

**City of Albany**  
**Citizens' Police Review Board Public Meeting**  
**Albany Law School**  
**161 Washington Avenue – Large Auditorium**  
**January 26, 2009**  
**6:00 p.m. – 8:00 p.m.**

**Present:** Jason Allen, Daniel Fitzgerald, Marilyn Hammond, John Paneto, Andrew Phelan, Jr., Anthony Potenza, and Reverend Edward Smart.

**Absent:** Ronald Flagg.

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

Chairman Jason Allen called the meeting to order at 6:00 p.m.

**II. Approval of the Agenda**

The agenda was reviewed. Anthony Potenza moved to approve the agenda. Marilyn Hammond seconded the motion. The motion carried unanimously.

**III. Old Business**

**CPRB No. 18-08/OPS No. C08-238**

Chairman Jason Allen summarized the complaint. Chairman Allen reported that in April 2008, the Government Law Center (GLC) received a notice of claim regarding the complaint. He noted that the Board reached out to the complainant's attorney on two occasions asking that the complaint be written on the complaint form. The Government Law Center did not receive a response from the attorney or his client.

Chairman Allen noted that the correspondence also cited that pursuant to the Board's authority under the City Ordinance, complaints filed after six (6) months of the alleged misconduct shall, however, be returned or accepted and reviewed by the CPRB upon a majority vote of its members to do so.

Chairman Allen explained that the Board reached out to the complainant's attorney to get the complaint<sup>1</sup> documented on the complaint form since it was not filled out on the form. Chairman Allen then opened the discussion for thoughts on how the complaint should be handled.

John Paneto suggested the complaint be closed out without prejudice. Chairman Jason Allen moved to close the complaint pursuant to the Board's by-laws. Daniel Fitzgerald seconded the motion. The motion carried unanimously.

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<sup>1</sup> The GLC did not receive a complaint from the attorney, but a notice of intent to file a claim.

#### **IV. New Business**

##### *A. New Complaints*

##### 1. New Complaints Received Since January 8, 2009 Meeting

Chairman Jason Allen reported that five (5) new complaints had been received by the Board since its January 8, 2009 meeting. Andrew Phelan read a summary of each new complaint.

##### **CPRB No. 3-09**

The complainant alleges that on January 6, 2009, the complainant and another individual witnessed the arrest of the owner of a store on Central Avenue. One of the arresting officers told the other individual to “put the camera down stop videotaping.” The complainant alleges that the officer approached them and said “Back the f\*\*k up.” The complainant further alleges that the officer used vulgar language. The complainant claims that the officer told the other individual to “Get your fat 500 lbs a\*\* back.” The complainant further claims that when he asked for the officers badge number, the officer yelled his badge number and name at the complainant and then said to the complainant “Can you spell?”

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

##### **CPRB No. 4-09**

The complainant alleges that on January 4, 2009, while visiting a friend in Albany, his vehicle was towed for allegedly being parked three (3) - four (4) feet from the curb on a snow covered narrow street. According to the complainant, the street was poorly plowed, so he parked the best way possible. The complainant is requesting that the parking ticket be thrown out or taken off his record.

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

##### **CPRB No. 5-09**

The complainant alleges that on January 6, 2009, the complainant witnessed a traffic officer harassing a friend of the complainant for double-parking her van on Central Avenue while unloading packages for the complainant’s business. According to the complainant, when he went outside to help unload and speak with the officer, the officer began writing down the license plate number of the van. The complainant claims that when he requested the officer call her supervisor to clarify the law regarding loading and unloading, the officer said “I don’t care what you were told, I am above the law.”

The complainant alleges that following this discussion another police car arrived. The complainant approached the second officer who allegedly told the complainant to get out

of his face so that he could speak with the parking officer. The complainant alleges that he requested that the second officer call the supervisor or tell the complainant if he had the right to load and unload. According to the complainant, the second officer stated that he was not obligated to call the supervisor. When the complainant questioned that it was the duty of the officer to clarify the law to the public, the second officer stated “You can take your f\*\*king a\*\* down to traffic safety on Central Ave if you want to talk to her supervisor.” The complainant alleges that the second officer continued to scream at him, yelling “get the f\*\*k away from my car.”

According to the complainant, an additional cruiser arrived on the opposite side of the street with four officers who all began threatening that they would arrest the complainant if he did not get out of the road. The complainant alleges that when he stopped in front of the cruiser, the second officer released the brakes and the car proceeded to roll into the complainant. The complainant claims that he moved out of the way, and then asked the four officers if he could see the supervisor. According to the complainant, the officers continued to curse and swear saying “Get the f\*\*k out of the road you piece of s\*\*\*.” The complainant claims that he responded “f\*\*k you pigs” as he turned around to enter his store. The complainant further claims that he felt three (3) sets of hands grab and push him into his store window and was told “You’re under arrest now you f\*\*k.”

The complainant alleges that he was handcuffed, and that the officers were pulling him in different directions while yelling “stop resisting arrest” to which the complainant responded that he was not and that he wanted someone to take what he was holding out of his hands. The complainant further alleges that the officers said, “shut the f\*\*\* up, you want to call us pigs you black piece of s\*\*\*,” and that one of the officers threatened to taser him. The complainant claims that he responded to the officers by daring them to punch him in his face and that the officers responded “f\*\*\* you we got you now, don’t worry you’re going to get yours.” The complainant further alleges that when he was taken to the station, he was never informed of his rights.

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

### **CPRB No. 6-09**

The complainant alleges that he was pulled over by an officer after the complainant and a second car turned onto Ontario Street from Central Avenue. The complainant alleges that after giving the officer his license and registration, the officer began yelling that he wanted the complainant’s valid insurance information. According to the complainant, another officer arrived on the scene and stared at the complainant. The complainant alleges that the first officer gave him two tickets. According to the complainant, when he asked for the officer’s name and badge number, the officer refused to provide it. As the complainant remained parked on the side of the road to read the tickets, the officer kept blowing the horn.

According to the complainant, as he was on his way to the store, the complainant observed a police vehicle stopped at the intersection of First and Quail St. The police

vehicle preceded to park in the Quail Auto Store lot as the complainant was leaving. According to the complainant, the complainant used his directional and left his parking spot. The police vehicle began following the complainant and pulled him over on Second Street. The complainant alleges that this officer was the second officer at the scene of the first alleged incident. The complainant further alleges that the officer told him that he was pulling him over for failure to use a signal, which the complainant refuted. According to the complainant, the officer then said that the complainant was being pulled over because his back license plate light was out. When the complainant stated that he did not have a back license plate light, the officer responded "Shut the f\*\*\* up and stop being a d\*\*\* head. Listen to your f\*\*\*\*\* authorities."

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

### **CPRB No. 7-09**

The complainant alleges that a traffic officer gave the complainant a ticket knowing that the parking meter was broken. The complainant further alleges that the traffic officer made a smart comment regarding Obama being in office and that Corey Ellis was the reason that she was giving the complainant a ticket. According to the complainant, this situation occurred more than once.

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

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

### **CPRB No. 15-08/OPS No. C08-173 (Presented by John Paneto)**

John Paneto summarized the complaint. Mr. Paneto reported that the complainant alleges that during testimony at a Suppression Hearing in Albany County Court, the arresting detective under oath stated that the informant called only one time and the total investigation took just one hour. The complainant stated he was called repeatedly over a three (3) to four (4) day period by the informant and at least twice on the day of his arrest. The complainant alleges that the detective perjured himself on the stand during testimony. In addition, there was a complaint against the APD.

Mr. Paneto noted that a monitor was not assigned to this complainant. Mr. Paneto stated that according to the Office of Professional Standards (OPS), if the detective had in fact perjured himself on the stand then the defense attorney, prosecution, and the judge who all had access to the evidence would have had cause to dismiss the charges and file perjury charges against the detective for misconduct.

Mr. Paneto stated that the complainant should discuss his allegations with his defense attorney and not with the Board. He explained that the Board does not have jurisdiction to review court cases or act as the complainant's defense attorney. Mr. Paneto summarized the finding of OPS on the allegation of misconduct as *unfounded*. It was noted that the officer involved in the case was present. The officer stated that this was a

narcotics case. The officer acknowledged that the complainant may have had a three (3) to four (4) day period of contact with the informant, but the police department and the officer did not have knowledge of that. The officer stated that it was totally possible that the informant, who uses drugs, may have had contact with the complainant prior to the day in question. There was a phone call placed to the informant, and the complainant responded a short time later. The APD videotaped the informant in a narcotics transaction. The officer stated that he arrested the complainant a couple of minutes following that. The complainant subsequently pled guilty to the charge.

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

**CPRB No. 22-05/OPS No. C05-572 (Presented by Reverend Edward Smart)**

Reverend Edward Smart summarized the complaint. Reverend Smart reported that the complainant alleged that the officers used excessive force when they kicked the complainant around causing him to suffer a concussion, multiple lacerations, and internal injuries. The complainant alleges that the officers literally stomped on him. Reverend Smart reported that he reviewed a number of documents consisting of a citizen's complaint form, civilian complaint form, the monitor's report, the OPS report, three (3) officers' reports, one sergeant's report, neighborhood canvasses of at least six (6) individuals, and officers' statements. Reverend Smart further reported that he reviewed the call logs, intra-departmental memos, incident report, APD report, oral statements from various other witnesses, medical reports, property reports, correctional medical history, conviction notice, and photos of facial bruises over left eye.

Reverend Smart reported that based on the OPS investigation, a police officer, who is in the course of effecting or attempting to effect an arrest, or of preventing or attempting to prevent the escape of a person from custody whom he or she reasonably believes to have committed an offense, may use force when and to the extent he or she reasonably believes such to be necessary to effect the arrest. Based on the OPS investigation, all of the officers involved indicated that the complainant was punching, kicking, and fighting in an extremely violent manner as they attempted to get him in custody. Despite being given verbal commands, the complainant refused to comply and continued to fight with the officers. Based on the complainant's actions the officers were justified and within their authority to use reasonable force.

Reverend Smart noted that the complainant was not present. It was noted that monitor Al Lawrence was present. Mr. Lawrence stated that he had nothing new to add. It was noted that there were no questions from the Board.

Reverend Edward Smart moved to concur with the OPS finding on the allegation of use of force as *unfounded*. John Paneto seconded the motion. The motion carried unanimously.

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

John Paneto summarized the complaint. The complainant made several allegations regarding a road rage traffic stop. The complainant alleged that she was leaving 52 Corporate Circle at 2:15 p.m., when she encountered the officer. She was in her 2002 Hyundai in the yield zone making a right-hand turn. According to the complainant, the road consisted of two lanes, one directly from the right, which she was in, and the left lane, which is for drivers coming off Route 155. As the complainant turned into the right lane and began to drive up Route 155, a grey Ford F-150 pick-up truck with excessively tinted windows came up on her left side in the left lane, laid on the horn, and then cut her off to pass her. The complainant was now directly behind the pick-up truck and the driver began to apply his brakes, so she did the same. The driver of the pick-up truck began to slow down while continuing to brake. According to the complainant, because of the driver's erratic behavior, the complainant attempted to pass him on the right side of the road and the truck moved all the way over so the complainant could not get by. The complainant attempted to pass on the left and the driver of the pick-up truck sped up so that the complainant could not get over, only letting the complainant in when oncoming traffic forced him to do so. At the next light, the driver of the pick-up flashed a metallic object which looked like a badge, and began swearing at the complainant using the expletive "Pull the f\*\*k over!" The complainant alleged that the driver of the pick-up truck began berating her and told her she would be arrested, her car would be towed, and she would be issued four (4) tickets for cutting him off. The complainant further alleged that the officer displayed every element of road rage and then ticketed her as a further insult. The complainant believed that the officer should be charged with road rage. She was ticketed after she questioned his authority.

John Paneto summarized the allegations in the complaint. The first conduct standards allegation related to when the officer pulled along the left side of the complainant's vehicle, laid on the horn, and then cut the complainant off to pass her. The second conduct standards allegation related to when the officer applied his brakes while the complainant was directly behind him. The third conduct standards allegation related to when the driver was driving erratically, refusing to let the complainant pass him. The fourth conduct standard allegation related to when the officer flashed a metallic object and then swore at the complainant to "Pull the f\*\*k over!" The call handling allegation related to the officer telling the complainant that she was lucky that he already wasted enough of his day off, or he would have to have her car towed and she would be going to police court. The fifth conduct standards allegation related to when the officer referred to the complainant as Mario Andretti.

Mr. Paneto acknowledged that the monitor George Kleinmeier was present. It was noted that the complainant was not present.

Mr. Paneto stated that one of the issues he had with the complaint was that this was a classic case of "He said", "She said." There were no witnesses to the complainant's allegations or to the police officer's conduct. Mr. Paneto stated that he had some serious reservations about the police officer's conduct; one reservation being that he was aware

of the officer's authority to make the stop, but the officer got out of his civilian vehicle, approached the complainant, banged on her window, and proceeded to make a traffic stop. Mr. Paneto further stated that he found this to be highly irregular. In addition, while making this traffic stop, the officer had his own child in the back seat of his vehicle.

Mr. Paneto noted that OPS never interviewed the complainant, but they did speak to the complainant's attorney. Based on the OPS investigation, the attorney was loud and implicated that there was an audio recording of the traffic stop to prove the complainant's case of the officer's road rage. The OPS did not receive a copy of the audio recording and the complainant's attorney insisted that he would not make it available. Mr. Paneto noted that he did not hear the recording either.

Mr. Paneto reported that according to the monitor's summary, there were several allegations made by the complainant. The complainant made four (4) allegations of misconduct and one allegation of call handling in her complaint. The sixth allegation of misconduct for the Mario Andretti comment was added by OPS. Mr. Paneto stated that the monitor also had issues with the target officer handling this encounter by leaving the child in the vehicle while this incident was occurring. The target officer only requested assistance by calling in to the dispatcher after making the encounter. Mr. Paneto stated that if he were the officer, he would have called the dispatcher first to let everyone know what was going on and to ask permission. Mr. Kleinmeier stated that he had nothing to add.

Mr. Paneto stated that he had grave reservation for the reason for the stop. He stated that he knew that the officer had the authority to make the stop, but under these circumstances, the target officer may have created a situation that could have been dangerous by approaching the vehicle with no backup or support. It was unknown whether the driver had a weapon or what was happening. Mr. Paneto noted that there were no independent witnesses. He further noted that there was the issue of the child in the target officer's vehicle and the fact that the target officer's vehicle had heavily tinted windows.

Mr. Paneto stated that given the nature of the encounter that he would reprimand the target officer for making such a dangerous stop.

Chairman Jason Allen asked what is the SOP regarding off-duty traffic stops because he felt that this was a chase. Deputy Chief Stephen Reilly replied that an officer has the authority, as Mr. Paneto said, in that situation to conduct a stop. Deputy Chief Reilly stated that the complainant had a negative driving history not just in Albany, but in towns surrounding Albany. Deputy Chief Reilly reiterated that the officer had the authority to take the action which he did. However, he would not have taken the same action in this same particular scenario. Deputy Chief Reilly explained that as far as what is legal or administratively permitted, the stop was permitted. Deputy Chief Reilly stated that the OPS reviewed the complaint thoroughly and sustained a couple of allegations that they discovered in this process. Deputy Chief Reilly noted that the complainant's attorney

insisted that he had an audio recording, but he would not produce it. If the OPS had the recording, it would have helped them with the investigation. Deputy Chief Reilly stated that the attorney's only concern was to drop the charges against the complainant. Deputy Chief Reilly further stated that this is not how the OPS operates. The attorney told the OPS that the complainant was his client but the OPS was not permitted to talk to her.

Chairman Allen asked if the off-duty officer simply took the license plate number and stated what he saw, could the charges be issued later on. Did the stop have to occur for the tickets to be issued?

Deputy Chief Reilly stated that the officer could have recorded the license plate number, and followed up later on. However, it is still permitted for him to have taken the action that he did. Deputy Chief Reilly stated that he would probably not have taken the same actions as the target officer in this case. Wisdom may dictate taking a certain action, but he still has rules and acts to follow when it comes to disciplining an officer.

Reverend Edward Smart asked Deputy Chief Reilly if he was married. Deputy Chief Reilly responded that he was married. Reverend Smart asked Deputy Chief Reilly if he would have suggested to his wife that if a person drives up to her in a pickup truck with tinted windows should she pull over to the side? Deputy Chief Reilly replied that if a car with tinted windows was coming up aggressively behind her, absolutely. He would want the car to go past her. Reverend Smart clarified what he meant. He explained that a person would pull over if they knew that it was a policeman because of the siren and lights. But if there was a policeman in a truck with dark tinted windows you could not tell that he is a policeman because the truck does not have a siren or lights. Reverend Smart stated that he did not know why a policeman would have a truck like that because it sounded like a drug dealer in Albany. He added that we know he is not. Reverend Smart asked if Deputy Chief Reilly would want his wife to pull over if a person was blowing a horn. Reverend Smart explained that he would have told his wife to speed up and get out of the way, because that person could not have been a policeman, since policemen have sirens, horns, and lights. Reverend Smart further explained that in this situation the officer should have taken down the license plate and called in for a marked police car to pull them over. Reverend Smart concluded that this situation was handled very poorly.

Daniel Fitzgerald stated that the department had identified that this is something that the Board would like to address for potential change in the SOP. Mr. Paneto commented that when the target officer made that encounter he did not have knowledge that this person had a negative driving history. Mr. Paneto further commented that he would not have stopped but rather would have gone to Wal-Mart or a public area if he had a vehicle telling him to stop, unless he saw lights and sirens.

Deputy Chief Reilly stated that it was important for the Board to keep in mind that the woman was driving aggressively behind the officer. Mr. Paneto commented that he stated this indirectly, but because they did not have a map they cannot describe who was where. Mr. Paneto noted that Deputy Chief Reilly's statement was understood.

Monitor Theresa Balfe asked if the complainant was behind the officer and was the officer flashing his lights to get her to pull over. Mr. Paneto responded that there were no lights. Ms. Balfe asked how the officer was able to get the complainant to stop. Mr. Paneto responded that the officer went through a traffic light, got out of his vehicle, and told the complainant to pull over.

Monitor George Kleinmeier stated that most police departments use the off-duty officer in a supporting deposition where they call the on-duty officer and use the off-duty officer as a witness so he would not be involved.

Mr. Paneto stated that this is a training issue. He explained that for the target officer to make this stop without backup or assistance or even to call it in while the traffic violation was occurring was dangerous, especially when the target officer got out of his vehicle, knocked on the complainant's window, and told her to pull over. Mr. Paneto asked what if the complainant pulled out a gun and blew him away during the traffic stop?

Reverend Smart stated that when the board has the opportunity to search the records of an individual who was arrested or gets a ticket, a bias is formed about this person. The Board did not have the officers' record of conduct. Reverend Smart further questioned if the officer ticketed his buddies when they are out drinking and one of them does something wrong. Reverend Smart commented that if off-duty officers want to pull people over, then we ought to let them constructively do something down in the very drug-infested areas that are in need of the attention of everybody. Reverend Smart ended by saying that he had a lot of questions about this case.

Chairman Allen stated that there is a lot of due diligence by management on cases. He further stated that he read this as a car chase. Chairman Allen explained that when he is driving and somebody passes him aggressively he does not speed up. He just let them go or slows down to prevent something from happening. Chairman Allen added that he thinks that there is a state law that says that unmarked police cars that are not on traffic patrol cannot engage in this type of a traffic stop. Police cars have to have markings on them. Deputy Chief Reilly replied that he is not aware of the state law. Chairman Allen stated that he is concerned personally that the actions escalated and made things worse. If the off-duty officer observed the conduct, took down the license plate number, and filed it with an on-duty officer, the stop would be more credible.

Mr. Paneto stated that the Board needs to add a memo to the record as to the missing conduct standard allegation that was not included in the report. He further stated that maybe it was a training issue or maybe just an information memo that when the APD conducts these traffic stops they should go back to the SOP to make sure that the officer is abiding by the SOP.

Chairman Allen asked Mr. Paneto to summarize the issues that he would like to see in a letter from the Board to the APD. Mr. Paneto responded that while the Board agreed with the conduct standards allegation that was submitted by OPS, he had a problem with

what was not submitted and the officer's initial reasons for the stop. Mr. Paneto stated that the reason for the stop indicated a serious need for training. Chairman Allen clarified that Mr. Paneto had a problem with the reason for the stop and not the way it was done. Mr. Paneto affirmed that his problem was with the reason for the stop. Mr. Paneto stated that he believed that the officer should have just driven away.

John Paneto moved to accept the OPS' findings and have a memo drawn that identifies that there is a glaring omission in the OPS investigation as to whether the APD officers had the authority to do this and should the target officer have gotten involved in this situation.

John Paneto moved to concur with the OPS finding of *unfounded* as to the first violation of conduct standards allegation that the officer pulled along the left side of the complainant's vehicle, laid on the horn, and then cut the complainant off to pass her. Mr. Paneto noted that the monitor also agreed with the OPS. Daniel Fitzgerald seconded the motion. The vote was four (4) in favor and three (3) against. Chairman Jason Allen, Reverend Edward Smart, and Marilyn Hammond voted against the motion. The motion failed.

Reverend Smart explained his vote against the motion. He stated that he was not in favor of the motion because he did not think that the complainant made this up. Reverend Smart further stated that a woman who sees an aggressive pickup truck with tinted windows could not make this stuff up. Although there is no video, it is still extremely logical if you put yourself in her position which is the real problem. If an off-duty policeman goes after someone, he must think about how he is going to get that person to pull over since he is off-duty and without lights and sirens. Reverend Smart stated that this is logic without training.

Marilyn Hammond explained her vote against the motion. She stated that she was not in favor of the motion because being a woman she would not have pulled over because if somebody was coming at her the way the officer did to the complainant, she would not know who they were.

Chairman Jason Allen explained his vote against the motion. He stated that he heard other Board members state that this was not the right thing to do. Therefore, he wanted it to be explicitly stated.

John Paneto moved to concur with the OPS finding of *not sustained* as to the second violation of conduct standards allegation where the officer applied his brakes while the complainant was directly behind him. Mr. Paneto noted that the monitor also agreed with the OPS. Daniel Fitzgerald seconded the motion. The vote was four (4) in favor and three (3) against. The motion failed. Chairman Jason Allen, Marilyn Hammond, and Reverend Edward Smart voted against the motion. Chairman Allen noted that the explanations for the votes against the motion were the same as previously explained.

John Paneto moved to concur with the OPS finding of *not sustained* as to the third violation of conduct standards allegation where the officer was driving erratically, refusing to let the complainant pass him. Mr. Paneto noted that the monitor also agreed with the OPS. Daniel Fitzgerald seconded the motion. The vote was four (4) in favor and three (3) against. The motion failed. Chairman Jason Allen, Marilyn Hammond, and Reverend Edward Smart voted against the motion.

John Paneto moved to concur with the OPS finding as to the fourth violation of conduct standards allegation where the officer flashed a metallic object and then swore at the complainant to “Pull the f\* over!” Mr. Paneto noted that the monitor also agreed with the OPS. Andrew Phelan seconded the motion. The vote was two (2) in favor and five (5) against. The motion failed. Chairman Jason Allen, Marilyn Hammond, Anthony Potenza, Daniel Fitzgerald, and Reverend Edward Smart voted against the motion.

John Paneto moved to concur with the OPS finding of *sustained* as to the call handling allegation where the officer told the complainant that she was lucky that he already wasted enough his day off or he would have to have her car towed and she would be going to police court. Chairman Jason Allen seconded the motion. The motion carried unanimously.

John Paneto moved to concur with the OPS finding of *sustained* as to the last violation of conduct standards violation where the officer referred to the complainant as Mario Andretti. Reverend Edward Smart seconded the motion. The motion carried unanimously.

Mr. Paneto reiterated his request that the Board work with the Government Law Center to draft a memo to the APD.

**CPRB No. 17-08/OPS No. C08-247** (Presented by Reverend Edward Smart)

Reverend Edward Smart summarized the complaint. Reverend Smart reported that the complainant filed an appeal as to the way her original complaint which she filed in 2006 was handled. According to the complainant, she was not aware that information such as pictures and doctors reports should have been included with her complaint. Reverend Smart reported that he reviewed the capital healthcare summary, billing inquiries, letters from the complaint, seven photos, original complaint, 911 dispatcher call, various original dispatch notices, officers’ reports, intra-departmental correspondence, affidavits by various individuals, and certified mail sent by OPS.

Reverend Smart reported that the complainant’s original complaint contained a violation of conduct standards allegation and a call handling allegation. The OPS investigation was conducted by OPS detective Alisa Murray. Based on the OPS investigation, the finding for the violation of conduct standards in this complaint was *unfounded*. Reverend Smart noted that a monitor was assigned to investigate this complaint. He further noted that monitor Joel Pierre-Louis reviewed this case twice.

Reverend Smart recommended that the case be closed according to Article XLIV General Provision of Part 33, Citizen's Review Board, Section 42-345 which stated that "The Chief of Police shall review the department's preliminary report in light of the CPRB's finding and then make the Department's final determination known..." Further, he noted that the Chief of Police and the CPRB all agreed on the initial findings and a final determination was rendered. Reverend Smart stated that he concurred with the OPS finding of *unfounded*.

Reverend Smart commented that he did not believe that the Board had an appeals process. He explained that the complainant was not satisfied with the initial results of her complaint so she filed a second complaint. The final determination on this case rests with the chief of police. Reverend Smart stated that the Board, the OPS, and the monitor were gracious to review it a second time.

Reverend Smart moved to concur with the OPS finding of *unfounded*. Marilyn Hammond seconded the motion. The motion carried unanimously.

**CPRB No. 30-08/OPS No. C08-308** (Presented by Reverend Edward Smart)

Reverend Edward Smart summarized the complaint. The complainant alleged that as she was leaving her patient's house, there were numerous potholes up and down the street. According to the complainant, as she went around the potholes so that she would not tear up her car, an officer stopped her between Judson/Lexington Avenue and gave her a ticket. The complainant further alleged that before she could get from Lexington Avenue to Henry Johnson Boulevard, the officer pulled her over again and gave her another ticket. The complainant claimed that she started up Second Street to go to the store for her patient, and the officer gave her another ticket.

Reverend Smart reported that he reviewed the civilian complaint, the reports from May 6 and April 3, convictions of the motorist, confidential report given by the detective, call logs of the various incidents that took place that evening, intra-departmental memos, officers' statement, a copy of the summons, citations, and unit activities for that evening. Reverend Smart commended OPS on its investigation into whether there were actual potholes on that particular street. Based on the OPS investigation, it was very clear that there were not any potholes on that particular street.

Reverend Smart noted that one of the officers that pulled over the complainant was on a bicycle. The officer did not do anything out of order. Reverend Smart reported that based on the OPS investigation, the complainant was stopped by officers who observed the complainant swerving to the right and left. The complainant was stopped and given a ticket for "Failing to Keep Right." Reverend Smart further reported that documents and logs showed that the complainant was stopped a second time by a different officer who observed her driving, and that officer issued the complainant a second ticket for "Failing to Keep Right." Reverend Smart noted that the officer on the bike could not keep up with the complainant, so another officer assisted the officer on the bike, pulled the complainant over, and the officer on the bike issued the complainant a separate ticket for

the same violation, which constituted the second ticket. Reverend Smart reported that there was no record of a third ticket. Records indicated that the complainant's case was heard on June 10, 2008, and the complainant pled guilty to one count of "Failing to Keep Right" and was ordered to pay a fine. The second violation for "Failure to Keep Right" was dismissed. Based on the OPS investigation, during the stop the officers acted in a responsible and reasonable manner.

Mr. Paneto asked if a breathalyzer was warranted in this case. Reverend Smart replied that it seems that this is not an uncommon occurrence for the complainant and this was not about drugs or alcohol, but just about not keeping to the right.

Reverend Edward Smart moved to concur with the OPS finding of *exonerated*. Marilyn Hammond seconded the motion. The motion carried unanimously.

**CPRB No. 32-08/OPS No. C08-330** (Presented by Andrew Phelan, Jr.)

Andrew Phelan summarized the complaint. The incident occurred on May 2, 2008. The complainant filed his complaint on May 9, 2008. Mr. Phelan reported that the officer was conducting an investigation looking for a person with a warrant. The complainant was driving up a one-way street and came across the police vehicle with its hazard lights flashing, blocking the street. The complainant claimed that he could not pass and asked the officer, who was speaking to someone, if he was going to be much longer. According to the complainant, the officer responded by asking the complainant to turn down his music because the officer could not hear him. The complainant maintained that he turned his music down and again asked the officer how much longer he would be.

Mr. Phelan stated that according to the complainant the officer returned to his patrol vehicle and proceeded to drive up the street. The officer then pulled over to the side of the road and the complainant proceeded to pass him. The officer then got behind the complainant's vehicle, turned on the patrol vehicle's siren, and pulled the complainant over. When the complainant asked the officer why he was pulled over, the officer said you were following too closely and loud music. Mr. Phelan stated that there was a verbal disagreement between the complainant and the police officer and traffic tickets were issued. The complainant pled guilty, and the case was adjourned in contemplation of dismissal.

Mr. Phelan summarized the findings of the OPS on the allegation of call handling as *unfounded* where the complainant alleged that he was harassed, provoked, and treated unfairly by an officer. Based on the OPS investigation, the complainant stated that he did not deserve the tickets he received. According to the officer, he explained that the complainant received the tickets based on his driving and the officer's observations. The complainant's witness stated that she knew the complainant was listening to the Yankee game and not music. The witness knew this because the radio was loud enough for her to hear it in a separate vehicle behind the complainant, thus substantiating the fact that the radio was loud and in violation of the Vehicle and Traffic Law. The complainant pled guilty to the tickets in court.

Mr. Phelan summarized the findings of the OPS on the violation of conduct standards allegation as *not sustained* where the complainant felt that he was provoked and harassed by the officer. Based on the OPS investigation, the officer stated that he neither provoked nor harassed the complainant in any way. It was the complainant who was screaming profanities during the traffic stop. The officer stated that he completed the uniform traffic tickets and issued them to the complainant, along with instructions on how to answer them in court. Mr. Phelan noted that a monitor was assigned to the case.

Mr. Paneto asked whether the complainant was driving the wrong way down the street. Mr. Phelan responded that the complainant was driving the right way and did not pass the police car.

Andrew Phelan moved to concur with the OPS finding on the allegation of call handling as *unfounded* and the OPS findings on the allegation of violation of conduct standards as *not sustained*. John Paneto seconded the motion. The motion carried unanimously.

**CPRB No. 31-08/OPS No. C08-320** (Presented by Andrew Phelan, Jr.)

Andrew Phelan summarized the complaint. Mr. Phelan reported that this incident happened on April 5, 2008. A police officer got a call that there was a person with a weapon in a marital dispute. The wife called a friend and told the friend that her husband was at her residence and threatening to harm her and kill himself. The wife's friend called 911. The wife had an order of protection issued against her husband in July 2008. The complainant, who was the husband, filed this complaint from Albany County Jail. The OPS tried to contact the complainant to no avail. Mr. Phelan noted that he reviewed the certified letters that were sent to the complainant and returned.

Mr. Phelan stated that the complainant alleges use of force in his complaint. The complainant alleges that when the police told him to put his hands on top of his head, he complied with no delay. According to the complainant, when the officer placed him in handcuffs, he told the officer "they were too tight." The officer told the complainant to "shut up," and pushed the complainant in the back with a force so hard that the complainant rammed his head into the wall. The complainant further alleges that as a result, he felt like he was losing consciousness for about 30 seconds while everything around him went dark, blood started to run down his head, and a huge lump appeared over his right eye. The complainant claims that as the days went by, since there was blood in the corner of his right eye and he got a massive headache, he was told by the Albany County Jail Medical Unit that he had a possible concussion.

Mr. Phelan summarized the findings of the OPS on the use of force allegation as *exonerated* where the complainant alleged that he was assaulted by the officer while being arrested. Based on the OPS investigation, the officers were dispatched to a "person with a weapon" call and upon arrival were met by the victim who confirmed the incident. The victim informed the officers that her husband, who was the complainant, had threatened her with a knife and was inside the house. The officers indicated that they

discovered the complainant hiding inside a bedroom closet under a pile of clothing and upon giving him numerous verbal commands to “stand up and show his hands,” he failed to comply with their order to “show his hands” and kept his hands inside of his front sweatshirt pocket. An officer stated that as a result of the complainant’s refusal to comply with his commands, he deployed a two handed shove to the complainant and attempted to pin him against the wall until he could safely remove his hands from his pocket and detain him. This was indicative that the complainant was not in handcuffs and/or in custody. The officer’s actions were in response to the complainant’s non-compliance.

Mr. Phelan reported that the officer’s actions did cause the complainant to bump his head on the wall causing minor bleeding and a bruise to his forehead. Based upon the nature of the call, the victim confirming that her husband was still on the scene and the fact that he possessed a knife, which is a deadly weapon or dangerous instrument, the threat of serious physical injury or death presented itself for all parties involved. The officer was authorized to use the necessary physical force he deployed to effect the arrest. Mr. Phelan noted that booking photos depicted an injury to the complainant’s forehead that was consistent with the complainant striking his head against the wall. Minimal bleeding and a bruise to his forehead can be seen in the photograph. After the complainant was in custody, the complainant was found to be in possession of a large 6” butcher knife that was located in the very same pocket from which he refused to remove his hands. The knife was placed into evidence for safe keeping since it was pertinent to the criminal case. Mr. Phelan explained that not knowing what the complainant’s intentions were when he failed to comply with the officers, coupled with the fact that he threatened deadly physical injury to his wife, the officer(s) had to act quickly while deploying the appropriate amount of force in order to effect the arrest. Mr. Phelan noted that the officers on scene and AFD/EMS personnel all indicated that the complainant stated that he was all right and did not want to be treated.

Mr. Phelan stated that with respect to the allegation that the complainant suffered from the injuries, the complainant refused any medical treatment that was offered to him on the scene and/or transport to the hospital for a medical evaluation. Mr. Phelan further stated that any additional problems the complainant may have experienced as a result of his initial injury could not be determined as the complainant could not be located, nor has he contacted the OPS to follow up. Mr. Phelan noted that monitor Theresa Balfe was appointed to the case. Ms. Balfe stated that she did not have anything new to add.

Daniel Fitzgerald asked what other options the officer had available to him instead of using an open hand shove. Deputy Chief Reilly replied that the officer could have tasered or pepper sprayed the complainant.

Mr. Phelan commented that he looked at the photos and saw a band-aid over the top right part of the complainant’s eye, and he did not see any markings other than the band-aid.

Andrew Phelan moved to concur with OPS’ findings on the allegation of use of force as *exonerated*. Chairman Allen seconded the motion. The motion carried unanimously.

**CPRB No. 33-08/OPS No. C08 -319** (Presented by Anthony Potenza)

Mr. Potenza summarized the complaint. Mr. Potenza commented that the handwriting of the complainant was difficult to decipher. Mr. Paneto noted that the complainant was present. Mr. Potenza reported that he reviewed the citizen's complaint form, the OPS confidential report, and the intra-departmental correspondence (IDC) regarding this case. Mr. Potenza stated that the complainant alleges the refusal of the police officer to respond to a complaint by the complainant of assault and another item which was unknown to the officer.

Mr. Potenza summarized the OPS investigation. During the course of their investigation the OPS contacted the complainant on May 12<sup>th</sup> to schedule an appointment regarding the complaint. The complainant stated that he was too busy to be interviewed on the date mentioned above, but indicated to the OPS that he would call on Wednesday, May 14<sup>th</sup> to schedule an appointment with the OPS. During this call to schedule an appointment with the OPS, the complainant stated that he was sitting in a restaurant and someone came in, grabbed the complainant's hot chocolate, threw it in the street, and pushed the complainant. The complainant walked across the street to report the incident and the police officers stated that there was nothing that could be done. According to the complainant, an officer told him to stop harassing the police officers or he would be arrested. The complainant was given complaint forms at the South Station which were completed by the complainant and returned at the South Station. There were numerous attempts by the OPS last spring and last summer to schedule an interview with the complainant. The complainant never appeared for the scheduled interviews on numerous dates. A certified letter was sent to the complainant as late as September 2008 and was returned to the OPS as unclaimed.

Mr. Potenza noted that subsequent review and research of the incident found that the complainant complained of hot chocolate being thrown, but it was unknown whether the hot chocolate was thrown at the complainant or at the ground. Mr. Potenza further noted that in reviewing the intra-departmental correspondence the officer reported that the complainant was extremely intoxicated, rambling, and incoherent. The police officer stated in the IDC that the complainant was given a complaint form, which was completed and submitted at the South Station.

Mr. Potenza summarized the findings of the OPS on the call handling allegation as *no finding*, where the complainant failed to produce information to further the investigation. Based on the fact that there is limited information in the complaint form, information the sergeant was able to obtain, and the information gleaned from a brief phone conversation with the complainant, OPS was unable to further investigate the incident. Mr. Potenza stated that it was unknown exactly where the incident occurred; however, it must have occurred somewhere in the vicinity of Delaware Avenue and Jefferson Street since that was from where the complainant called the police.

Mr. Potenza stated that it was unknown exactly what the complaint was about other than the possibility of officers failing to take a complaint. It was also unknown whether there was even a complaint for the officers to take based on the information and the radio recordings. Based on the evidence presented and the confidential report from OPS, Mr. Potenza moved to concur with the OPS finding of *no finding*.

The complainant was acknowledged. The complainant added that the incident occurred right across the street from where two police cars were parked talking to each other in a gas station on the corner of Lark and Madison. The incident occurred at Cafe 217. The complainant stated that a cup of hot coffee was thrown at him. When he proceeded to go across the street to complain to the police, he was told that since they were not present, a complaint cannot be taken from him because the officers did not see the cup of hot coffee being thrown at him. If the officers decided to respond to the complaint they would have seen the cup of coffee that was still shattered on the street. The officers could have ticketed the person who threw the cup out in the street for littering or whatever. The complainant stated that this could have been the minimal complaint, even if the officers did not want to pursue an assault charge. The complainant further stated that the officers persisted to tell him to go away. When the complainant called the Albany dispatcher, the dispatcher sent over the exact same officers who were across the street. The complainant stated that he detained the person, and the Café owner had already cleaned up the cup that was thrown at the complainant. The people who were in front of the Café, whom the police officers could have interviewed, had left.

The complainant stated that when he went to the South Station and asked for a complaint form, he was told that Citizen Police Review Board forms were not easily available. The complainant further stated that when he insisted on their availability, he was told to speak to the sergeant, who insisted that he should first file an internal investigation before he could get a complaint form. According to the complainant, he insisted on filling out the complaint form, which he did at that time. The complainant was told that he needed to submit it to the Central Station. When the complainant pointed to the line in the CPRB law that requires any police station to accept such a form, they subsequently accepted the complaint form. The complainant stated that his intention was not to bother the Board with what seems to be an insignificant case, but rather to record his dissatisfaction with the police not responding to his request for help when they were sitting in their cars across the street from the incident.

Reverend Smart asked the complainant if it was his cup or someone else's cup. The complainant responded that it was the establishment's cup. Reverend Smart asked if the cup was taken from the complainant's hand. The complainant replied that the cup was removed from his hand as he was drinking hot chocolate. Reverend Smart asked the complainant if he knew the person who took the cup. The complainant replied that he did not know the person and would not recognize the person if he saw him at this point. The complainant added that the officers should have responded instead of just sitting across the street. The complainant stated that he may have not been coherent during his initial complaint with the cops on the street, but he was coherent when he was at the South Station and insisted on his right to fill out the form.

Reverend Smart stated that the complainant did the right thing. He added that as the complainant can see, the process works very well, the Board listened to his complaint, and the Board has taken his complaint very seriously. Reverend Smart thanked the complainant for attending the meeting.

Anthony Potenza moved to concur with the OPS finding of *no finding*. Reverend Edward Smart seconded the motion. John Paneto abstained from voting because he works with the complainant. The motion carried 6-0 with one (1) recusal.

It was noted that CPRB No. 41-08/OPS No. C08-386 was postponed to the next meeting due to time constraints.

*B. Committee/Task Force Reports*

By-Laws and Rules

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

Mediation

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

Community Outreach

Chairman Jason Allen noted that he met with the NAACP's executive committee. He further noted that are the minutes from that meeting in the meeting packets. Chairman Allen stated that he made some recommendations to the committee and wanted input from its Board members. Chairman Allen noted that it was a very good meeting, with an exchange of very good ideas, and that the NAACP is interested in a lot of things that the Board is working on. Reverend Smart added that the NAACP contacted him and informed him that Chairman Allen had done an excellent job and they feel a great sense of relief in knowing that Chairman Allen is providing this kind of leadership.

Chairman Allen stated that he appreciated the feedback. He noted that the NAACP did have some issues they wanted to follow up on. Chairman Allen stated that the next meeting with the NAACP still needed to be scheduled.

Chairman Allen reported that another outreach meeting was scheduled for Wednesday and needed to be rescheduled because none of the members of the outreach committee could attend.

Police Department Liaison

Committee Chairman Daniel Fitzgerald noted that based on what he heard at tonight's meeting he would be trying to find out what are the off-duty police officer procedures.

Chairman Allen asked the OPS when they can meet regarding the early warning system and camera policies. Deputy Chief Reilly stated that Chief James Tuffey was reaching out to the Board because that is something he wants to discuss directly with the Board. Deputy Chief Reilly mentioned that on Wednesday, a representative from IAPRO is coming to update the APD on the software and anyone who is interested in sitting in to check it out is welcome.

#### Public Official Liaison

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

#### Task Force on Monitors

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

#### *C. Election for Board Officer Positions*

Chairman Jason Allen reported that at the last meeting of the Board, nominations were held for Chair, Vice-Chair, and Secretary. The Board had a nomination for one person for each position. It was noted that Chairman Allen was nominated for Chairman, Ronald Flagg was nominated for Vice-Chair, and Andrew Phelan, Jr. was nominated for Secretary.

Anthony Potenza moved to have Chairman Jason Allen re-elected to the position of Chairman. Andrew Phelan, Jr. seconded the motion. The motion carried unanimously.

Chairman Jason Allen moved to have Ronald Flagg elected to the position of Vice-Chairman. Andrew Phelan, Jr. seconded the motion. The motion carried unanimously.

Chairman Jason Allen moved to have Andrew Phelan, Jr. elected to the position of Secretary. Marilyn Hammond seconded the motion. The motion carried unanimously.

#### *D. Report from the Government Law Center*

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

#### Complaint Inventory as of Date of Meeting

It was reported that as of today, there are currently sixty-three (63) active complaints before the Board for review. Of those sixty-three (63) active complaints, eight (8) were reviewed at tonight's meeting, which leaves the Board with fifty-five (55) active complaints. Out of those fifty-five (55) complaints, fourteen (14) are ready to go on the agenda for review.

It was further reported that three hundred and three (303) complaints have been closed. The total number of complaints that remain suspended from review is six (6). The total

number of complaints filed to date is three hundred and sixty-four (364).

It was reported that since the last meeting of the Board, the GLC received four (4) grievance forms. The total number of forms received to date is sixty-five (65). In response to the GLC's outreach to all sixty-five (65) individuals, the GLC has received sixteen (16) CPRB complaint forms.

#### Business Cards

Reverend Edward Smart asked why the Board had not yet received their business cards and stated that he was willing to pay for his. Ms. Moseley responded that at the last meeting it was decided that four (4) Board members including Reverend Smart would receive business cards, and they should receive the cards within one month.

#### Board Vacancies/Re-appointments

Sharmaine Moseley welcomed back Marilyn Hammond to the Board. It was reported that Ms. Hammond completed a refresher orientation training at the GLC and would be attending a refresher with the OPS within the next couple of weeks as well as attending the APD's Citizens Police Academy.

It was further reported that as of today one (1) vacancy on the board still remains to be filled by the Common Council.

It was noted that the GLC is still awaiting a response as to the re-appointment of Chairman Jason Allen and Anthony Potenza. Anthony Potenza stated that he was informed that he was re-appointed.

#### Monitors

It was reported that the GLC received a letter from monitor Theresa Balfe requesting a six (6) month leave of absence. Ms. Balfe's request was granted. It was noted that the board will now have four (4) monitors. It was reported that in the past the Board had granted leaves of absence and the monitors were able to keep up with the caseload.

#### Next Board Meeting

It was reported that the next Board meeting is scheduled for Thursday, February 12<sup>th</sup> at the library.

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

Deputy Chief Stephen Reilly reported that Detective Michael Romano has requested a personal transfer to seek another opportunity within the APD. Therefore, until APD can fill that position the OPS will be less one detective. Deputy Chief Reilly explained that

the Board may see the cases slow down until the OPS brings the next person up to speed as soon as possible.

Chairman Jason Allen noted that during the several years he has been on the Board he has never seen a backlog like this. He explained that is why the Board met twice this month instead of once. Chairman Allen thanked Deputy Chief Reilly for addressing this issue.

*F. Report from the Chair*

Chairman Allen noted that the Board had issued a press release that day discussing how last year the Board had made four recommendations. The first is that every person who has an issue may not necessarily fill out a complaint form and the Board reached out to them and there was a lot of success with that. Although the Board does outreach within Albany, there may be people outside of Albany who aren't aware of the Board. The second was cameras and audio in every patrol car. The third was the early warning system which Deputy Chief Reilly mentioned he would like to do an overview on with members of the Board on Wednesday morning. The fourth was mediation.

Chairman Allen stated that the press release was meant to update the public on the first initiative and how the Board was looking forward to the next three initiatives gaining traction. The Board understands the audio and video have been ordered, and the policy is under review. This brings credibility to the complaint process and brings OPS and the Board the tools needed to effectively conduct investigations to effectively conduct investigations.

**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 adjourned at 7:45 p.m.

Respectfully submitted,

Andrew Phelan, Jr.  
Secretary