complainant were witnesses, but the OPS could not get them to come forward. Ms. Hammond stated that the monitor also reviewed the OPS case file and agreed with the finding that the complaint was **unfounded**. Ms. Hammond stated that the complaint had been revisited and she was unsure what the Board wanted to do with the complaint now.

John Paneto stated that he was the reason that the complaint was not closed previously by the Board. He further stated that if he voted against the motion again the Board would not have quorum. Mr. Paneto stated that his issue was that the police encounter was silly. Mr. Paneto further stated that the young ladies were leaving the YMCA. He did not believe that their behavior rose to the level of the police encounter regardless of whether they were littering. Mr. Paneto stated that he believed Jean Gannon disagreed with him.

Ms. Gannon stated that while Board members can disagree with what the police do, the question was whether the APD violated a policy in conducting this stop. The Board's job is to see if the police are following the rules and regulations that are established for them. Ms. Gannon further stated that if the Board does not like the rules and regulations, the Board should go back and address that. Ms. Gannon stated that she believed the Board was going to vote on whether the police officers involved in the incident were following the rules established for them.

Acting Chairman Ronald Flagg stated that the police have the authority to intervene if they see somebody throwing a can, or a bottle, spitting on the sidewalk, or anything that impacts the safety and health of the citizens of Albany. If the Board thinks it is silly or a waste of time, that is moot.

Commander Ronald Matos stated that littering is a violation of city code. Acting Chairman Flagg stated that whether the Board members thought the actions of the police were silly is not the issue. Mr. Paneto stated that he did not disagree but his point was that if there were more members present he could make his statement, the Board could vote, and then move on. Mr. Paneto stated that he was willing to change his vote and that he believed there was enough information on the record to close the case.

Marilyn Hammond moved to concur with the OPS findings of *exonerated*. Jean Gannon seconded the motion. The motion passed unanimously.

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

Anthony Potenza summarized the complaint. Mr. Potenza reported that a monitor was assigned to the case. Mr. Potenza read a synopsis of the allegation. The complainant alleged that he was just about to drive away after leaving a store on Lark Street and Clinton Avenue when an officer pulled up behind him from Clinton Avenue. According to the complainant, he 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 his license and registration. The complainant claimed that the car door was closed with the window slightly open. The officer then instructed the complainant to roll down the window. The complainant rolled down the window "exactly half enough" for the officer to conduct the procedure with no problem. The officer then stated "roll down the window all the way." The complainant replied "I don't have to. What's the problem with the window?" The complainant alleged that the officer, for no reason, opened the driver's door where the stop was initiated. The complainant told the officer "What are you doing, you have no right to open the door." Through all of this, the complainant is looking for his ID and his registration. The complainant is now leaning against the door. Mr. Potenza reported that he assumed that this meant that the complainant was leaning against the door. Another officer drove by when the officer proceeded to grip the complainant's right hand firmly around his left arm, so firmly that the complainant suffered a sprained elbow and was released from the hospital later with a sling the next day. The officer snatched the complainant out of the vehicle. He told the officer to get his hands off of him. According to the complainant, he did nothing and was complying with everything the officer asked him to. The officer asked the complainant to place his hands behind his back and then on top of his head. He told the complainant to stand with his hands on top of his head until his car was searched. Nothing was found in the complainant's car, and the car was towed away.

Mr. Potenza reported that he reviewed the complaint form submitted by the complainant, the OPS Confidential Report, the police officer inter-departmental correspondence (IDC), the rules regarding motor vehicle stops and towing and impoundment, the call record, the Field Investigation Contact Report, and a copy of the ticket and summons. Mr. Potenza stated that he also looked at related documents including the vehicle towing report from the towing agency, the

authorization for release of medical records with regard to the sprained arm, the emergency room discharge report, examination and assessment and diagnoses of the injury, and the "Routine Care Advice Sheet for Bruises, Bumps, Sprains and Strains" as well as the monitors report.

Mr. Potenza summarized the finding of the OPS as *exonerated*, where the acts that provide the basis for the complaint had occurred, but it is shown that the acts were proper. Mr. Potenza stated that based on the OPS investigation, the stop was initiated because the complainant was parked in a no standing zone. Mr. Potenza further stated that based on the investigation, the complainant was non-compliant, uncooperative, and highly aggressive during the stop which was initiated as a result of the complainant having parked in violation of the no standing sign. Mr. Potenza reported that the officer could not see the complainant clearly due to the tint of the windows, and the complainant only opened the window about an inch. Mr. Potenza stated that this was backed by documentation. Mr. Potenza reported that the officer asked the complainant two times to roll down his window, and the complainant refused. The complainant, by his own admission, stated that the window was only slightly open which is consistent with what the officer stated in the backup documentation. Mr. Potenza stated that the officer then instructed the complainant to roll his window down. Mr. Potenza reported that the complainant did so, "exactly half enough" for the officer to conduct his procedure. Mr. Potenza stated that according to the complainant, when the officer told him to roll down his window all the way, the complainant stated "I don't have to. What's the problem with the window?" Mr. Potenza stated that the actions and response are indicative of the complainant's non-compliant behavior.

Mr. Potenza reported that another officer who was on the scene stated that he observed the complainant acting in an agitated and aggressive manner toward the first officer. Mr. Potenza stated that 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. For officer safety reasons the complainant was removed from the vehicle and checked for weapons due to his aggressive behavior and the fact that he reached for something earlier in the stop. Mr. Potenza stated that the officer needed to make sure it was not a gun. Mr. Potenza reiterated that the complainant was verbally aggressive and agitated during the entire procedure, though he was not physically aggressive. The complainant did get out of the vehicle on his own accord. Mr. Potenza stated that in the documentation provided by the officers to the OPS, at no time was excessive force used on the complainant to get him out of the vehicle. Mr. Potenza further stated that the officers stated that at no time did the complainant complain of any pain or injury during the stop.

Mr. Potenza reported that although the complainant stated that he had witnesses, efforts were made by the police department and the OPS to locate witnesses to clarify the matter, but none came forward.

Mr. Potenza moved to concur with the OPS findings of *exonerated* on the first allegation of use of force. Acting Chairman Ronald Flagg asked if the monitor was present. Monitor George Kleinmeier replied that he was present. He stated that the officer asked the complainant if he had been smoking marijuana and the complainant stated that he had but not at that time. Marilyn Hammond seconded the motion. The motion carried unanimously.

Mr. Potenza summarized the findings of the OPS on the second allegation of conduct standards, where the officer asked the complainant to place his hands behind his back and then on top of his head and he was told to stand with his hands on his head until his car was checked. Mr. Potenza reported that based on the OPS investigation, when an individual is being checked for weapons, they are asked to stand with their hands behind their back or on top of their head which is standard procedure. Mr. Potenza stated that he agreed with the OPS finding of ***unfounded*** on the second allegation of conduct standards. Mr. Potenza moved to concur with the OPS finding of ***unfounded***. Marilyn Hammond seconded the motion. The motion passed unanimously.

Mr. Potenza summarized the OPS findings of the third allegation of conduct standards, where the complainant alleged that his vehicle was searched and towed, as ***exonerated***, where the acts that provide the basis for the complaint had occurred but it is shown that the acts were proper. Mr. Potenza reported that based on the OPS investigation, the search of the vehicle was justified and lawfully conducted. Mr. Potenza added that the complainant was found to only have a permit which under vehicle and traffic law warranted the towing of the vehicle.

Mr. Potenza stated that he agreed with the OPS finding of ***exonerated*** on the third allegation of conduct standards allegation regarding the search and towing of the vehicle. Mr. Potenza moved to concur with the OPS finding of ***exonerated***. Marilyn Hammond seconded the motion. The motion passed unanimously.

## **V. New Business**

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

#### **1. New Complaints Received since June 11, 2009 Meeting**

Acting Chairman Ronald Flagg stated that six (6) new complaints had been received by the Board since its June 11, 2009 meeting. Anthony Potenza read a summary of each new complaint.

#### **CPRB No. 29-09**

According to the complainant, on April 11, 2009 the complainant was a victim of rape. On that date two detectives came to her house. According to the complainant she knew both of the detectives because they had previously arrested her on December 20, 2007. The complainant alleges that one of the detectives told the complainant "Don't you and the alleged rapist have a protection order. I was called on Valentine's Day and told that you and he were seen at the mall that day." According to the complainant she replied that she did not have an Order of Protection so it did not matter if she was seen at the mall with the alleged rapist that day. The complainant claims that the detective called the complainant, and the alleged rapist "retards". The complainant further claims that the detective called the complainant a "whore" and "stupid" to deal with a younger man. The complainant alleges that the detective did not believe the complainant was raped. The detectives, however, did take the complainant's statement. According to the complainant, the complainant's son was present during the detectives' visit to her house and when the detective made a racial remark. The complainant alleges that because



the complainant's son was cooking a hamburger and the house was filled with smoke, the detective stated to the complainant's son "What are you cooking, chicken?" The complainant's son replied, "Why, because I'm black?" The complainant claims that the detectives told the complainant before they left that they were going to close her case because she would never win anyway. She further claims that he told her that if she was raped she deserved it because she should not be with the alleged rapist. The complainant thought she was treated unfairly, and that the two detectives should have never been assigned to her case because they were not objective having previously arrested the complainant.

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

#### **CPRB No. 30-09**

The complainant alleges that in September, 2007 he was being targeted by an unknown person. According to the complainant, when the police showed up they saw this unknown person that the complainant thought was going to attack him. The complainant alleges that the unknown person walked away and that the officers did not confront the unknown person. The Mobile Crisis Unit was called. The complainant alleges that he told the officers that his life was in danger, and then he was tased twice by the police officers for no reason. The complainant further alleges that he was put onto a stretcher and admitted to Albany Medical Center. Upon arrival at Albany Medical Center, the complainant was sedated and woke up in intensive care. The complainant does not understand why he was placed in the hospital. According to the complainant, a female barber witnessed the entire incident from across the street.

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

#### **CPRB No. 31-09**

According to the complainant, on November 27, 2007 around 3:15 p.m. he was arrested for sale of a controlled substance. The complainant alleges that after the officers took him to the police station, while handcuffed, his clothes were taken off of him, he was strip searched, and one of the officer's inserted his finger into the complainant's rectum while the other officer held a taser to the complainant's head telling him not to move. The complainant further alleges that the officer told the complainant that he was looking for crack cocaine in his rectum. According to the complainant, after the officer did not find anything, they took the complainant to Albany Medical Center. The complainant claims that the detective told the doctor that the complainant had crack cocaine in his rectum. According to the complainant, he was stripped of his pants while the doctor stuck four to five enemas into his rectum. The complainant alleges that he was examined, handcuffed to a potty stool, and forced to drink diarrhea fluid. Several hours later after the doctor did not find anything, the complainant was admitted to the hospital for an overnight stay. The complainant was arraigned at the hospital at 2 a.m. in the morning. According to the complainant, a couple of days later he received a hospital bill for \$13,000.

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

### **CPRB No. 32-09**

According to the complainant, she parked in front of a fire hydrant to run into the grocery store and was given a ticket by an officer. As soon as the complainant saw the officer, she ran out of the grocery store and told him she will move her car immediately. The officer ignored her and started to write the ticket. According to the complainant, she asked the officer to please forgive her and not write the ticket several times. The complainant alleges that the officer told her that she should not have parked there. The complainant further alleges that the officer got upset because she kept asking him not to give her a ticket. The complainant claims that the officer started screaming at her and told her that he runs the city and could do whatever he wants. According to the complainant, she got into her car and parked two spaces ahead and the officer drove away looking very upset and frustrated. Then the officer came back, got out of his car, and asked the complainant to open her window. The complainant alleges that the officer began to yell at her because she refused to open her window. The complainant further alleges that the officer punched her window which scared her. Then the officer asked her for her license and registration. The complainant continued to ignore the officer. The complainant claims that the officer then went back to his car to get something to break her window so she opened her window a little bit to calm him down. The complainant further claims that the officer reached into her car, unlocked the car door, took all off the complainant's seatbelt and forcibly pulled her out of the car. The officer and his partner handcuffed her. The complainant further alleges that the officer went into the complainant's car and took her driver's license out of her handbag. The officer gave the complainant a ticket for not signaling as she moved her car to park two spaces up.

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

### **CPRB No. 33-09**

According to the complainant, on the morning of July 5, 2009 around 3:30 a.m. while he was waiting at the light, he heard a bang on the trunk of his vehicle. When he opened his window he saw the officer in the back of his vehicle, so he asked him why he hit his vehicle. The complainant alleges that the officer hit his vehicle again as the officer was walking along the driver's side of the complainant's vehicle. The complainant further alleges that the officer hit his vehicle with a police issued baton. According to the complainant, the officer told him to "move, move." The complainant claims that the officer caused damage to his car when he hit it with his baton. The complainant alleges that when he asked the officer what was his problem, the officer opened the vehicle door and tried to grab the complainant out of the vehicle and the complainant's vehicle key. When the complainant grabbed the door and tried to close it, the officer swung his baton trying to hit the complainant's hand but instead hit the door frame of the vehicle. The complainant further alleges that the officer told him to get the f out of town and don't ever come back. According to the complainant, he went to the police station to file a complaint because the officer damaged his vehicle. The complainant alleges that the sergeant told him that he could not take his complaint because it was against an officer and that it had to be handled by internal affairs. The complainant further alleges that the sergeant told him that he could take his version and the officer's version and type it into the computer.

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

### **CPRB No. 33-09**

According to the complainant, on July 13, 2009 at 6:45 a.m. while she was in the Stewarts store, a man asked her if it was her music that was playing. When the complainant replied that it was, the man told her that there were children outside the store. According to the complainant, the man told her that she should not be listening to this type of music because of the profanity. When the complainant asked the man who was he to tell her what to do, he got very loud, pulled out his badge and told the complainant that he could tell her what to do. The complainant further alleges that he called her an idiot. According to the complainant, she left the store, got into her car and put on her seatbelt. The officer approached her car, continuing to call her an idiot. The complainant alleges that the officer then leaned into her car window continuing to call her names so she started to roll the car window up. The officer took his upper body off the car so the complainant drove away. According to the complainant, she went to the Stewarts store to see if they would be able to keep the camera record of the incident.

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

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

Acting Chairman Ronald Flagg stated that two (2) cases, CPRB 40-08/OPS No. C08-282 and CPRB 24-09/OPS No. C2009-042 would not be presented at this meeting but would be held over until the Board's next meeting. He apologized that the Board member was not ready to present his cases.

### **CPRB No. 63-08/OPS No. C08-628 (Presented by John Paneto)**

John Paneto summarized the complaint. Mr. Paneto stated that the incident took place around 10 or 11 p.m. on the night of August 29, 2008. He stated that the time was unclear based on the complainant's recollection and police record but that did not have any bearing on the case. Mr. Paneto further stated that the police were dispatched to the scene of a stabbing at 11:46 p.m. on August 29, 2008. Mr. Paneto stated that he reviewed the OPS case file and several memos from police officers assigned to the case. He further stated that the case monitor Al Lawrence was present at the meeting.

Mr. Paneto reported that this was a police call on a stabbing which turned into a murder investigation. Several individuals in the vicinity of Washington Avenue and Ontario Street were collected because they appeared to match the description of the person who did the stabbing. Some of the individuals had similar clothing (white shirt and blue jeans) and knew each other and were hanging out together. Mr. Paneto stated that whether or not the individuals were involved in the actual stabbing is not clear in the record, but once the murder investigation began, several individuals were rounded up and detained by the Albany Police Department.

Mr. Paneto reported that according to the complainant, he was walking home with his friend in the area of Ontario Street and Central Avenue when he was searched, put into the back of a

police unit, taken to the South Station, and held for a murder investigation. While at the South Station, the cuff on the complainant's ankle was too tight and he could not feel his circulation. The complainant asked the officer to loosen the cuff, and they did not. The complainant alleged that when he asked to call home and call the District Attorney, he was told no. The complainant alleged that the officers told him that if he wanted to go home, he had to agree to take a DNA test. The complainant alleged that when he asked for his belongings the officer gave him back his ID but did not give him back his \$50.00. The complainant's father alleged that the sergeant told him that he should not have his kids walking around at night. This comment was made to the complainant's father, not the complainant himself.

Mr. Paneto summarized the findings of the OPS on the first allegation of conduct standards where the complainant alleged that he was searched and put into the back of a police car without knowing what he had done. Mr. Paneto reported that based on the OPS investigation, the complainant knew why he was searched and retained. The investigation revealed that the complainant had just left the scene of a large fight where a young man was just stabbed to death. Based upon the nature and the severity of the call, the officer was justified in conducting the search of the complainant and the other person who was with him.

Mr. Paneto noted the second allegation of conduct standards where the complainant alleged that the officers were not loosening the cuffs on his ankle and when he asked them to do so, the request was denied.

Mr. Paneto noted the third allegation of conduct standards where the complainant alleged that his requests to make a phone call home and a call to the District Attorney were also denied.

Mr. Paneto noted the fourth conduct standards allegation where the complainant alleged that he was detained from about 11 p.m. to about 5 a.m. and was told he could not leave until he agreed to take a DNA test.

Mr. Paneto the fifth conduct standards allegation where the complainant alleged that the officer did not return his \$50.

Mr. Paneto stated that based on the investigation and the monitor's report, the police acted appropriately in detaining the complainant because he was in the immediate area. The call identified several individuals. The complainant's clothing matched the description, and the complainant appeared to be trying to leave the scene rather quickly. According to the OPS report, the officers received from witnesses of the incident, information regarding the group's direction of travel, the group's proximity to the incident, as well as a physical description of the possible perpetrators of the crime. The officers used a four-tier method evaluating propriety of encounters initiated by the police. It should be noted that the complainant failed to mention that he was walking with three other young men. Mr. Paneto noted that the complainant was clearly at the wrong place at the wrong time with the wrong friends. Mr. Paneto reiterated that there was discrepancy regarding the exact time of the incident, but that it did not affect the case. Mr. Paneto further stated that all individuals who were stopped had weapons on them. The complainant failed to disclose that he was in possession of a knife. Mr. Paneto stated that this

bothered him because the complainant was detained, searched for contraband, and a knife was found on the complainant while he was in the police station.

Mr. Paneto summarized the finding of the OPS on the second violation of conduct standards allegation, where the complainant alleged that the cuffs where on his ankle too tight and when he asked for the officers to loosen them, they did not. Mr. Paneto stated that he did not know how he could further elaborate on the second conduct standards that the ankle cuffs were too tight.

Mr. Paneto summarized the finding of the OPS on the third violation of conduct standards allegation, where the complainant alleged that his requests to make a phone call home and a call to the District Attorney was also denied. Mr. Paneto reported that based on the OPS investigation, he is unclear on the procedure. It appeared that at the time, the complainant was not under arrest so it did not appear that the complainant had a right to call anyone. Mr. Paneto stated that the complainant was being detained along with seven other individuals while the police were looking for potential suspects in the stabbing. Mr. Paneto further stated that the reason for the complainant's detention was appropriate since he was in the immediate area, exhibiting suspicious behavior, and running or walking away from the scene of the incident.

Mr. Paneto summarized the finding of the OPS on the fourth violation of conduct standards allegation, where the complainant alleged that he was detained from about 11 p.m. to about 5 a.m. and was told he could not leave until he agreed to take a DNA test. Mr. Paneto reported that based on the OPS investigation, he believed that the Albany Police Department did not have a policy on this, but the monitor made a great deal of effort in documenting the issue of how, when, and why a DNA test can be conducted and at what time a DNA test must be destroyed and not used against a detainee. Mr. Paneto deferred to monitor Al Lawrence for an explanation.

Mr. Lawrence stated that he was not suggesting that the officer did anything wrong and that what occurred was apparently the practice of the APD. Mr. Lawrence further stated that he was not suggesting that the investigation was not thorough, but rather that it appeared to him that the law does not anticipate taking cheek swabs or other DNA evidence from people who are not to be charged with a crime. Mr. Lawrence stated that the law does recognize that people have significant constitutional privacy rights to their DNA so he was questioning the departmental sanction practice of taking a DNA sample from somebody they know they are going to release, solely for the purpose of adding to the DNA bank in the hopes of someday later being able to use that for another crime.

Commander Ronald Matos stated that neither APD policy nor the Executive Law allows for samples that are turned over on a consensual basis to be added to the data bank. The sample that is turned over on the consent of the person being examined is used to compare to another sample that is part of the investigation. Commander Matos stated that forensically, the APD collects a biological sample. A person who is subject to an investigation would be asked to consent to a sample and that DNA swab will then be used to compare against what was collected at the crime scene. Commander Matos further stated that it has never been the APD's policy to try and build a database. It is contrary to the law. The State Police would not allow it, and it is not done. The sample in this case was used only for this investigation.

Mr. Paneto summarized the findings of the OPS on the fifth conduct standards allegation where the complainant alleged that his \$50 was never returned to him upon his being released from the police station. Mr. Paneto reported that based on the OPS investigation, the \$50 was not in the inventory report.

Board Counsel Patrick Jordan asked Mr. Paneto if he was clear with what he had stated with regard to the DNA. Mr. Paneto responded in the affirmative. Mr. Jordan stated that there was a case law this year which allows the APD to do what they did. Mr. Paneto stated that the individual was detained and signed a consent form for the DNA sample. Mr. Paneto further stated that he was curious about why the APD policy was different from what the monitor stated. Mr. Jordan stated that the monitor was correct in considering the DNA bank, but it would be illegal to use the sample for the NY State and the Federal Bank. Commander Matos reiterated that the sample that was taken from the complainant was used just for this particular case.

Acting Chairman Ronald Flagg stated that the complainant was required to consent to the DNA sample anyway. Mr. Lawrence stated that the complainant claimed that he could not leave until he gave a DNA sample, but there was no way to corroborate that statement.

Mr. Paneto stated that he agreed with the OPS finding of *exonerated* on the first allegation of a violation of conduct standards where the complainant was searched and put in the back of a police car without knowing what he did. John Paneto moved to concur with the OPS finding. Marilyn Hammond seconded the motion. The motion passed unanimously.

Mr. Paneto stated that he agreed with the OPS finding of *not sustained* on the second allegation of a violation of conduct standards where the complainant asked the officers to loosen the cuffs on his ankles and they did not. Mr. Paneto moved to concur with the OPS finding. Marilyn Hammond seconded the motion. The motion passed unanimously.

Mr. Paneto stated that he agreed with the OPS finding of *exonerated* on the third allegation of a violation of conduct standards where the complainant alleged that he was denied a phone call to the District Attorney and home. Mr. Paneto moved to concur with the OPS finding. Marilyn Hammond seconded the motion. The motion passed unanimously.

Mr. Paneto stated that he agreed with the OPS finding of *not sustained* on the fourth allegation of a violation of conduct standards where the complainant alleged that he was detained until he agreed to take a DNA test. Mr. Paneto stated that the Board already had a discussion on this. Mr. Paneto moved to concur with the OPS finding. Marilyn Hammond seconded the motion. The motion passed unanimously.

Mr. Paneto stated that he agreed with OPS on the finding of *not sustained* on the fifth allegation of a violation of conduct standards where the complainant alleged that the officer gave the complainant back his ID but did not give him back his \$50. Mr. Paneto moved to concur with the OPS finding. Marilyn Hammond seconded the motion. The motion passed unanimously.

Mr. Paneto summarized the findings of the OPS on the sixth allegation of call handling where the Sergeant allegedly stated, "You shouldn't have your kids walking around at night" to the complainant's father. Mr. Paneto reported that based on the OPS investigation, the sergeant admitted to stating "If it were my kid he wouldn't be walking around at night carrying a knife." Mr. Paneto reiterated that the knife was found at the police station and not any time earlier than that. Mr. Paneto stated that he found it to be counter-police procedures that a person was allowed to be detained with a knife while in the custody of the police. The police found the knife when another officer frisked the complainant again after the complainant asked for a restroom break. Detective Alisa Murray stated that the complainant had the knife secreted in his waist band. She further stated that when the complainant asked to use the restroom, the officer decided to search the complainant one more time, and that was when the knife was found secreted in the waistband of the complainant's underwear, not in his pocket which is more readily accessible.

Mr. Paneto stated that he agreed with the OPS finding of *sustained* on the sixth allegation of call handling, where the complainant alleged that a sergeant told the complainant's father that he should not have his kids walking around Albany at night. Mr. Paneto noted that the sergeant admitted that he stated that. Mr. Paneto moved to concur with the OPS finding. Marilyn Hammond seconded the motion. The motion passed unanimously.

**CPRB No. 74-08/OPS No. C08-710** (Presented by Acting Chairman Ronald Flagg)

Acting Chairman Ronald Flagg stated that the incident occurred on October 30, 2008, and no monitor was assigned to the case. Acting Chairman Flagg stated that the complainant alleged that he was coming out of a store on Madison Avenue and Grand Street when he was approached by detectives and asked if he would like to work for them. Acting Chairman Flagg stated that the complainant alleged that when he told the detectives no, they stated they had some sales of drugs and should arrest him. The complainant alleged that he was being harassed on a regular basis by narcotics plain-clothes officers.

Acting Chairman Flagg stated that he reviewed the case file. Mr. Flagg reported that based on the OPS investigations, the two detectives whom the complainant alleged were harassing him were contacted. The two detectives gave signed statements that they had not had contact with the complainant for a period of time. Additionally, if they had contact with the complainant, they would have been required to arrest the complainant because there had been a court order of indictment on the complainant. The complainant was later arrested in December. Acting Chairman Flagg stated that he assumed the arrest was on drug charges.

Acting Chairman Flagg noted that he agreed with the OPS finding of *unfounded* on the allegation of a violation of conduct standards. Acting Chairman Flagg moved to concur with the OPS finding of *unfounded*. Anthony Potenza seconded the motion. The motion passed unanimously.

*B. Appointment of New Members to the Committee on Complaint for Review for August/September 2009*

The following Board members were appointed to the Committee on Complaint for Review for September 2009: Ronald Flagg, Marilyn Hammond, John Paneto, and Anthony Potenza.

*C. Committee/Task Force Reports*

By-Laws and Rules

Acting Chairman Ronald Flagg stated that Chairman Jason Allen was involved with this. Acting Chairman Flagg further stated that he had nothing to report.

Community Outreach

Acting Chairman Ronald Flagg stated that he had nothing new to report. Coordinator of the Board Sharmaine Moseley stated that she will report on outreach in her report.

Mediation

Acting Chairman Ronald Flagg stated that Committee Chairman was not present at the meeting. He further stated that he had not been in contact with Chairman Jason Allen and therefore was unaware of information to share. Acting Chairman Flagg stated that he knew the Board had a discussion on mediation last month but did not know if Chairman Allen had spoken to the Police Chief.

Police Department Liaison

Acting Chairman Ronald Flagg stated that Committee Chairman Andrew Phelan was not present at the meeting.

Public Official Liaison

Committee Chairman Ronald Flagg stated he had nothing new to report.

Task Force on Monitors

Task Force Chairperson Jean Gannon stated that Sharmaine Moseley will report on this during the GLC report. Ms. Moseley agreed to discuss this in her report.

*D. Report from the Government Law Center*

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

Complaint Inventory as of Date of Meeting



It was reported that the Board reviewed five (5) complaints at tonight's meeting and closed five (5) of them, which leaves the Board with fifty (50) active complaints. Out of those fifty (50) active complaints, three (3) are ready to go to the agenda for review.

It was further reported that three hundred thirty-five (335) complaints have been closed. The total number of complaints that remain suspended for review is six (6). The total number of complaints filed to date is three hundred ninety-one (391).

It was reported that the Board received four (4) grievance forms since its last meeting. The total number of grievance forms received to date is ninety-three (93). The GLC has reached out to all ninety-three (93) individuals, and has received twenty-four (24) CPRB complaint forms.

#### CPRB Monitors

It was reported that the GLC was notified by monitor Teresa Balfe that she will be returning to her monitor duties after her six month leave. The GLC has drafted a Want-Ad for a search for monitors. The City is okay with the ad so it will be posted in the Times Union as soon as it is approved by Albany Law School's Human Resources Department.

#### Board Vacancies/Re-Appointments

It was reported that in October 2009, four members of the Board will be up for re-appointment. Two of those four members have informed the Board that they do not want to be reconsidered for re-appointment. The GLC sent a letter to the Mayor and Common Council regarding the re-appointments of Jean Gannon and Reverend Edward Smart and also requested that they fill the vacancy left by Daniel Fitzgerald and the vacancies that will be left by John Paneto and Andrew Phelan. It was noted that a copy of the letter was in the meeting packets.

#### Community Outreach

It was reported that the International Center will be sending a visitor from Trinidad and Tobago on August 3<sup>rd</sup> or 4<sup>th</sup> who would like to meet with the Board. Ms. Moseley stated she will send out an email to see who is interested.

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

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

John Paneto stated to Commander Ryan that having reviewed the file regarding the stabbing case that was discussed earlier, the police department did an outstanding job rounding up so many individuals and having so many police officers involved in one night. He further stated that citizens do not get to see the job that the police do. Mr.

Paneto stated that a murder suspect was found that evening and prosecuted. Mr. Paneto further stated that the case was a bigger deal than was on the record.

*F. Report from the Chair*

Acting Chairman Ronald Flagg stated that he had nothing to report except that to announce that Chairman Jason Allen and his wife have a new baby girl.

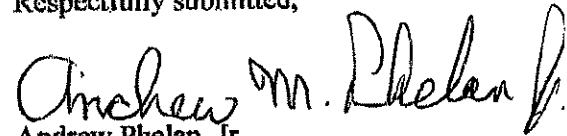
*G. Summer Meeting Schedule*

Sharmaine Moseley stated that the next Board meeting is scheduled for August 13<sup>th</sup>. Anthony Potenza moved to suspend the August 13<sup>th</sup> meeting and have a combined meeting in September. Acting Chairman Ronald Flagg expressed the concern Chairman Jason Allen had had regarding being backed up in the fall. Acting Chairman Flagg stated that at this point there were only three (3) cases to review. John Paneto seconded the motion. The motion passed unanimously.

**VI. Adjournment**

John Paneto moved to adjourn the meeting. Anthony Potenza seconded the motion. The motion carried unanimously. The meeting adjourned at 7:35 p.m.

Respectfully submitted,

  
Andrew Phelan, Jr.  
Secretary