

City of Albany
Citizens' Police Review Board
Albany Public Library
161 Washington Avenue- Large Auditorium
January 14, 2010
6:00 p.m. – 8:00 p.m.

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

Absent: Ronald Flagg.

I. Call to Order and Roll Call

Chairman Jason Allen called the meeting to order at 6:05 p.m.

II. Approval of the Agenda

The agenda was reviewed. Reverend Edward Smart moved to approve the agenda. Marilyn Hammond seconded the motion. The motion carried unanimously.

III. Approval of the April 9, 2009 and May 14, 2009 Minutes

The April 9, 2009 meeting minutes were reviewed. Marilyn Hammond moved to approve the meeting minutes. Andrew Phelan, Jr. seconded the motion. The motion carried unanimously.

The May 14, 2009 meeting minutes were reviewed. Marilyn Hammond moved to approve the meeting minutes. Andrew Phelan, Jr. seconded the motion. The motion carried unanimously.

IV. New Business

A. New Complaints

1. New Complaints Received since November 12, 2009 Meeting

Chairman Jason Allen reported that sixteen (16) new complaints were received by the board since the November 12, 2009 meeting. Andrew Phelan moved to waive the reading of the new complaints due to amount of cases received. Marilyn Hammond seconded the motion. The motion carried unanimously.

2. New Complaints for Review

CPRB No. 73-08/OPS No. C08-699 (Presented by Reverend Edward Smart)

Reverend Edward Smart summarized the complaint. The complainant alleged that she was sitting in the parking lot and a male acquaintance was dumped in the backseat of her car after being kicked out of the club. He was clearly intoxicated and was bashing car windows in the parking lot prior to being placed in the car. The male acquaintance immediately started hitting the driver. The driver exited the vehicle. The male acquaintance began hitting the complainant with a wooden brush on her head. The complainant was in the passenger side, struggling to get the door open. After finally making her escape, the complainant approached another friend who tried to fight the male acquaintance. They approached an officer and asked for an EMT. The complainant told the officer that the male acquaintance had struck her. The officers allegedly responded that "it was obvious that they had been drinking and if they called EMTs they would know that." The officers allegedly advised them to leave the premises. Another officer allegedly stated that if they had left the club this would never have happened. Reverend Smart reported that he read the following documents: Confidential Report dated October 27, 2009 pages 1-7; Nyack Hospital Emergency Medical Chart dated October 25, 2008; Inter-departmental Correspondence (IDC) dated October 30, 2008; Inter-departmental Correspondence dated September 22, 2009; Incident Report dated October 29, 2008; Albany Police Investigation Report dated October 25, 2008; Call Report dated October 26, 2008; Case Management Law; Photos; Supplemental Report dated October 25, 2008; Sworn Testimony dated November 22, 2008, Repository Inquiry dated October 18, 2008, Arrest Record dated May 25 2009; and Sworn Testimonies dated November 21, 2008. Reverend Smart stated that the complainant is a minor, who admitted to underage drinking. The complainant was two and a half hours from her residence. Reverend Smart further stated that the complainant was not truthful concerning the inquiry and the complainant did not use good judgment.

Reverend Smart summarized the finding of the OPS on the allegation of call handling as *unfounded*, where the review showed that the allegations made in the complaint did not occur. The complainant alleged that she approached officers indicating the person who had assaulted her, but the officers did not handle the matter, nor was EMS summoned for her injury. Reverend Smart stated that based on the OPS investigation, an arrest was made for the assault. The complainant alleged that the officers did not offer her EMS services or arrest the person who injured the complainant. Based on the OPS investigation, both officers reported that the complainant was asked what occurred and if she wanted EMS for her injury. This was further confirmed by the director of security at the establishment. The complainant received a non-life threatening injury. Other witnesses on the scene stated that the complainant was all right and her friend took her away. Other officers stated that the complainant and her friends did not want the police involved. The complainant was asked if she wanted medical treatment and she refused. The complainant and her friends clearly stated that she did not want medical treatment or the involvement of the Albany Police Department. The injuries she received were not

life threatening and the cut was a centimeter in length. An arrest was made for the assault. Reverend Smart stated that he agreed with the OPS finding of *unfounded*.

Chairman Jason Allen asked what the actual date of the incident was. Reverend Smart replied that the complaint was filed on October 29, 2008, and the actual incident took place on the October 25, 2008.

Reverend Edward Smart moved to accept the OPS finding of *unfounded*. He noted that the complainant was not present. Chairman Jason Allen seconded the motion. The motion carried unanimously.

CPRB No. 8-09/OPS No. CC2009-015 (Presented by Jean Gannon)

Jean Gannon summarized the complaint. The complainant alleged that he was assaulted by several Albany police officers. The complainant further alleged that after he jumped a fence on Orange Street, several officers broke down the fence and told him to freeze. According to the complainant, he complied. The complainant claimed that when he laid face down on the ground, several police officers began assaulting him. He alleged that two officers tasered him, one in the knee, and one in the shoulder and neck while punching him in the face. The complainant further alleged that one officer was holding his legs, while another officer hit him in the face with his gun. After the alleged assault, the complainant was brought to Albany Medical Center to be treated for a cut on his head, with five staples, which was caused by the officer's gun, and a concussion. According to the complainant, he has frequent headaches, nightmares, a loss of memory, and he gets nervous around the police. The incident occurred on November 30, 2008 at 2:15 a.m. Ms. Gannon reported that she reviewed the following documents: the CPRB Complaint dated February 19, 2009; Monitor's Reports by George Kleinmeier dated March 6, 2009 and October 5, 2009; Albany Police Department Supplemental Report dated December 1, 2008; Albany Police Department Report listing the property of the complainant; the Albany Police Department Property Report listing the taser cartridge used by one of the officers in question; a letter from the OPS to the complainant dated February 17, 2009 requesting that he contact the OPS should he desire to pursue the complaint; and the return receipt for the letter signed by a staff member at the correctional facility. Ms. Gannon further reported that she reviewed the generic letter from Albany Medical Center with instructions for head injuries which do not appear serious. The letter did not address anything specific to the complainant's allegations. Ms. Gannon reported that she reviewed the Albany Police Department Subject Resistance Report dated November 30, 2008, the Albany Police Department OPS Confidential Report, the statement from the complainant dated November 30, 2008, the Albany Police Call Log dated November 30, 2008, the booking photographs of the complainant, the Department of Corrections Inmate Information confirming his custody status, the New York State Police Forensic Investigation Center Report discussing the DNA comparison

of the samples provided by the Albany Police Department of the complainant and the swabs from the handgun in question, Albany Police Department Incident Report November 30, 2008, Arrest Report, the Albany Police Department Admissions Screening Sheet dated November 30, 2008, the Albany Police Department Suicide Prevention Screening Guidelines dated November 30, 2008, and the Albany Police Department Investigation Report of the Incident.

Ms. Gannon reported that based on the OPS investigation, the documents reviewed showed that the officers were responding to a call for large groups in an area. According to the police and the complainant, the complainant ran away from police officers. The officers pursued. During their pursuit, the officers noticed a silver handgun in the complainant's possession. While the complainant climbed over an eight foot fence in an attempt to get away from police, his hand gun went off. The complainant fell head first when going over the fence. According to the police, the complainant sustained a head injury at that time. The fall from the fence, however, did not stop the complainant. Despite his head injury, the complainant continued to try to run away from police. The complainant got stuck on a metal fence. After a struggle ensued, an officer used a taser on the complainant. The complainant was subsequently handcuffed and arrested at the scene. The handgun was recovered at the scene with an additional five live rounds in it. The complainant alleged that he dropped the gun when told to do so by the pursuing officers. The complainant signed a statement at the time of the arrest admitting to being in possession of the hand gun. On the bottom of his typed statement, the complainant wrote "I'm sorry for what happened earlier this night. I did not want anyone to get hurt." The complainant alleged that his head injury was a result of an officer hitting him in the head twice with a police weapon. Based on the OPS investigation, there was no evidence to support that allegation and nothing in the record from Albany Medical Center discussing the potential cause of the complainant's head injury. Ms. Gannon reported that the complainant alleged that a police officer punched him in the face while he was lying on the ground. Based on the OPS investigation, the review of the booking photographs showed no evidence of any facial injury. Ms. Gannon further reported that it was important to note that the police did not use deadly force within the course of this arrest although the Albany Police Department policy certainly permitted them to do so. It appears that they used the minimum force necessary to effect the arrest of the complainant. Ms. Gannon stated that she saw no evidence of excessive use of force. The complainant did not respond to the OPS inquiry for more information when investigating his allegation of excessive use of force. The complainant subsequently pled guilty for possession of the hand gun and is serving five years in prison.

Ms. Gannon summarized the finding of the OPS on the allegation of excessive use of force as *unfounded*, where the review showed that the allegations made in the complaint did not occur. Based on the OPS investigation, the complainant admitted that he was

running away from police and jumped over a fence in order to avoid being arrested. The complainant's combative and uncooperative demeanor was documented in the subject resistance report according to standard operating procedures and was completed immediately following the end of the call. The complainant not only tried to prevent his lawful arrest, but he also recklessly fired one shot from his gun as he attempted to flee. The officers could have interpreted this as deadly force against them and retaliated. The complainant's failure to comply with the officers resulted in him being physically restrained by the officers. The complainant's booking photo showed no evidence of being punched in the face or any physical injury to the facial area as alleged. The lacerations on the back of the complainant's head were a direct result of his own actions when he attempted to elude officers while knowingly and unlawfully possessing a deadly weapon. The complainant gave a sworn statement to detectives, and at no time did he indicate that he was assaulted by the officers who took him into custody. The least amount of force was utilized in getting the complainant into custody even though the complainant was in possession of a hand gun. The contact that transpired between the complainant and the officer was a direct result of his failure to comply. Ms. Gannon noted that neither the complainant nor a representative was present.

Jean Gannon moved to accept the OPS finding of *unfounded* on the allegation of excessive use of force. Chairman Jason Allen seconded the motion. The motion carried unanimously.

CPRB No. 20-09/OPS No. CC2009-038 (Presented by Anthony Potenza)

Anthony Potenza summarized the complaint. Mr. Potenza stated that the complainant was issued a ticket for double parking. The complainant alleged improper call handling by the Albany Police Department. While the complainant was double parked, the police officer allegedly pulled up behind the complainant and waited. The complainant was annoyed by the police car behind her and did not move her car. The police officer allegedly hit his air horn, pulled next to the complainant, and asked her to move. The complainant finally moved the vehicle. This took place on Clinton Avenue. As the complainant drove further down the street, she continued to be annoyed with the police officer. The complainant called the officer an "a*****e", which she admitted to in her complaint. The complainant was finally stopped at Chapel Street and Orange Street and was issued a ticket for double parking. Mr. Potenza reported that he reviewed the Citizen Complaint Form, the OPS Confidential Report, Inter-departmental Correspondence, parking summons, the call ticket, Vehicle Report, New York State Vehicle and Traffic Law relating to double parking, and the City of Albany General Ordinance section 25-22.

Mr. Potenza summarized the finding of the OPS on the call handling allegation as *exonerated*, where the acts which provided the basis for the complaint occurred, but upon review the acts were proper. Mr. Potenza stated that based upon the circumstances of the

incident, the officer should have written the ticket upon immediately observing the complainant's car double parked in violation or shortly thereafter when the complainant failed to move. The officer was within his rights to issue her a summons.

Mr. Potenza stated that he concurred with the OPS finding of *exonerated*. Anthony Potenza moved to accept the OPS finding of *exonerated*. He noted that the complainant was not present. Andrew Phelan, Jr. seconded the motion. The motion carried unanimously.

CPRB No. 36-09/OPS No. CC2009-073 (Presented by Andrew Phelan, Jr.)

Andrew Phelan summarized the complaint. Mr. Phelan stated that the incident occurred on August 4, 2009, at 10:20 p.m. The complainant was observed going through a red light at the corner of Morton Avenue and Pearl Street. The complainant alleged a violation of conduct standards. Mr. Phelan reported that based on the OPS investigation, the officer stated that the complainant was rude and verbally aggressive towards the officers and used profanity towards the officers. An officer added to the call ticket that at 10:39 p.m. immediately following the traffic stop, he observed the complainant acting in an agitated manner, and the complainant was yelling at the officer on the scene. The complainant allegedly became irate when asked where he lived. Based on the investigation, the officers stated that at no time were they rude towards the complainant. They further stated that they acted in a professional manner. The officers indicated that they did not see any officers act in such a manner as alleged by the complaint. The officers stated that the complainant became agitated when asked what his address was. Mr. Phelan stated that it is common for officers to ask drivers for their actual address if they have a post office box. This is to determine if the driver of the vehicle is familiar with the area in which they were stopped. This information can be used at the officer's discretion when determining whether or not a traffic summons will be issued. According to Albany Police Standard Operating Procedures, officers are required to issue a summons without discussion, avoid unnecessary conversation, and shall not offer excuses for issuance of any tickets. Mr. Phelan noted that the complainant was not present.

Chairman Allen asked if there were cameras in the police cars at the time of the incident. Mr. Phelan stated that it was unknown to him whether they had cameras or not.

Andrew Phelan moved to concur with the OPS finding of *not sustained*. Anthony Potenza seconded the motion. The motion carried unanimously.

- B. *Appointment of New Members to the Committee on Complaint Review for February 2010.*

The following Board members were appointed to the Committee on Complaint Review for February 2010: Jean Gannon, Andrew Phelan, Jr., and Anthony Potenza.

It was noted that Chairman Allen may be available.

C. *Committee/Task Force Reports*

By-Laws and Rules

Committee Chairman Jason Allen reported that the Board has been discussing with the Common Council how long a complaint should remain open until it is closed. Chairman Allen stated that Commander Matos gave him a report concerning the number of investigations, and the average number of days spent on each investigation. Chairman Allen suggested that the Board meet with the Common Council regarding the findings of the report.

Community Outreach

Committee Chairman Reverend Smart reported that the next outreach meeting is scheduled for January 21, 2010, with the Center Square Neighborhood Association. It was noted that Chairman Allen will be attending the meeting. Reverend Smart further reported that the committee also has an outreach meeting scheduled with the New York Civil Liberties Union for February 24, 2010 at Albany Law School.

Mediation

Committee Chairman Jason Allen reported that he met with the APD police union representatives and leadership in September. The follow-up meeting was postponed.

Police Department Liaison/ Policy Review/ Recommendations

Committee Chairman Andrew Phelan, Jr. stated that he did not have anything new to report. Chairman Allen stated that he has read the press release involving the cameras. He asked about the status of the Standard Operating Procedure (SOP). Commander Matos stated that it has been written with changes, but most of the changes do not affect how the policy will be utilized. Chairman Allen stated that he was concerned that it will not be ready, and the cameras are already out on the street.

Chairman Allen asked about the status of the SOP for the Early Warning System. Commander Matos stated that there is not a finalized SOP for the Early Warning System. Commander Matos further stated that there are training issues which includes the training of supervisors and the creation of an EAP program. There is a February training date scheduled for EAP. The software program is operating and collecting data. The training

portion for the supervisors is still needed in order to get the policy out. Chairman Allen stated that he would like the Board to be involved in making the SOP.

Public Official Liaison

Chairman Jason Allen stated that there are no meetings scheduled with the Common Council or the Mayor's office. Reverend Smart stated the board should consider meeting with the Common Council's Public Safety Committee after it is reorganized because there are many newly elected Council members. Chairman Allen agreed to schedule a meeting for March.

Task Force on Monitors

Task Force Chairwoman Jean Gannon reported that the Mayor approved the resumes of monitors that were submitted to him. She further reported that the board is now waiting for the Common Council's approval.

D. *Nominations for Elected Board Member Positions*

Anthony Potenza nominated Chairman Jason Allen for the Chairman position for the next year. Reverend Smart seconded the nomination. It was noted that there were no other nominations for Chair. Chairman Jason Allen stated that Vice-Chairman Ronald Flagg is out of town for the months of January and February but would not mind if they submitted nominations in his absence. Anthony Potenza nominated Ronald Flagg for Vice-Chairman. Chairman Jason Allen nominated Reverend Edward Smart for Vice-Chairman. Marilyn Hammond seconded the nomination. Chairman Allen stated that they would only take nominations during this meeting and vote during the next meeting after reaching out to Ronald Flagg to see if he would like to continue in his position. Reverend Smart stated that he did not want to run against Ronald Flagg. However, if Ronald Flagg did not want to continue in his position as Vice-Chair, he would serve. Reverend Edward Smart nominated Andrew Phelan, Jr. for secretary. Chairman Jason Allen seconded the nomination. It was noted that there are no other nominations for the secretary position. Reverend Edward Smart moved that the Committee Chairs remain unchanged. Chairman Jason Allen seconded the motion. The motions carried unanimously.

E. *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 as of today, there are currently sixty-four (64) active complaints before the Board for review. Of those sixty-four (64) active complaints, four (4) were reviewed at tonight's meeting, which leaves the Board with sixty (60) active complaints. Out of those sixty (60) active complaints five (5) cases are ready to go on the next meeting agenda for review.

It was further reported that three hundred and fifty-five (355) complaints have been closed. The total number of complaints suspended from review is eleven (11). The total number of complaints filed to date is four hundred and twenty-six (426).

It was reported that since the Board's last meeting, the GLC received fifteen (15) grievance forms. The total number of grievance forms received to date is one hundred and thirty-four (134). In response to the GLC's outreach to all one hundred and thirty-four (134) individuals, the GLC has received thirty-five (35) CPRB complaint forms.

Board Vacancies/Re-appointments

It was reported that the GLC has received correspondence from the Common Council regarding its appointment of new member Akosua Yeboah to the Board. The GLC is scheduling an orientation for Akosua Yeboah for next week. It was further reported that Jean Gannon was re-appointed for a two (2) year term on the Board. Currently, the Board still has one (1) vacancy to fill which was left by Daniel Fitzgerald who was a Mayor appointee. The GLC is also still waiting on the re-appointments of Reverend Edward Smart and Andrew Phelan, Jr.

Reports and Minutes

It was reported that the GLC is working on catching up on the minutes and quarterly reports. In the meeting packets, are the June meeting minutes and a quarterly report to review.

Upcoming Meetings

It was reported that the next Board meeting is scheduled for February 11, 2010 at the Labor Temple.

F. *Report from the Office of Professional Standards*

Commander Ronald Matos invited the Board to come into the OPS office to look at the cameras in the officers' cars. Commander Matos stated that the Citizen's Academy applications are on the website and the dates have not been set.

G. *Report from the Chair*

Chairman Jason Allen stated that he had nothing new to report.

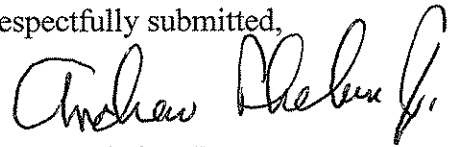
V. **Public Comment**

Chairman Jason Allen opened the floor for public comment. It was noted that there were no public comments.

VI. **Adjournment**

Reverend Edward Smart moved to adjourn the meeting. Chairman Jason Allen seconded the motion. The motion carried unanimously. The meeting adjourned at 7:00 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew Phelan, Jr.", written in a cursive style.

Andrew Phelan, Jr.
Secretary

