

**City of Albany  
Citizens' Police Review Board  
Albany Public Library  
161 Washington Avenue- Large Auditorium  
March 11, 2010  
6:00 p.m. – 8:00 p.m.**

**Present:** Jason Allen, Jean Gannon, Anthony Potenza, Reverend Edward Smart, and Akosua Yeboah.

**Absent:** Ronald Flagg, Marilyn Hammond and Andrew Phelan, Jr.

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

Chairman Jason Allen called the meeting to order at 6:10 p.m.

**II. Approval of the Agenda**

The agenda was reviewed. Chairman Jason Allen stated that CPRB No. 19-09/OPS No. CC2009-031 and CPRB No. 42-08/OPS No. C08-385 were tabled until next month. Reverend Edward Smart moved to approve the agenda. Chairman Jason Allen seconded the motion. The motion carried unanimously.

**III. Approval of the September 10, 2009 Meeting Minutes**

The September 10, 2009 meeting minutes were reviewed. Anthony Potenza moved to approve the meeting minutes. Jean Gannon seconded the motion. Akosua Yeboah abstained from voting. Ms. Yeboah explained that she was not on the Board during that time period. The motion did not pass because there was no quorum. The September 10, 2009 meeting minutes were tabled until the next meeting.

**IV. New Business**

**A. New Complaints**

**1. New Complaints Received since February 18, 2010 Meeting**

Chairman Jason Allen reported that five (5) new complaints were received by the board since the February meeting. Reverend Edward Smart moved to waive the reading of the new complaints due to the length. Anthony Potenza seconded the motion. The motion carried unanimously.

**2. New Complaints for Review**

**CPRB No. 45-08/OPS No. C08-409 (Presented by Jean Gannon)**

Jean Gannon summarized the complaint. The complainant alleged that on June 28, 2008 at approximately 9:16 p.m., she was "singled out" by an officer when he issued her three (3) Uniform Traffic Tickets (UTT) for section 509-5 for holding more than one (1) license, section 1229-3 for no seat belt, and section 1201-A for standing/stopping on pavement. The complainant further alleged that the officer rudely reached into her vehicle and snatched her wallet from her hand and took it back to his unit to print out the tickets. The complainant alleged that the officer was negligent, and his demeanor was intimidating. She further alleged that she stopped her vehicle for a very brief period next to a parked vehicle on the curbside to discharge a passenger and there were three (3) other vehicles double-parked which were not cited for 'standing/stopping on pavement.' When the complainant pointed this out to the officer, his defense was that they were unloading material. The complainant further alleged that she was issued a 'no seat belt' ticket and that her seat belt was engaged until such time that the officer asked her for her license. She disengaged the seatbelt in order to retrieve her pocketbook, which was located on the rear seat of the vehicle.

Ms. Gannon reported that she reviewed the following information: the Citizen Complaint Form received by the Government Law Center (GLC) on July 2, 2008, the Office of Professional Standards (OPS) Confidential Report, the Monitor's Report dated September 21, 2009 from Joel Pierre-Louis, Inter-Departmental Correspondence from the Target Officer dated September 2, 2008, Inter-Departmental Correspondence from the Back-up Officer dated September 3, 2008, UTT #TS0500NDB2 "Stopping/Standing on Pavement", UTT #TS0500NFB2 "No Seat Belt- Driver", UTT #TS0500NGB2 "Holding More Than One (1) NYS License", News story concerning the new software for issuing tickets, UTT #TS0500NGB2 "Holding More Than One (1) License" with officer traffic stop notes, letter from the Albany Police Department (APD) to a witness asking the witness to contact the OPS, USPS return receipt for APD letter to witness, Standard Operating Procedure (SOP) article 47.2 Traffic/Stopping Violations, NYS Traffic and Criminal Software (TRACS) website information paper, Call ticket showing arrival time of 21:14 and departure time of 21:28, the OPS Confidential Report dated June 10, 2009 which discussed disposition of tickets, telephone interview with a second witness, phone call to first witness, target officer's interview with the OPS, Inter-Departmental Communication dated October 16, 2009 from target officer to follow up on CPRB questions from initial review, and Inter-Departmental Correspondence dated October 20, 2009 from back-up officer.

Ms. Gannon stated that after reviewing all the information, it was clear that there were repeated attempts by phone and mail to contact the complainant's second witness. These attempts were unsuccessful.

Ms. Gannon stated that there were five (5) conduct allegations that were made by the complainant. In the first allegation, the complainant alleged that she was "singled out" by an officer when he issued her three (3) UTTs.

Ms. Gannon stated that the monitor's report, the OPS file, and the complaint did not provide any information regarding the race, color, creed or national origin of any other drivers/motor vehicle operators on South Pearl Street, so the issue of whether the complainant was singled out for "harsh enforcement" due to her being a member of a protected class cannot be assessed. Ms. Gannon stated that the complainant offered no suggestion as to what specific actions by the police suggested her race had anything to do with the traffic stop.

Ms. Gannon stated that the review of the case file offered contradictory statements concerning whether there were other vehicles similarly parked. Officer A stated that the complainant's vehicle was the only one that he observed double-parked. However, in a statement from the Back-up Officer ("Officer B"), Officer B stated that when the complainant asked him why the other officers were not being ticketed, he explained that they were unloading equipment.

Ms. Gannon stated that regardless of whether there were or were not other vehicles similarly parked, the complainant admitted and acknowledged that she was double-parked. Ms. Gannon stated that Officer A admitted and acknowledged that he "singled" her out because she was double-parked.

Ms. Gannon summarized the finding of the OPS for this allegation of violation of conduct standards as *exonerated*, where the acts which provided the basis for the complainant occurred, but the review showed that such acts were proper. Ms. Gannon stated that based on the OPS investigation, when the officer issued the complainant three (3) UTTs, he was assigned to vehicle and traffic enforcement at the time of the incident. While in the course of performing his duties the officer observed the complainant's vehicle in violation. The officer stated that he observed the complainant's vehicle parked in the traffic lane obstructing vehicular traffic in front of the pizza restaurant at 52 South Pearl Street. The officer further admitted that he "singled" her out because she was the only vehicle parked. He did not observe any other vehicle in violation. The complainant's vehicle was the only vehicle obstructing traffic at that point. The officer further stated that the complainant was parked illegally in the traffic lane, and she was not parked against the curb. Ms. Gannon stated that were it not for the complainant's own actions of parking in violation, which she admitted to in her complaint, the officer would not have had a reason to conduct the traffic stop. The complainant never referenced that the drivers of the "other" vehicles were not African American to further substantiate her allegation of being "singled out."

Ms. Gannon stated that the monitor agreed with the OPS recommendation regarding this issue to the extent that the complainant and her witness admitted that her vehicle was double-parked on South Pearl Street. Ms. Gannon further stated that it was the complainant's act of double-parking her vehicle which gave Officer A cause to conduct the traffic stop.

Ms. Gannon stated that she agreed with the monitor and the OPS that this conduct allegation be closed as *exonerated*. Ms. Gannon recommended that the Board wait until the end of the entire complaint to vote on each allegation because there are other issues that needed to be discussed.

Reverend Smart stated that there should be discussion on each item as Ms. Gannon reads through them. Ms. Gannon agreed and clarified that she was just recommending that the Board refrained from voting until the very end of the complaint.

Ms. Gannon asked if the monitor wished to add anything regarding the allegation. Mr. Pierre-Louis stated that he had nothing further to add. Ms. Gannon opened the floor to questions from Board members.

Reverend Smart stated that he believed that the complainant was "singled out." Reverend Smart explained that the officers should ticket everyone or no one at all. Reverend Smart stated that if the first officer stated that there were no others double-parked, and the backup officer stated that there were, then in his conclusion the officer and anything that he has said may not be truthful. Reverend Smart asked why the officer would not say that he saw others double-parked, but he used his discretion in ticketing the complainant. Reverend Smart stated that this is not the kind of appropriate behavior for an officer. Reverend Smart further stated that he did not know whether the complainant was singled out because she was African American because there could be a number of reasons why a person is singled out. Reverend Smart stated that the officer may have been on a double shift, and decided that he was going to clean up because he was tired. Reverend Smart further stated that there is some validity to this complaint. Ms. Gannon stated that she would address the veracity of the officer's statements in the next allegation.

Ms. Gannon stated that not everyone gets a ticket for everything done wrong. Whether a person is singled out due to race, color or creed is different. There is no evidence to say that this had occurred with this case.

Ms. Gannon summarized the second conduct allegation. The complainant alleged that with respect to the charges the pertinent facts under the alleged violation of Sec. 509, Subd5 of the VLT are as follows:

"(1) The sum or substance of the offense is "no person shall hold more than one (1) unexpired license issued by the commissioner at any one (1) time";

(2) At the time of the complainant's encounter with Officer A, the complainant had only one (1) valid license issued by the Department of Motor Vehicles and underneath the current license the complainant had several expired licenses which on their face indicated they were no longer valid;

(3) Once the complainant secured her wallet from her pocketbook, the officer, without warning, rudely reached into her vehicle and snatched it from her hand. After the officer seized her wallet, he took it back to his cruiser to print out the three (3) tickets previously specified in this statement;

(4) The officer, at the place and time of our encounter, neglected to inspect the expired licenses to ascertain they were no longer valid prior to issuing the UTT alleging a violation of Sec. 509 Subdivision 5;

(5) Officer A's negligence, intimidating demeanor and failure to review and peruse the expired licenses available at the scene prior to charging the offense of possessing multiple licenses was reckless and an abuse of discretion. It unnecessarily raised an allegation of misconduct on that could have, in his discretion, been definitively resolved at the scene without wasting prosecutorial and judicial resources by issuing this unnecessary summons.

Ms. Gannon stated that based on her review of the case file, one of the target officer's statements is inaccurate which creates difficulty in trying to assess what actually transpired during this traffic stop. Ms. Gannon explained that in the officers' May 8, 2009 statement to the OPS, Officer A stated that he was on patrol on Pearl Street and observed a vehicle parked in front of Jack's Pizza "with no driver in the vehicle and two (2) passengers in the vehicle." Ms. Gannon stated that when the officer was asked by the OPS whether there was a driver in the vehicle, he replied "no." The officer then went on to say that he "initiated a traffic stop and at that point a party came out of the pizza shop stating that she was driver of the vehicle and there was no driver present." Ms. Gannon stated that these parts of his statement are untrue. Ms. Gannon further stated that the driver of the vehicle was with the vehicle the entire time, and it was the rear passenger who left the vehicle and went into the pizza shop.

Ms. Gannon stated that approximately one month later, on June 2, 2009, Officer A informed the OPS that he looked through his notes and found that he had taken notes in reference to the traffic stop. These notes were entered into the automated ticket system (TRACS). Ms. Gannon stated that Officer A's notes stated: "stopped in front of 52 South Pearl in front of pizza shop. No lights on. Party came out of pizza shop. Addressed driver. Instant attitude from her. When I asked for her license, she stated it was stuck and could not get it out. Finally produced it, asked for registration, looked, handed an insurance card, when I said I needed registration she threw all contents into glove box

and said I can't find it. On approach did not have seatbelt. Had slice of pizza almost eaten on paper plate on lap. Fell off when reached for purse. She finally gave me license had another NYSDL behind first. Stated she was going to file a complaint."

Ms. Gannon stated that the account of the events on the TRACS system more closely resembles the situation as described by the complainant and her witness. Ms. Gannon further stated that she was concerned that Officer A provided an incorrect statement to the OPS relying on vague recollections rather than relying on his notes in the first place. The OPS relied on portions of this statement throughout the investigation even after learning that there was a major discrepancy.

Ms. Gannon stated that the APD's Standard Operating Procedure's Article 47.2 on Traffic/Stopping Violations states that "keeping in mind that a correct recollection of events may be called upon for testimony in court, it is recommended that each officer maintain notes concerning any action(s). Such notes can be kept by an officer regarding each incident either in a separate notebook or on the back of each UTT." Ms. Gannon stated that Officer A followed this policy.

Ms. Gannon further stated that when using TRACS, once the officer hits "end shift" they cannot access the ticket to make any changes. Ms. Gannon stated that on the shift that the ticket is issued, if they need to update notes they can; however, they cannot change anything else in the system. Ms. Gannon stated that having been notified of the complaint two (2) months after the traffic stop, Officer A would have been unable to access his notes to add anything with respect to the complainant's allegations. Ms. Gannon stated therefore, it appears that Officer A took notes at the time of the traffic stop.

Ms. Gannon stated that Officer A's initial interview by the OPS showed that he did not consult his notes before making his statement and instead relied on what turned out to be faulty memory of a previous event. Ms. Gannon stated that once it became clear that the officer's statement was inaccurate, at least in part, the rest of his statement is questionable. Ms. Gannon stated that she is troubled by the OPS's continued reliance on any part of that statement for the conduct of their inquiry. The officer complied with the APD's policy to keep notes of stops. Ms. Gannon noted that there was nothing in the file that indicated that the OPS questioned the officer as to why he provided a statement based on his recollections rather than refreshing his memory with his available notes. Ms. Gannon stated that she saw nothing in the file that suggested that the officer was admonished, corrected, or chastised for providing a statement that was inaccurate. Ms. Gannon stated that she understood that the date of the incident and the date of the Officer's interview were far apart. Ms. Gannon further stated that she was not suggesting that the officer provided his statement with the express intent of providing a false statement. Ms. Gannon questioned what happens when the OPS determines that the

statement provided by the Officer turns out to be inaccurate in recounting major facts of the investigation. Ms. Gannon commended the officer for coming forward with his discovery of the notes on his ticket especially since they were contradicted in the statement he previously made to the OPS. Ms. Gannon stated that she did not know where the line is drawn between an officer making a false statement for which some sort of action should be taken or when it is just honest error and should be overlooked.

Chairman Allen reiterated that the notes were discovered after the officer had made his initial statement to the OPS. Ms. Gannon replied in the affirmative. The officer provided his notes one (1) month after he provided the statement to the OPS. Chairman Allen questioned whether the notes were entered into the OPS investigation. Ms. Gannon stated that the notes were entered into the OPS investigation, but the first statement that contained the inaccuracies continued to remain "in play" and be used to support some of the OPS findings, which is troubling.

Ms. Gannon stated that a review of the case file revealed contradictory statements as to the issuance of the ticket for more than one license and the officer's demeanor. As to Officer A's demeanor, the officer denies that he was rude, unprofessional, or intimidating toward the complainant. Officer B stated that Officer A's demeanor was "firm but calm." Based on the OPS investigation, the complainant's witness stated that "the officers were very unprofessional and biased being that they were two (2) African American women that were in the car. The way the officers talked to them was rude, and they put flashlights in their faces like that had just committed a big crime." The witness later said "the initial officer was quite rude. The back-up officer was agitating the initial officer to make him do things that he should not have done." Ms. Gannon stated that there was no specificity offered by the complainant or her witness as to what behaviors/tone of voice or manner of behavior constituted rude or intimidating behavior as alleged, nor is there any indication that they were asked to provide specific details by the OPS. Ms. Gannon stated that it was only the complainant's witness who suggested rude and intimidating behavior by Officer B, the back-up officer. Ms. Gannon further stated that his behavior was not addressed in this report by the OPS, the monitor, or this report.

Ms. Gannon stated that as to the allegation that the officer snatched the complainant's wallet out of her hand, without warning, and with no apparent reason, there is conflicting information. According to the notes the officer wrote at the time of the incident he did mention that the complainant stated that she could not take the license out of her wallet.

Ms. Gannon stated that according to the complainant's witness per the OPS telephone interview notes "The officers asked for the complainant's insurance card, she showed them the card, and they took it. They took the complainant's whole wallet and they went in the (police) car and came back and said 'well you have more than one license.'" Ms. Gannon stated that later in her complaint, the witness stated that "the complainant had the

wallet out trying to get her license out and she could not get it, so the officer took the wallet with him back to the car. He could have gone through the complainant's wallet because it took him several minutes to get back to the complainant."

Ms. Gannon reported that based on the OPS investigation, Officer B did not observe Officer A snatch the complainant's purse, and he did not recall if Officer A was in possession of the complainant's purse or license at anytime during the traffic stop.

Ms. Gannon summarized the OPS finding regarding the violation of conduct standards allegation as ***not sustained***, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that an officer rudely reached into her vehicle and snatched her wallet from her hand and took it back to his unit to print out tickets. Based on the OPS investigation, the officer indicated when the complainant informed him that her license was "stuck and won't come out" that he instructed her to remove it from her wallet and that it was necessary that she only have the license. The officer stated that he did not snatch the wallet out of her hand and at no time did he come into contact with her wallet. Ms. Gannon stated that during training at the Zone 5 Law Enforcement Academy, officers are trained not to take possession of a person's wallet to review their license during a traffic stop, but they are to request that the license be removed from whatever it may be contained in. Ms. Gannon stated that this is performed so that the officer can review the license, front and back, if necessary to insure that it is valid and not a fake. Ms. Gannon further stated that this is also done to prevent allegations made against officers of missing money or other items from a person's wallet. The back-up officer indicated that he did not recall if the target officer returned to his vehicle or if he was in possession of the complainant's purse or license.

Ms. Gannon stated that the monitor disagreed, in part, with the OPS findings. The monitor agreed with the OPS finding that the officer did not "snatch" the wallet from the complainant's hand during the incident. However, the monitor disagreed with the OPS finding concerning whether the officer took physical possession of the wallet as both the complainant and her witness stated that he did, in fact, take the wallet back to the patrol car and then returned the wallet after issuing three (3) UTTs. The OPS relied on the complainant and witness statements to corroborate the validity of the officer's remarks written on the UTT and to refute the initial statement made by the officer. The monitor suggested that if the complainant and the witness statements were judged reliable enough to agree with the officer's statement as to whether the driver was in the car or the one getting pizza, those same statements should be reliable enough to effectively refute the officer's statement that he did not take the complainant's wallet.

Ms. Gannon stated that while she agreed with the OPS that officers are trained not to take wallets from people during traffic stops but to request the driver to remove the license from the wallet and give just the license to the police officer, receiving such training is



not proof that the officer complied with it. Ms. Gannon stated that whether the wallet was taken or not, it is important to note that there were no allegations or suggestions that anything was removed from the complainant's wallet.

Ms. Gannon stated that as to the complainant's statement that "once I secured my wallet from my pocketbook, this officer, without warning, rudely reached into my vehicle and snatched it from my hand. Once he seized my wallet for no apparent reason, he then took it back to his cruiser to print out the three (3) tickets previously specified in this statement," Ms. Gannon believed that as both Officer A and the complainant's witness testified, the complainant was having difficulty removing her license from her wallet, so the reason the Officer would have taken the wallet would appear obvious.

Ms. Gannon stated that neither the OPS nor the monitor addressed the issuing of the UTT for the "having more than one valid NYS license." The OPS believed that this issue should be resolved in traffic court, and it has been addressed. Ms. Gannon stated that she disagreed with the OPS position on this issue.

The complainant alleged that Officer A abused his authority by issuing her a ticket without basis. Although not included in the OPS report, Ms. Gannon stated that she previously asked the OPS to question Officer A as to how he knew the other license or licenses he observed were not expired. According to the IDC he provided to the OPS, he stated "did issue UTT for holding more than one valid NYS driver's license. She did present a valid license when she removed it from her wallet. Another NYSDL was observed still in wallet. I did not observe the expiration and given temperament of complainant I did not ask for that document. I believe that when I checked the DMV computer it showed that the complainant did have a valid NYSDL but had no other DMV documents attached to her name."

Ms. Gannon reported that in her discussion with the OPS, Ms. Gannon questioned why, since by the officer's own admission he did not have any evidence that the complainant was carrying more than one valid NYSDL, they did not view this as an abuse of authority. The OPS stated that this was a matter for Traffic Court to resolve, and if Traffic Court thought it baseless, the ticket would have been summarily dismissed. The OPS took as evidence to the contrary that since this ticket was Adjourned in Contemplation of Dismissal (ACOD) it supports their position that the ticket issuance was not without merit. Ms. Gannon stated that she disagreed. The prosecution dismissed not only the holding more than one (1) license and the seat belt charges, the validity of which are questioned by the complainant; it also dismissed the double-parking violation which is not in dispute. The fact that a hearing contemplating dismissal was not held does not provide evidence that the violations were valid or invalid.

Ms. Gannon stated that as to whether he took the wallet, certainly both the complainant and her witness stated that he did. Officer A stated that he did not. At some point the complainant's license was removed from the wallet since Officer A saw and the complainant acknowledged having other NYSDLs within her wallet. Ms. Gannon stated that if the officer was in possession of the wallet, he would have been able to see the expiration date on the other licenses and could have made an informed accurate decision as to whether to issue the ticket for "holding more than one (1) NYSDL." Ms. Gannon further stated that if the officer did not have the wallet, he would not have been able to see whether the other license or licenses were expired and just would have written the ticket, without evidence that the complainant was carrying more than one (1) valid NYSDL.

Ms. Gannon stated that the OPS should have reviewed Officer A's decision to issue the ticket for having "more than one (1) driver's license." According to the complainant, she was carrying only one (1). Ms. Gannon stated that the OPS should investigate whether Officer A's failure to make this determination (whether it was valid or invalid), is an act of negligence or abuse of authority by Officer A as alleged by the complainant. According to Officer A, he asked the complainant for her vehicle registration but she told him she could not find it. Officer A could have, but did not, issue the complainant a UTT for failure to provide her registration as permitted by section 401-4 of the VTL.

Ms. Gannon stated that she disagreed with the OPS finding on the conduct allegation as **not sustained**, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. Ms. Gannon stated that the complaint should be returned for further review concerning three (3) issues:

- (1) The issue of Officer A providing an inaccurate statement to the OPS;
- (2) The question of whether issuing an UTT for having more than one (1) valid NYSDL when apparently having no cause to do so constituted an act of negligence or an abuse of authority; and
- (3) Whether the officer took the complainant's wallet from her.

Reverend Smart stated that he agreed with Ms. Gannon. He further stated that this second allegation is the second time that the officer had not been truthful about the facts. He stated that if the officer stated that the complainant had more than one license, it is obvious that he took the wallet and he is the only person who denied this allegation. Reverend Smart stated that it is extremely serious when people are not truthful in their statements. He further stated that he was surprised that the OPS would not look at this and understand that whether it was exonerated in traffic court was not the issue. Reverend Smart stated that the issue is whether the officer was being honest.

Chairman Allen reiterated that the complaint had been returned to the OPS for further review before this meeting. Ms. Gannon clarified that it was returned to the OPS during her review.

Chairman Allen asked what were the main issues that need to be addressed. Ms. Gannon replied that whether the issue of the officer providing the inaccurate statement needed to be addressed by the OPS, whether the issuing the UTT for more than one (1) license constituted an act of negligence or abuse of power and whether the officer was in possession of the complainant's wallet.

Deputy Chief Steven Reilly stated that the case was being returned to the OPS for further investigation, and it was not necessary to write a letter. He stated that he will personally ensure that the issues stated by the board are addressed. Deputy Chief Reilly further stated that he was briefed on this case a few minutes before the meeting began and was not up to speed on it. He stated that the case review was unacceptable to him and he will make sure that the Board's concerns are addressed.

Chairman Allen stated that the Board would issue a letter so that the members can collect their thoughts and send it to the OPS.

The complainant's husband was acknowledged as being present. He stated that he did not think it was incumbent upon the complainant to prove the ethnicity of the other drivers, and selective enforcement of the laws is not the best practice. He further stated that if the Board concluded that the officer selectively enforced the laws because he overlooked other parked vehicles but singled out this vehicle that it equally reprehensible and it should not be up to the complainant to prove the ethnicity of the other drivers.

Ms. Gannon stated that she was concerned that there was no question of anyone as to why the complainant made that allegation.

Monitor Joel Pierre-Louis was acknowledged as being present. Ms. Gannon asked if he had anything to add. Mr. Pierre-Louis stated that Ms. Gannon had properly summarized his report and he had nothing further to add. Monitor Theresa Balfe stated that as a monitor she would like to know the procedure for these officers when they get called in for a review. She stated that the officer took notes but made an inaccurate statement based on memory. Ms. Balfe further stated that as a monitor for nineteen (19) years, as you process cases they start to blend together. The officer made the initial statements from memory, but his notes were facts. She stated that she is concerned that the OPS never went back and used the proper notes and continued to use the inaccurate statement in concert with the proper notes in making their report. She questioned whether the officers had time to look back at their notes before meeting with the OPS and making their statement.

Ms. Gannon reported that based on the OPS investigation for the third allegation where the complainant alleged that Officer A was negligent and displayed intimidating behavior, the witness described both officers' behavior as very unprofessional and biased. Ms. Gannon stated that the witness stated that the way both officers talked to them was quite rude. The witness stated that the backup officer was agitating the initial officer to make him do things that he should not have done. Ms. Gannon noted that the witness alleged that both officers engaged in rude and unprofessional conduct, however the complainant herself did not make mention of any inappropriate conduct by the back-up officer. Ms. Gannon stated that this investigation did not address any behavior by the back-up officer.

Ms. Gannon reported that there were no specific details provided nor requested by the OPS of examples of rude or intimidating behavior, or what manner of agitation the witness was suggesting, or what the initial officer was goading the other officer into doing. According to Officer A, he believed he was quite respectful and pleasant but noted that the complainant took a combative attitude toward him. According to the back-up officer, Officer A was "calm but firm."

Ms. Gannon summarized that the OPS recommended that this violation of conduct standards allegation be closed as ***not sustained***, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that an officer was negligent and his demeanor was intimidating. Based on the investigation, the officer stated it was the complainant who took a combative attitude prior to him speaking to her. Ms. Gannon stated per the "officer's notes" on the back of the UTT at the time of the incident, he stated that "stopped in front of 52 South Pearl..." The officer further stated that he was quite respectful and pleasant. Based on the OPS investigation, the back-up officers' observation of the target officer's demeanor was that he was firm but calm when he was explaining to the complainant why she was stopped.

Ms. Gannon reported that the monitor disagreed with the OPS finding. Based on the monitor's report, even though the complainant may have been combative did not mean that Officer A's demeanor was not intimidating, biased, reckless, and/or rude as alleged by complainant and confirmed by her witness. He quoted the witness as saying Officer A's conduct was "very unprofessional, rude, and biased."

Ms. Gannon stated that the complainant stated that Officer A's decision to charge her with having more than one (1) valid license was reckless. The complainant did not allege that his demeanor was. Ms. Gannon further stated that no one was asked to provide any specifics as to what behaviors were offensive. Ms. Gannon stated that the witness statement, as reported by the OPS, alleged that both officers engaged in this behavior. That allegation was not supported by the complainant. Ms. Gannon stated that the

witness stated that the back-up officer agitated Officer A into doing things he should not be doing, without providing specific examples, and without her allegation being supported by the complainant. Ms. Gannon further stated at the time of the monitor's report, there was no information provided by the back-up officer concerning Officer A's demeanor. Ms. Gannon stated that she agreed with the monitor's comment that the behavior and demeanor of the complainant are not evidence to support or refute her allegations about the behavior/demeanor of the officer. However, if the complainant was feeling/behaving in a combative manner, it may have colored her perception of the officer's actions.

Ms. Gannon reiterated that she agreed with the OPS recommendation that this conduct allegation be closed as *not sustained*, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint.

Reverend Smart stated that intimidation and rudeness are not just what a person says verbally. He stated that if there is a woman on Pearl Street at Saturday night and her wallet is snatched out of her hand, it is intimidating, rude, and frightening.

Ms. Gannon stated that it was not clear from the complaint or the report what specifically was intimidating or rude. Ms. Gannon further stated that they need to draw out from the complainant what she specifically means.

Reverend Smart stated that it is not ok to snatch things out of someone's hands.

Ms. Gannon stated that the monitor and the witness concluded that the wallet was not snatched out of her hand. The witness stated that she did not say that. Ms. Gannon stated that the complaint was going back for review and that she disagreed that the allegation should not be exonerated.

The complainant's husband stated that Ms. Gannon stated that the OPS did not ask for specific instances and examples. He further stated that it was unfair to expect lay people to be able to discuss in great detail inappropriate behavior if the OPS did not ask them to specifically describe an instance. Ms. Gannon stated that she agreed.

Ms. Gannon summarized the fourth allegation of violation of conduct standards. The complainant alleged "My vehicle was stopped for a very brief period of time on the roadside of a parked vehicle next to the curb to allow for a passenger to be discharged there with the anticipation that she would promptly return thereto, and at all times I remained in the driver's seat together with a front seat passenger." Later in her complaint, the complainant stated that the "motor was not running and the vehicle was fully stopped."

Ms. Gannon reported that based on the OPS investigation, according to Officer A's notes on the UTT, when he approached the vehicle, the complainant had an almost eaten slice of pizza on a paper plate on her lap. Additionally, his notes indicated that the vehicle lights were not turned on.

Ms. Gannon noted that the complainant's statement said that she stopped to discharge the passenger with the anticipation of the passenger's prompt return. The VTL Sec 25-22 defines parking, standing and stopping: "Park" or "Parking" shall mean the standing of a vehicle, whether occupied or not, other than temporarily, for the purpose of, and while actually engaged in, loading or unloading merchandise or passengers." "Stand" or "standing" shall mean the stopping of a vehicle, whether occupied or not, other than temporarily for the purpose of, while actually engaged in, receiving or discharging passengers."

Ms. Gannon summarized that the OPS recommended that this conduct allegation be closed as *exonerated*, where the acts which provide the basis for the complaint occurred, but the review showed that such acts were proper. The complainant alleged that she stopped her vehicle for a very brief period next to a parked vehicle on the curbside to discharge a passenger and there were three (3) other vehicles double-parked which were not cited for "standing/stopping on the pavement." When she pointed this out to the officer, his defense was that they were unloading material. Based on the OPS investigation, the officer stated that the complainant's vehicle was the only vehicle that he observed double-parked, and the vehicle was not running as the complainant and the occupants finished eating the pizza they purchased. The back-up officer stated that the complainant complained about the other vehicles that were double-parked. At that time he told her that they were unloading music equipment. The officer later stated, during his interview nearly a year later, that he did not recall any other vehicles unloading equipment and if they were, they were parked in a parking spot, but not in the driving lane, and he did not observe any other vehicles. Referring back to the officer's notes taken on the date of incident, he documented "stopped in front of 52 S. Pearl..." He further stated, "on approach did not have seat belt, had slice of pizza almost eaten on paper plate on lap..." Based on the information, he specifically indicated that the complainant had "no lights on" coupled with the fact that that the officer also indicated that "on approach did not have seat belt, had slice of pizza on lap" which are contradictory to her statement that her "vehicle was stopped for a very brief time." Her action of turning off her lights is indicative of a significant amount of time that had transpired. Ms. Gannon stated that the law does not permit people to double-park vehicles for the consumption of food. The complainant clearly made the choice to begin to eat the pizza prior to moving her vehicle out of the driving lane.

Ms. Gannon stated that the monitor disagreed with the OPS recommendation. The monitor stated that Officer A, by his own admission, did not know how long the vehicle

had been double-parked, nor did he observe the vehicle for any extended period of time before he approached and subsequently issued the UTT. While Officer A consistently denied in both his IDC and interview with the OPS that there were other cars double-parked in the same vicinity on the date and time in question, both the complainant and her witness, as well as the back-up officer, stated that there were other cars that were double-parked on the street.

Ms. Gannon stated that the monitor stated that neither Officer A nor Officer B approached, questioned, or ticketed the drivers of these vehicles. Ms. Gannon stated whether or not other vehicles were ticketed has no bearing on whether or not the complainant was double-parked. While the monitor is correct that the complainant, her witness, and Officer B stated that other vehicles were similarly parked, Officer B's statement said that the drivers were unloading music equipment at the time. The complainant and her witness did not provide any information to suggest they took exception to Officer B's statement at the time he provided the explanation.

Ms. Gannon stated that in the complainant's statement, she was very clear that she stopped her vehicle temporarily to discharge her passenger, and then she waited in anticipation for the passenger's prompt return. During this waiting period, in which her car was turned off and the lights were off, the complainant was not actually engaged in the loading or unloading of merchandise or passengers or receiving or discharging passengers. It is this period of waiting for the passenger's return which provided cause for Officer A to issue the UTT.

Ms. Gannon stated that she agreed with the OPS that this conduct allegation be closed as *exonerated*, where the acts which provided the basis for the complaint occurred, but the review showed that such acts were proper.

Mr. Pierre-Louis stated he disagreed with the OPS report because there was no indication by the officers as to how long the complainant had stopped her vehicle. He stated that there were other cars that were double-parked at the same time. Ms. Pierre-Louis stated that the other officer, the witness, and the complainant did not corroborate the back-up officer's statement that the other cars were unloading music equipment.

Ms. Gannon summarized the fifth allegation. The complainant alleged that she was given an UTT when she did have her seat-belt on and only disengaged her seat-belt in order to reach her purse in the backseat to obtain her driver's license. The complainant's witness did not provide any information as to whether or not the complainant's seat belt was engaged or not when Officer A initially approached the vehicle.

Ms. Gannon stated that the OPS recommended that this conduct allegation be closed as *exonerated*, where the acts which provided the basis for the complaint occurred, but the review showed that such acts were proper. The complainant alleged she was issued a "no

seat belt" ticket and that her seat belt was engaged until such time that the officer asked her for license and she disengaged the seat belt in order to retrieve her pocketbook, which was located on the rear seat of the vehicle. Based on the officer's notes, there was no mention of the complainant having to remove her seat belt to retrieve her pocketbook. Ms. Gannon stated had she disengaged her seat belt in the presence of the officer in order to retrieve her pocketbook to produce her license upon his request, it would be clear to the officer that the action of disengaging her seat belt would not have been performed had he not requested her license. Ms. Gannon stated that the officer indicated in his interview that when he issued the complainant a "no seat belt" ticket, that she was not in the vehicle at the time. He stated if he did issue a ticket, it was because she got back in the vehicle and turned the vehicle on at that point and that could be perhaps why. The officer did not recall the circumstances. He stated that as far as he recalled this was so many months ago, there was a front passenger and a rear passenger, and the complainant was not in the driver's seat at that point. He stated that it was not an incident that really stuck out in his mind. Ms. Gannon reported that the officer's recollection of when he had initial contact with the complainant, whether she was in the driver's seat or exiting the pizza shop, differ from his IDC and the OPS interview, however, the accounts of the complainant and her witness are consistent in that they both state that the rear passenger was the party that exited the vehicle and entered the pizza shop. The officer specifically indicated that the incident was so many months ago and the incident did not stick out in his mind. Ms. Gannon stated that based on the officer's notes on the ticket, coupled with the accounts of the complainant and her witness, it was evident that the complainant was in the driver's seat of the vehicle upon contact. The back-up officer specifically stated that he did not arrive on the stop in time to observe if the complainant had her seat belt engaged or disengaged.

Ms. Gannon noted that the monitor disagreed with the OPS recommendation and finds the OPS disingenuous for not accepting the complainant's statement as being true regarding the statement about wearing the seat belt, when the OPS accepted it as true that the complainant was in the driver's seat and was not the one getting pizza. The monitor questioned the officer's speculating on why he issued this ticket since, by his own admission, he could not recall the events. Second, the monitor questioned how the officer could give the complainant a ticket since he said she was coming out of the pizza place and was not in the driver's seat. Third, the monitor questioned how the officer could issue the complainant a ticket if the car was not running.

Ms. Gannon stated that the issue of Officer A's statement not being in agreement with the back-up officers' statement is of concern and was discussed previously. However, there is evidence to support the officer's notes on the UTT and the complainant's and witness statements are more reliable than the other statements made by Officer A.



Ms. Gannon stated that she disagreed with the OPS finding and recommended that this allegation be closed as ***not sustained***, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. Ms. Gannon stated that there was not adequate information in the file to support the recommendation of ***exonerated***, where the acts which provided the basis for the complaint occurred, but the review showed such acts were proper. Ms. Gannon stated the validity of the ticket is an issue for the court to decide. Ms. Gannon further stated that she saw no evidence to suggest that the issuance of this ticket was, in any way, the result of maliciousness on the part of Officer A.

Mr. Pierre-Louis stated that it was disingenuous for the OPS not to treat the statements from the complainant and her witness as true as to the incident in general and other issues raised by the complaint.

The complainant's husband stated that there was no duty for the complainant to have her seat-belt on in a car which was parked. He further stated that since she was issued a ticket for double-parking, and the officer stated that the car and the lights were off, she had no duty to be wearing a seat-belt at the time. The complainant's husband stated that since the officer's statements are so inconsistent, the conclusion is that he went out of his way to issue more tickets than he had to write, which is the definition of maliciousness.

Chairman Allen stated that this complaint is analogous to a complaint that was sent back to the OPS last month for a complainant getting a ticket for talking on a cell phone in a parked car.

The complainant described the incident in question. The complainant stated that she was in the driver's seat of her vehicle, and her sixteen year-old passenger was in the pizza shop. She stated that two police officers approached her car, and she did not know what she did wrong. The complainant stated that she has respect for police officers, and she was treated unfairly. She showed the Board her wallet and how tight it was at the time. The complainant stated that her leather wallet was brand new at the time. She stated that the officer shined the flashlight in her face, and she showed the officer her license. She stated that she tried to pull it out, but she was nervous. It was dark and the license was stuck. She stated that the sixteen year-old was nervous because as she approached the vehicle the other officer had his hand on his gun. The complainant further stated that she asked the officers if she could call her husband and tell him that she was being detained. She stated that the officer told her to "shut up." The complainant further stated that she shut up and allowed her sister to talk. She stated that the officer snatched her wallet out of her hand. She stated that she was very intimidated.

Chairman Allen stated the issues were: Why was the officer's inaccurate statement still propagated throughout the investigation? Was issuing the UTT's an abuse of authority

by the officer? Did the officer actually take the wallet from the complainant? Is it the responsibility of the complainant to prove the ethnicity of other drivers? Why does a seat belt have to be on in a parked car?

Reverend Smart stated that there was excessive language used, and that the complainant stated that she was told to "shut up." He stated that the incident took place on Pearl Street after 9 p.m. on a Saturday night. Chairman Allen stated that the excessive language was not incorporated into the complaint.

The complainant stated that she spoke with Detective Alisa Murray because she felt really degraded and the target officer stated to her "make sure that you get home safely and you don't end up having an accident." She stated that she knew why he said that to her. The complainant stated that the time he spent with her could have been spent on handling violence in the city. She further stated that the Detective stated that she was going to "drop it" and that she did not want it to be reviewed by the Board. The complainant stated that she wanted to make sure that this was addressed.

Jean Gannon moved to send the entire case back to the OPS for further review. Reverend Edward Smart seconded the motion. The motion carried unanimously.

**CPRB No. 53-08/OPS No. C08-476** (Presented by Chairman Jason Allen)

Chairman Jason Allen reported that the complaint was received on July 28, 2009. He stated that the complainant alleged two (2) counts of call handling, one (1) count of use of force, and one (1) count of a violation of conduct standards. Chairman Allen stated that monitor Joel Pierre-Louis was assigned to this complaint.

Chairman Allen summarized the complaint. The complainant alleged that members of the APD entered his house with lights and guns in his face; he was thrown to the floor in his bedroom; a knee was placed in his back; he was ripped off the floor in handcuffs; and dragged into the living room. The complainant further alleged that he was then interrogated and stripped of his jewelry, which was placed on his refrigerator. When the complainant asked if he could take the jewelry with him, he was allegedly told "let your crack head buddies eat tonight." The complainant alleged that his door was left open, and he had items stolen from the apartment. Detectives from the complainant's last complaint allegedly told him that he has made their life a living hell with internal affairs. The complainant claimed that he was charged with criminal nuisance, but the charges were dismissed. He further claimed that since his last arrest a year ago, he has been harassed by both uniformed and plain-clothes members of the APD.

Chairman Allen stated that the monitor's report was consistent with what he read in the OPS Confidential Report.

Chairman Allen reported that he reviewed the following information: complaint, the OPS Confidential Report, Thirteen (13) Intra-departmental Correspondences (IDC), search warrant and supporting documentation, several sworn affidavits regarding the testing of the substances found at the complainant's apartment, APD Line-up Report, APD Community Response Unit (CRU)-Information Registration Form, CAPSNET Web Service Records, APD Investigation Reports, APD Call Sheets, NYS Arrest Report, APD Canine Utilization Report, APD Property Report, APD Admission Screening Sheet, Suicide Prevention Screening Guidelines, APD Community Response Unit-Search Warrant Operational Plan, APD Substance Field Tests, Aerial photographs of the location of the incident, Mug Shots of the complainant, and the Grand Larceny Report.

Chairman Allen stated that according to the monitor, the facts were undisputed. On June 24, 2009, members of the APD executed a "no-knock" search warrant and entered the complainant's home with their flashlights and guns drawn. Upon entering the apartment, the officers encountered the complainant and ordered him to the ground. The complainant was handcuffed while he was lying on the floor. The complainant was taken to the living room where he was searched.

Chairman Allen reported that the following facts are in dispute. The complainant alleged that he was thrown to the floor with a knee placed in his back. He also alleged that he was ripped off the floor while handcuffed and dragged into the living room. The complainant alleged that he was stripped of his jewelry, which was left on the refrigerator, despite his request to take the jewelry with him to the police station. Additionally, the complainant alleged that when he inquired as to why he could not take his jewelry with him, members of the APD told him to "let his crack buddies eat tonight," meaning let them get it and sell it for money. He alleged that the front door of his apartment was left wide open and that other items were stolen from his apartment. The complainant further alleged that he had filed a previous complaint against members of the APD and that one (1) of the officers against whom he had filed a previous complaint was present during this incident and purportedly told the complainant that he had already made their lives a living hell with internal affairs so "f\*\*k [him]."

Chairman Allen stated that unsuccessful attempts were made to meet with the complainant; however, a phone call interview was able to be conducted, correspondence was received from the officers, and documentation was obtained.

Chairman Allen further stated that he reviewed the findings by the OPS. On the first allegation of call handling, the OPS recommended this allegation be closed as ***exonerated***, where the acts which provided the basis for the complaint occurred, but the review shows that such acts were proper. Based on the OPS investigation, the officers entered the residence through the authorization of a "no knock" search warrant issued by a judge. "No-knock" means that the officers have authorization to enter the premises to

be searched without giving notice of authority and purpose on the grounds that there is reasonable cause to believe that the property may be easily and quickly destroyed or disposed of. The giving of such notice may endanger the life or safety of the executing officer or another person. Under these circumstances the detectives will force entry if necessary, have their weapons drawn for safety, secure the entire residence and anyone inside the residence will be taken into custody and placed in one confined area in order for the detectives to complete their duties of searching for the specified items listed on the search warrant. Therefore, they would have entered with their weapons drawn, flashlights illuminated and the complainant would have been handcuffed and taken to the designated area to be monitored while the apartment was being searched.

Chairman Allen summarized the OPS finding for the second allegation of the use of force as *unfounded*, where the review showed that the act or acts complained of did not occur. The complainant alleged that a knee was placed in his back, he was ripped off the floor in handcuffs, and dragged into the living room. Based on the OPS investigation, there was no evidence to indicate that the complainant was treated in the manner he alleged. Had that been the case, he would have suffered some type of injury, especially if in fact he had spine surgery as he stated. Chairman Allen reported that the complainant was pre-screened in booking prior to being placed in a cell and did not indicate that he had any injuries or illness. Further, the photographs of him that were taken that night did not indicate that his condition was anything but normal. The complainant did not indicate that he received medical treatment for any injuries, which one would think would be necessary had he been treated in the manner he described especially after having spine surgery and still suffering from the effects of that surgery.

Chairman Allen summarized the OPS finding for the third allegation of a violation of conduct standards as *unfounded*, where the review showed that the act or acts complained of did not occur. Based on the OPS investigation, the complaint filed by the complainant several years ago was not against the officers who were on the scene the night of the search warrant and therefore they would not have had knowledge of that incident nor was any contact made with the members of CRU with regard to the complainant's previous complaint.

Chairman Allen summarized the OPS finding for the final allegation of call handling as *unfounded*, where the review showed that the act or acts complained of did not occur. The complainant alleged that he had jewelry which the detective put on the refrigerator and said "let your crack head buddies eat tonight." The complainant alleged that the jewelry was later stolen. The complainant filed an SIR several days following his arrest and indicated that he had two (2) chains and a diamond earring stolen from his residence that valued \$2,800. In the report filed, he stated to the officer that his "only concern is the New York state ID" which was also allegedly stolen. Based on the investigation, if the complainant had jewelry stolen, a reasonable person would believe that along with the

ID being a concern the jewelry would also be a concern due to its value. He was, however, not concerned about that. The detective had direct contact with the complainant that night. He was the detective who placed the complainant in handcuffs. The detective stated that he did not see any jewelry on the complainant. Further, the report filed by the complainant was for larceny, which means items were stolen. If the complainant's apartment was broken into and items stolen a report would have been filed for both a burglary and a larceny.

Chairman Allen asked the monitor if he had anything to add. Mr. Pierre-Louis replied that Chairman Allen accurately summarized his report.

Reverend Smart asked if the complainant was charged and convicted. Mr. Pierre-Louis stated that he was charged, but was not sure if he was convicted yet. Deputy Chief Reilly stated that he was arrested, but was not aware of the status of the case at this point.

Chairman Jason Allen moved to concur with the OPS finding of *exonerated* on the first allegation of call handling. Reverend Edward Smart seconded the motion. The motion carried unanimously.

Chairman Jason Allen moved to agree with the OPS finding of *unfounded* on the second allegation of use of force. Reverend Edward Smart seconded the motion. The motion carried unanimously.

Chairman Jason Allen moved to agree with the OPS finding of *unfounded* on the third allegation of violation of conduct standards. Jean Gannon seconded the motion. The motion carried unanimously.

Chairman Jason Allen moved to agree with the OPS finding of *unfounded* on the fourth allegation of call handling. Akosua Yeboah seconded the motion. The motion carried unanimously.

**CPRB No. 54-08/OPS No. C08-477** (Presented by Akosua Yeboah)

Akosua Yeboah stated that this complaint was postponed from the last board meeting. Ms. Yeboah reported that the complainant alleged two (2) counts of violation of conduct standards, and one (1) count of use of force.

Ms. Yeboah summarized the complaint. The complainant alleged that he approached an officer who issued him a parking ticket earlier that day. He alleged that when he tried to ask the officer as to why he was issued the ticket the officer responded with expletives and foul language. The complainant further alleged that he was treated with excessive use of force which could have caused an existing aneurysm to burst. He alleged that the officers were targeting him because they were upset that they could not get who they were looking for in an unrelated event.

Ms. Yeboah reported that she reviewed the following documentation: all IDCs, APD Civilian Complaint Report, the OPS Confidential Report, arrest reports, call tickets for the arresting officer, call tickets for the assisting officer, call tickets of others present, Correspondence from the OPS to the complainants, Correspondence to the complainant's witnesses, additional conversations with the arresting officer, Monitor's report, Penal Law 240.20-Disorderly conduct, statement of the complaint, and supervisors inquiry report. Ms. Yeboah further reported that she visited the scene where the incident took place.

Ms. Yeboah summarized the OPS finding of *not sustained* on the first allegation of violation of conduct standards where the complainant alleged that the officer used foul and obscene language. Ms. Akosua stated that she agreed with the OPS finding. Based on the OPS investigation, there was no evidence that this occurred. There were no witnesses on behalf of the complainant to substantiate the occurrence. There were however, witnesses on behalf of the officer corroborating his statements. Ms. Yeboah could find neither deficiencies nor additional actions that should have been taken by the OPS when investigating this complaint.

It was noted that there were no questions from the board. Monitor Theresa Balfe was acknowledged as being present. Ms. Balfe stated that she thought that it was a good investigation by Detective Murray.

Akosua Yeboah moved to agree with the OPS finding of *not sustained*. Reverend Edward Smart seconded the motion. The motion carried unanimously.

Ms. Yeboah summarized that the OPS finding of *unfounded* on the allegation of use of force. Based on the OPS investigation, there was no evidence to support the complainant's charges. The complainant's own initial statements did not mention the use of force, specifically being choked to the point where serious injury could have been inflicted. Furthermore, the complainant's own witnesses did not come forward to support his allegations despite numerous attempts by the OPS to contact and interview them. Ms. Yeboah stated she could find neither deficiencies nor additional actions that should have been taken by the OPS when investigating this complaint.

It was noted that there were no questions from the board. Ms. Balfe stated that she had nothing to add.

Akosua Yeboah moved to agree with the OPS finding of *unfounded*. Chairman Jason Allen seconded the motion. The motion carried unanimously.

Ms. Yeboah summarized that the OPS finding of *unfounded* on the second allegation of violation of conduct standards. Based on the OPS investigation, the complainant's arrest was due to his own actions of disorderly conduct which the complainant himself

admitted. The officers demonstrated patience and tolerance in the face of repeated acts of disorderly conduct prior to making an arrest. Ms. Yeboah stated that she could find neither deficiencies nor additional actions that should have been taken by the OPS when investigating this complaint.

It was noted that there were no questions from the board. Ms. Balfe had nothing to add.

Akosua Yeboah moved to accept the OPS finding of ***unfounded***. Chairman Jason Allen seconded the motion. The motion carried unanimously.

**CPRB No. 07-09/OPS No. CC2009-006** (Presented by Chairman Jason Allen)

Chairman Jason Allen reported that the complaint was received January 14, 2009. He stated that the complainant alleged four (4) counts of conduct standards. It was noted that no monitor was assigned to the case. Chairman Allen stated that the complaint arises from an incident that took place on January 6, 2009.

Chairman Allen summarized the complaint. The complainant alleged that a public service officer (PSO) issued him a parking ticket knowing that the parking meter was broken. He further alleged the PSO made a smart comment in regards to President Obama being in Office, and she also referred to Corey Ellis being the reason for giving him the ticket. He alleged that this situation has happened more than once.

Chairman Allen reported that he reviewed the OPS confidential report which included the parking ticket record for over three (3) years for this complainant. Chairman Allen further reported that the confidential report also included the parking ticket record of the PSO to ensure that this PSO was not targeting the complainant.

Chairman Allen summarized the OPS finding for the first allegation of violation of conduct standards as ***unfounded***, where the review showed the act or acts complained of did not occur. The complainant alleged that a PSO issued him a parking ticket knowing the meter was broken. Based on the OPS investigation, the PSO stated that if a meter is broken it will say "out of order", "dead", or "failed" and if it says any of those three (3) things she cannot issue a ticket. If it is broken, she would call 'parking 4' and give them the number off of the meter to notify them that the meter is out of order. When there's no money in the meter, it flashes red and expired. The PSO indicated that she hand wrote 'CHLN15' on the ticket and that it was the meter number. She stated it was proper procedure to put that on every ticket because if someone claims that the meter is not working, it is written on the ticket. The person can go to City Hall and say that the meter was not working. The PSO can go back and actually check the meter to see if it is working correctly or not. The code written on the ticket will verify whether or not on January 6, 2009, that meter was working properly. A check conducted by the Albany

Parking Authority on two (2) separate dates revealed that the parking meter in question was found to be functioning properly.

Chairman Allen summarized the finding of the OPS on the second allegation of violation of conduct standard as *unfounded*, where the review showed the act or acts complained of were misconstrued. The complainant alleged that the PSO made a smart comment in regards to President Obama being in office. Based on the OPS investigation, the PSO stated that she did not make a comment regarding Obama being in office. She stated that an unknown male was stating "Obama, Obama, Obama, you're going to get yours now that Obama is in office." This occurred after the ticket was issued, and the PSO stated "well give the ticket to him then" and she kept walking. The PSO knew that the party who said "Obama, Obama, Obama" works in the barber shop, and he came out as she was done with the ticket. The male had been saying those things to her every time she passed. The PSO admitted that she stated "give the ticket to him" but she did not say "Obama." The male party wanted her to take the ticket back, and she said she could not. The PSO should have exercised better judgment in dealing with the unknown male party as her purpose at that particular time was to issue the complainant a parking ticket for an expired meter.

Chairman Allen summarized the finding of the OPS on the third allegation of violation of conduct standards as *not sustained*, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that the PSO referred to Corey Ellis as being the problem to giving the ticket. Based on the OPS investigation, the PSO stated that she did not refer to Corey Ellis as being the problem to giving this owner the ticket, and she did not make any comments referring to Corey Ellis.

Chairman Allen summarized the finding of the OPS on the fourth allegation of violation of conduct standards as *unfounded*, where the review showed the act or acts complained of were misconstrued. The complainant alleged that this situation has happened more than once. Based on the OPS investigation, the PSO has had previous issues with everyone in that barber shop. She just has to walk down the street, and they all come out. Specific to the owner (the complainant), she stated that he is actually pretty quiet, if he is the one that she was thinking of. She stated they come out all the time. The PSO stated that the complainant usually does not say much of anything. It is the tall guy in that shop that usually has a lot to say. The PSO stated that she is referred to as the "gray hair, white racial cracker" that causes all the trouble on Central Avenue, and she simply does her job. She stated that she issues thirty (30) to sixty (60), seventy (70) sometimes eighty (80) tickets a day. She walks a lot. That is a normal issuance for her no matter what area she is assigned. The fact of the matter is that the PSO is assigned a zone assignment from her supervisor and she is expected to perform her job duties of issuing tickets to violators.



Chairman Allen stated a check was conducted of her daily ticket production which consisted of a four (4) month time span, from December 1, 2008 through March 31, 2009 and it was revealed that she issued 2,724 tickets. Also included within that time span is the ticket that the complainant was issued on January 6, 2009. The printout further represented the numerous zones that the PSO was assigned to while she wrote said tickets throughout the city. There is no indication that she targeted the complainant in any way due to the fact that her ticket production remained the same regardless of her zone assignment.

Chairman Allen reported that a check was also conducted of the complainant's history of parking violations issued to his vehicle. It revealed that he received a total of eight (8) parking tickets between April 9, 2007 and July 22, 2009. His tickets are paid in full, except for one (1) ticket which was excused, having occurred on November 18, 2008.

Chairman Allen stated that consideration should be given to the fact that the complainant is a business owner on Central Avenue, which requires his presence and therefore his vehicle would be parked on Central Avenue or in the immediate area(s), all of which are heavily populated. Chairman Allen further stated that on the date of the incident, the PSO was performing her duties of issuing parking tickets to violators, and the complainant's vehicle was in fact parked in violation with an expired and not broken meter. As a business owner, it would be beneficial for the complainant to consider purchasing a permit parking in the area, as to prevent any future parking violation incidents.

Ms. Yeboah asked if it was illegal to park in front of a non-functioning parking meter. Chairman Allen replied that if you park in front of a non-functioning parking meter, you can contest it immediately, and they will go back and check it. He further stated that if the parking meter number is not written on the ticket, there is no way for them to go back and check it, and it is implied that the ticket would be dismissed. Chairman Allen stated that he would go further to say that it is not illegal to park in front of a broken meter.

Board Counsel Patrick Jordan stated that it was ok to park in front of broken meters. He stated that it is the responsibility of the parking authority to maintain the meters, and if the meters are not maintained, it will not be held against the vehicle operator.

Reverend Smart stated that he always has trouble with these kinds of complaints. He stated that the board's focus and oversight is determined by the legislation approved by the Common Council. It talks about the policies, practices and customs of the city of Albany Police Department, and in Section C, it talks about law enforcement officers, in Section D it talks about APD, and Section E affirms that the board has the oversight of the APD in terms of bringing together the community and a better understand of what they feel as well as the police department. Reverend Smart further stated that he did not

think that the board has oversight over people who issue parking violations. He stated that if they are able to have oversight over these people, then the legislation should be changed because they are not sworn and cannot make arrests.

Chairman Allen asked if parking enforcement officers were sworn in or if they wear badges. Deputy Chief Reilly stated that they are not sworn in. Reverend Smart stated that the oversight is not valid. Although he agreed with the findings, he did not feel that the Board had jurisdiction over these types of cases.

Mr. Jordan stated that he did not consider PSO's the same as clerks at a desk, or 911 clerks, which are not under the CPRB jurisdiction, however, they are under the APD supervision and they direct where they go and the routes they take. Mr. Potenza stated that they are under the direction and jurisdiction of the Albany Police Department. Mr. Jordan stated that PSO's are there to enforce the same laws as the APD officers do. It is up to the board as to how to go forward with these types of cases.

Chairman Allen stated that they are performing a law enforcement function under the direction of the Chief, and the case was investigated by the OPS. Mr. Jordan stated that those who merely work for the APD (not officers) are not under the board's jurisdiction.

Reverend Smart stated that the PSOs need to go through the same kind of training that the officers do. He stated that if they are going to be held to the same standards then they need to go through the same training as the officers have. Mr. Jordan stated that they go through training which is mandated through the APD SOP. Reverend Smart stated that as the case is being reviewed they are being held to the same standards as police officers, and he did not think that was correct.

Chairman Allen stated that this issue would be discussed when they meet with the common council. It was noted that the complainant is not present.

Chairman Jason Allen moved to concur with the OPS finding of *unfounded*. Reverend Edward Smart seconded the motion. The motion carried unanimously.

Chairman Jason Allen moved to concur with the OPS finding of *unfounded* on the second allegation of violation of conduct standards. Anthony Potenza seconded the motion. The motion carried unanimously.

Chairman Jason Allen moved to concur with the OPS finding of *not sustained* on the third allegation of violation of conduct standards. Jean Gannon seconded the motion. The motion carried unanimously.

Chairman Allen moved to agree with the OPS finding of *unfounded* on the fourth allegation of violation of conduct standards. Jean Gannon seconded the motion. The motion carried unanimously.

Akosua Yeboah reported that the complaint included one (1) call handling and one (1) use of force allegation. Ms. Yeboah summarized the complaint. The complainant alleged that he was harassed and searched for no reason while walking home from work, and injured during the search. The complainant stated that the officer told him that he stopped him because he was walking in such a way conducive to someone who may be carrying a weapon.

Ms. Yeboah reported that she reviewed the following: citizen complaint form, confidential report, monitor's report, IDCs, incidence reports for the location concerning the complaint, statement of the complaint, tactical safety protocol used in APD training for illegal firearms detection, NYS CPL 140.50 concerning temporary questioning of persons in public places and searching for weapons, patient records for the hospital emergency room where the complainant was treated, OPS correspondence to the complainant with verification of delivery, call record and additional conversations with the investigating detective.

Ms. Yeboah reported that based on the OPS investigation, while the complainant complained of pain, the hospital emergency room record stated that an x-ray taken of the left ankle showed no evidence of soft tissue swelling, fracture, or dislocation. Nonetheless, he was advised as to the care and treatment consistent with an ankle injury by hospital personnel (Motrin as needed, no weight on left foot, etc).

Ms. Yeboah summarized the finding of the OPS on the allegation of call handling as ***exonerated***. Based on the OPS investigation there had been recent criminal activities in the vicinity involving firearms, and the acts described were within the authority and responsibility of the officer to stop and question the complainant as to his name, address, and explanation of his conduct as well as to conduct a pat-down search. Ms. Yeboah stated that she agreed with the OPS finding of ***exonerated***. Ms. Yeboah stated that she could find neither deficiencies nor additional actions that should have been taken by the OPS in investigating this complaint.

It was noted that there were no questions from the board. Monitor Al Lawrence was acknowledged as being present. Mr. Lawrence stated that he had nothing to add. It was noted that the complainant was not present.

Akosua Yeboah moved to concur with the OPS finding of ***exonerated*** on the first allegation of call handling. Chairman Jason Allen seconded the motion. The motion carried unanimously.

Ms. Yeboah stated that in case law, the use of force is not precisely defined. The complainant's emergency room medical records did not show any evidence of injury,

which is somewhat subjective, but despite this the investigating detective made significant attempts to verify if an injury did in fact occur, by requesting follow up records from orthopedic specialists and contacting the complainant to inquire as to the condition of his ankle, as well as other actions to substantiate the claims of excessive use of force. Ms. Yeboah stated she could not find any deficiencies, or make any recommendations regarding the OPS investigation.

Akosua Yeboah moved to agree with the OPS finding of ***unfounded*** on the second allegation of use of force. Jean Gannon seconded the motion. The motion carried unanimously.

**CPRB No. 38-09/OPS No. CC2009-080** (Presented by Reverend Smart)

Reverend Edward Smart summarized the complaint. The complainant alleged that when stopped by an officer, he was taken to the patrol car and was pushed against the rear of the car and placed into handcuffs. The complainant alleged that he was searched. He had no weapons or drugs on his person, which made him wonder and ask the officer why he was being handcuffed. The complainant's wallet was removed, and the officer removed a benefit card, at which time the complainant raised his handcuffed wrists motioning he had a license and again allegedly received no response. The complainant stated that he asked why he was being arrested and the officer allegedly responded "Because you're on Grand Street." The complainant stated that he felt that he was being racially profiled.

Reverend Smart reported that he reviewed the following documents: the monitor's report, confidential report "shots fired" two (2) calls, disorderly conduct report, assault report from two (2) officers, obstruction/resisting arrest, nine (9) IDCs, two (2) call tickets "shots fired", central booking screening sheet, suicidal prevention screening, property report, property report incident location, and six (6) IDC reports.

Reverend Smart stated that on the first allegation on the use of force, the complainant alleged that officers pushed him into a car. Based on the OPS investigation, the Subject Resistance Report filed by the on scene supervisor, indicated that the complainant appeared intoxicated and stated to officers' he was "f\*\*ked up." Based on the report, the complainant resisted arrest, refused to comply and continued to lunge at officers and flail his hands. Two (2) officers on the scene stated that the complainant resisted arrest by flaring his arms to prevent from being handcuffed and was pulling away from other officers. While attempting to handcuff the complainant, he was pushed against a vehicle, due to its close proximity to the incident. The complainant was combative and actively resisting arrest and officers used the necessary force to affect the arrest.

Reverend Smart summarized the OPS finding on the first allegation of the use of force as ***exonerated***, where the acts which provided the basis for the complainant occurred, but review showed that such acts were proper. Reverend Smart stated that a report of shots

fired in the City of Albany is a serious threat to the children and community at large and should not be taken lightly. Reverend Smart commended the officers on their courage and quick response to such a serious call. He stated that it is clear that all the officers agree that the complainant was not cooperative, and the complainant stated that to a point he was cooperative. Reverend Smart stated that he had some reservations why the complainant was not arrested for intoxication or why sobriety tests were not given. Nothing was documented, and according to the monitor's report eight (8) officers stated that the complainant was "highly" intoxicated. The officers stated that the complainant said that he was "f\*\*ked up." Reverend Smart stated that he was concerned that if the complainant was highly intoxicated and "f\*\*ked up," this vital piece concerning the disposition of the complainant was not addressed. It seemed that the complainant was asleep inside the vehicle and awakened by officers who responded to a "shots fired" call. The complainant was asleep and intoxicated, and immediately got up, pulled up the hood of the vehicle to turn off the lights, and stood on the sidewalk. Reverend Smart stated that in his observation, the complainant did not sound like a shooter, or a man who just fired a few rounds. He was a man who had a few too many drinks and was sleeping it off in the van. Reverend Smart stated that when we are servants of the community, we fail to demonstrate our humanity when confronted with these opportunities to show some compassion. He further stated that he agreed with the OPS finding knowing that this incident, and the allegations could have been prevented.

It was noted that there were no questions from the Board.

Reverend Smart stated that on the second allegation of call handling, the complainant alleged he was approached for no reason. Based on the OPS investigation, officers were investigating a "shots fired" call in the area of 3 Wilbur Street. Shell casings were found on the scene, verifying gun shots had in fact been fired. Officers were conducting a canvass of the area and searching for evidence when they encountered the complainant sleeping in his vehicle. The supervisor on the scene indicated the complainant was approached so he could be checked for injury and interviewed regarding what he may have seen and his involvement, if any, regarding the shots fired call. Officers have a common law right to inquire when they have a founded suspicion criminal activity is afoot. Officers in this case were investigating a confirmed call for shots being fired and attempted to check the welfare of the complainant and gain some explanatory information as to what he may have seen. The officer stated that the complainant became highly aggressive, was intoxicated, and created a disturbance leading to his arrest for disorderly conduct.

Reverend Smart summarized that the OPS finding for this allegation was *exonerated*. Based on the OPS investigation, the officers were conducting a canvas of the area and found the complainant passed out in a vehicle. The officers stated that the complainant was highly intoxicated and did not know that the complainant was highly intoxicated

before waking the man. The complainant was asleep in the van with the lights on. Reverend Smart stated that in his opinion, this man had no information to share and if he was passed out and intoxicated he did not hear anything, see anything, and is not or would not be one who might be able to share. The documents never stated that the man was questioned about shots fired. The officers stated that they were concerned about the man, if he was injured or hurt, or needed EMS, or other medical help. Reverend Smart further stated that no help was called or indicated in the report. In the report, no officer stated that they asked the man if he had been shot or was injured. The complainant did not report that he was asked this question. The first question that the officers asked the complainant was for his name, not if the complainant heard shots or was injured. The officers gave no report of information received or questions asked by officers to the complainant. Reverend Smart stated that he is compelled by his review and investigation to state that there was ineffective policy or training, where the manner does not involve guilt, or lack thereof, but rather ineffective departmental policy or training to address the situation.

Ms. Yeboah asked if the complainant was unconscious when officers approached him. Reverend Smart replied that he was asleep, but the lights and the vehicle were on. Reverend Smart stated that the complainant was intoxicated, and the officers inquired as to his welfare. Reverend Smart further stated he did not think that the complainant was a threat to anyone. Reverend Smart stated that he thought the complainant reacted like anyone else would when awakened from a stupor. Ms. Gannon stated that if she was a cop she would think that he was a likely suspect, and she would not have just passed him by because it looked like he was sleeping. Reverend Smart stated that he did not think that they should just pass him by. Ms. Gannon stated that when he woke up and was agitated, the officers should not have let him continue the behavior. Reverend Smart stated that the complainant was drunk. Ms. Gannon stated that it does not give him the right to act that way towards officers.

Reverend Smart stated that in his opinion, if shots were fired, and this guy was in his van asleep, why waste time dealing with this guy? Ms. Gannon stated that they would probably stop anyone. Mr. Potenza stated that what he thinks Reverend Smart is saying is that the priority should be to go after the shots fired incident, rather than the complainant. He further stated that once they realized that he was not the suspect, they should not have wasted more time.

Reverend Smart stated that on the third allegation of authority and procedures, the complainant alleged unlawful arrest. Based on the OPS investigation, the supervisor stated that the complainant approached him in a threatening manner while shouting obscenities and was waving his hand in the supervisor's face. The complainant refused to comply with orders to step back and continued to lunge at the officers. The supervisor on the scene determined that the complainant intentionally caused a public

inconvenience, annoyance and alarm while in a public place by using abusive language which was in violation of PL 240.20-3 Disorderly Conduct and was subsequently arrested. Based on the supervisor's and officers' direct knowledge of the complainant's actions in public, there was enough probable cause to arrest him under the above section of the NYS Penal Law.

Reverend Smart summarized the OPS finding for this allegation as *exonerated*. Reverend Smart stated that the actions of the complainant were not those of a "gunslinger", but a man who just had a few too many. Reverend Smart stated that this man seemed to have been awakened and reacted much like a man who had been awakened from a recovering sleep. The complainant was parked to the side, asleep, passed out and awakened to requests for information concerning shots fired. Reverend Smart stated that he recommended that the CPRB finding be *ineffective policy or training*, where the matter does not involve guilt, or lack thereof, but rather ineffective departmental policy or training to address the situation.

Reverend Edward Smart moved to concur with the OPS finding of *exonerated* on the first allegation of use of force. Chairman Jason Allen seconded the motion. The motion carried unanimously.

Reverend Smart stated that there was ineffective policy/training on approaching people in this type of situation as to the second allegation of call handling. Reverend Edward Smart moved for the Board to accept a finding of *ineffective policy or training*.

Deputy Chief Stephen Reilly stated that during training, they are well made aware of the amount of police officers who have been shot and killed by intoxicated persons. For officers, when a person is intoxicated it is not an immediate dismissal of the possibility of that person being armed. Deputy Chief Reilly stated that officers should not immediately discount a person as a suspect because they are intoxicated. Just because a person is intoxicated does not mean that they cannot pull the trigger. Once the police find out that the person is not the suspect, then they need to move on.

Ms. Gannon asked how long the officers spent with the complainant. Reverend Smart replied that the officers spent enough time with the complainant since they woke him up.

Chairman Allen stated that he agreed with Reverend Smart with regard to a finding *ineffective policy or training*. Reverend Smart stated that he did not necessarily disagree with OPS findings, but reiterated that he believed it was necessary for the Board to find that there was ineffective policy or training present in the situation. Reverend Edward Smart moved to accept the Board's determination of *ineffective policy or training* as to the second allegation. Chairman Jason Allen seconded the motion. The motion carried unanimously.

Reverend Smart moved for the Board to accept a finding of *ineffective policy or training* on the third allegation of authority and procedure. Jean Gannon seconded the motion. The motion carried unanimously.

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

The following Board members were appointed to the Committee on Complaint Review for April 2010: Jason Allen, Jean Gannon, Anthony Potenza, and Reverend Edward Smart.

C. *Committee/Task Force Reports*

Chairman Jason Allen stated that due to time constraints a brief overview of upcoming committee meetings will be discussed.

By-Laws and Rules

Committee Chairman Jason Allen reported on upcoming meetings with the Common Council's Public Safety Committee and the Mayor. Chairman Allen requested that the GLC coordinate and schedule these meetings. He stated that he would be unavailable for the last half of April and would like the meetings to be scheduled before April 18<sup>th</sup> if possible.

Community Outreach

Chairman Jason Allen reported that he attended the last community outreach meeting with the Center Square Neighborhood Association. He asked whether the Board had met with the NAACP. Reverend Smart replied that there is a meeting scheduled for March 29, 2010. Reverend Smart further reported that the Outreach Committee has an upcoming meeting with Second Avenue Neighborhood Association on March 22, 2010. A meeting has also been scheduled with the New York Civil Liberties Union for March 31, 2010. Reverend Smart stated that he would not be able to attend the meeting on March 31, 2010 with the New York Civil Liberties Union. Chairman Allen asked the GLC to reach out to board members to try and get as many board members involved as possible because the community outreach meetings are a great experience to get involved with the community.

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 as of today, there are currently sixty-six (66) active complaints before the Board for review. Of those sixty-six (66) active complaints, five (5) were reviewed at tonight's meeting, which leaves the Board with sixty-one (61) active complaints. Out of those sixty one (61) active complaints, seven (7) cases are ready to go on the next meeting agenda for review. It was noted that the number may increase to nine (9) depending on if the GLC receives the monitor's reports for two (2) cases.

It was further reported that three hundred and sixty-four (364) 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 thirty-six (436).

It was reported that since the Board's last meeting, the GLC received five (5) grievance forms. The total number of forms received to date is one hundred and forty-three (143). In response to the GLC's outreach to all one hundred and forty-three (143) individuals, the GLC received thirty seven (37) CPRB complaint forms.

#### Grievance Form Process

It was reported that the Board members received a copy of a letter that was sent from the Board to Deputy Chief Reilly regarding the grievance form process and the Deputy Chief's response to that letter.

#### CPRB Monitors

It was reported that the status of the monitors remained the same. The Board is still awaiting approval of the list of new monitors from the Common Council. It was further reported that in the Board's meeting packets is a copy of a letter that was sent to the monitors regarding the timeliness requirement outlined in the protocol for submitting their reports.

#### Board Vacancies

It was reported that there is still a vacancy on the Board which would have to be filled by the Mayor. The Board is still waiting on the re-appointments of Reverend Smart and Mr. Phelan. Reverend Smart stated that he has not received a re-appointment letter.

#### Board Meeting

It was reported that the next board meeting is scheduled for April 8, 2010 at 6 p.m. at the Albany Public Library.

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

Deputy Chief Stephen Reilly reported that the OPS was increasing its staffing. He further reported that the policy that had been discussed regarding the cameras in the cars

was in corporation counsel's office waiting to be signed off on. Chairman Allen stated that there were a few other things that the Board needed to discuss with the OPS. Chairman Allen further stated that Board members Andrew Phelan and Anthony Potenza would be reaching out to the OPS regarding mediation.

F. *Report from the Chair*

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

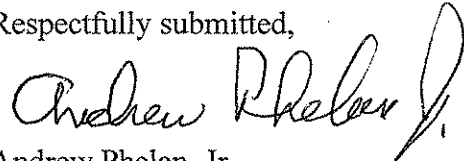
V. **Public Comment**

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

VI. **Adjournment**

Chairman Jason Allen moved to adjourn the meeting. Reverend Edward Smart seconded the motion. The motion carried unanimously. The meeting was adjourned at 8:20 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew Phelan, Jr.", with a stylized flourish at the end.

Andrew Phelan, Jr.  
Secretary