

City of Albany
Citizens' Police Review Board
Albany Public Library
161 Washington Avenue – Large Auditorium
March 13, 2007
6:00 p.m. – 8:00 p.m.

Present: Jason Allen, Mauri Davis Lewis, Daniel Fitzgerald, James Malatras, John Paneto, Andrew Phelan, Anthony Potenza, and Hon. Fowler Riddick.

Absent: Ronald Flagg.

I. Call to Order and Roll Call

Chairman Jason Allen called the meeting to order at 6:05 p.m. He noted that all board members were in attendance with the exception of Ronald Flagg.

II. Approval of the Agenda

The agenda was reviewed. Hon. Fowler Riddick motioned to approve the agenda. James Malatras seconded the motion. The motion carried unanimously.

III. Approval of the January 16, 2007 & February 13, 2007 Meeting Minutes

The January 16, 2007 meeting minutes were reviewed. Daniel Fitzgerald noted that corrections need to be made to John Paneto's name on page 5, Patrick Jordan's name on page 7 and Chief James Tuffey's name on page 10. Hon. Fowler Riddick motioned to approve the meeting minutes with amendments. James Malatras seconded the motion. The motion carried unanimously.

The February 13, 2007 meeting minutes were reviewed. James Malatras noted that he didn't receive the minutes and motioned to table approval of the minutes until the next meeting of the Board. Mauri Davis Lewis seconded the motion. The motion carried unanimously.

IV. Old Business

CPRB No. 43-02/OPS No. C02-356 (Presented by James Malatras)

James Malatras summarized the complaint. The complaint was originally reviewed by the Board on November 11, 2002. At that time the board agreed with the Office of Professional Standards (referred to hereafter as OPS) as sustained. The OPS and the Board agreed that the 911 call handler failed to properly enter the complaint as a domestic incident. The officers further failed to verify reason for the call, and failed to interview witness as to the reason and purpose of the

call. The complainant stated that she tried to explain to the officers the reason for the call but that they didn't listen.

James Malatras noted that as to the use of force allegation, the OPS stated that the case should be closed as *unfounded*. The board referred this portion of the complaint to mediation and subsequently tabled the excessive use of force allegation because the complainant filed a lawsuit against the City of Albany. Recently the civil case was completed. Therefore, the excessive use of force allegation is ready to be reviewed by the Board. James Malatras also noted that the OPS closed the case as *unfounded* where the review showed that the acts of the complaint didn't occur or were misconstrued because the officers told the complainant to put her arms behind her back and she didn't comply. Moreover, in its report, the OPS stated that the complainant said she was angry and pulled away when the officers tried to place her under arrest.

James Malatras stated that he disagreed with the OPS finding of unfounded and that it should be changed to *not sustained*. Chairman Allen asked James Malatras if his intent was to send the complaint back to the OPS for further investigation. James Malatras clarified that his intent was not to send the complaint back for further investigation. James Malatras motioned to find the second part of the complaint as *not sustained* as compared to the OPS findings of *unfounded*. Dan Fitzgerald seconded the motion. The motion carried unanimously.

CPRB No. 32-05/OPS No. C05-574 (Presented by Chairman Jason Allen)

Chairman Jason Allen explained the policy of the Board not to refer to the complainant by his/her last name. Chairman Allen asked the complainant for the ease of this discussion if he had an objection if the Board used his last name. The complainant, Ellis, replied that he did not have an objection. Chairman Allen noted that the complaint was filed on November 21, 2005 regarding an incident on November 17, 2005 at 8 o'clock at night. The complainant stated that he was pulled over by an Albany Police Officer who was riding shotgun with a New York State Trooper. He alleged that his civil rights were violated and that the Albany Police Officer was rude. Chairman Allen noted that on March 2, 2006, the OPS recommended to the CPRB that the case be closed as *unfounded* regarding the basis of the stop and *not sustained* regarding the allegation of rudeness. He also noted that at its April 2006 meeting, the Board voted to table the review of the complaint to allow the OPS more time to investigate. At its September 2006 meeting, the Board reviewed the OPS' further investigation of the complaint and the Board voted unanimously with one recusal to reject the OPS findings.

Former Board member Michael Whiteman originally presented this complaint to the Board. The Board based its rejection of the OPS findings on the following points: 1) Why was the vehicle stopped seven weeks after the call came in for the domestic violence complaint? 2) The person who filed the complaint said that the subject of the complaint had a gun. Why was there no mention of the gun in the domestic incident report? 3) Why was the State Trooper's explanation for the vehicle stop inconsistent with the explanation given by subject officers? 4) Why didn't subject officers conduct a search of the visible areas in the car if they stopped the complainant on the possibility of there being a gun in the car? 5) How was a warrant issued for the

complainant's arrest when his license was checked and there were no warrants? 6) When did the subject officers realize there were warrants? 7) Why was the complainant pulled over?

Chairman Allen read the complaint verbatim. The complainant alleged that his civil rights were violated by an Albany Police Officer on Thursday, November 17, 2005, at approximately 8:00pm. At that time the complainant was driving his car, a 2002 Lexus, in a southerly direction on Delaware Avenue. The complainant was alone in the car and is an African-American. As he was driving, he noticed a marked police car following him. He first noticed the police car near the intersection of Myrtle Avenue and Delaware Avenue at which time the officer put on his lights and siren to signal the complainant to pull over, which he immediately did. To the best of the complainant's knowledge, he had not engaged in any violation of the traffic laws. After the stop, the officer came up to him and asked for his license, registration and insurance card. The complainant provided these items to him. The complainant asked the Officer why he stopped him. The officer said, "you have warrants issued." The complainant did not think this was accurate and told the officer that he found that hard to believe, because he had just come from a meeting of the District Attorney's Office Community Accountability Board, on which he serves, and that no one from the DA's office had told him about any warrants. The complainant also told the officer that he had an accident a couple of months ago and had just run for public office, and no one had brought up or mentioned any warrants or charges. The officer said, "I find that hard to believe. Can you come up with a better story than that?" This was said in what the complainant perceived as a sarcastic tone of voice. The officer then went back to his car. He returned to the complainant's car a few minutes later and handed back the license, registration and insurance card. The complainant asked the officer for his name. The officer responded and the complainant asked if it was proper to run his license when he had not done anything wrong. The officer said, "I don't have to answer that question." The officer did not issue any tickets or charges. There were, in fact, no warrants issued for the complainant. The complainant believes the officer would not have taken any action, including running his license plate, had the complainant not been a young African-American man driving a Lexus. The complainant believes that the officer's actions were motivated by race and not by any indication that he had done anything wrong or improper. The complainant also believes that the officer treated him in a disrespectful manner based on race and his apparent disbelief that the complainant could be involved with the District Attorney's office or had run for public office.

Chairman Allen noted that the rest of the officer's information in the complaint was redacted and the complaint was signed on November 21, 2005 by the complainant. Chairman Allen reviewed an included statement signed by the target officer on January 10, 2007 and noted that the complainant's license plates showed a valid status from the NYS Police Information Network. The other person with the same name of Ellis in the system showed a second degree assault against women. Chairman Allen also noted that he reviewed the NYS Domestic Incident Report filed on September 30, 2005; a domestic report received on September 30th and closed on October 3rd which stated that the "complainant refused to prosecute"; a statement from the other Ellis regarding the domestic incident report; 15 pages of tape recorded print-outs from November 17th through November 18, 2005 of suspended and revoked license plates scanned by the reader in the patrol car that night, where the complainant's license plate does not come up because it was not suspended or revoked; the complainant's license plate taken the next day by the same

scanner with no tags and no resulting pullover; the complainant's contact history; the other Ellis' contact history; a transcript of the interview with the target officer on April 27, 2006 which stated why the target officer pulled the complainant over and why no search was conducted of complainant's vehicle; further disciplinary advisements on April 25, 2006; a memo from the state trooper who was riding shotgun with the target officer dated December 1, 2005, which stated that they were testing the plate reader that night to locate stolen or suspended vehicles and there was an associated hit and that evening he went to the passenger side at that pullover and there was no one else in the car and he could not hear what was said because the officers were on the drivers side; and a sworn statement by the woman who filed the domestic complaint against the other Ellis on December 20, 2005, about a month and a half after the domestic incident report, where she admitted that she told the APD about her association with the other Ellis and the complainant, as well as that the other Ellis may have a gun. She admitted that she was very upset that evening, and was not on her medication when she filed the domestic incident report. Chairman Allen noted that he also reviewed inter-department correspondence regarding the domestic call incident against the other Ellis; inter-department correspondence dated December 2, 2005 from the Operation Impact Lieutenant saying he was at dinner at the Gateway Diner and was next to the target officer when he received a phone call from the officer who received the Domestic Incident Report and that's when the discussion, after the phone call, centered around the other Ellis and the complainant possibly having an association and that the other Ellis, per the woman, could have a gun. Chairman Allen also noted that he viewed inter-department correspondence dated December 12, 2005 regarding the officer eating dinner with the target officer and the target officer mentioning getting the call; a transcript and an advisement of rights on November 29, 2005 of the target officer on the complaint stop; a contact report for the stop for investigation; and a computer and dispatch record for the domestic report which was the CAD that was filed when the domestic incident was filed.

Chairman Allen read the letter which the Board received from the APD regarding the responses from the APD regarding the Board's questions. Chairman Allen noted that the letter summarized what he reviewed in the confidential report in the OPS file.

1. Why was the vehicle stop deemed valid seven weeks after the call came in for the domestic violence complaint?

There is no explanation in the further investigation why the traffic stop was deemed a valid stop seven weeks later. When following up on police information that a wanted subject may be in possession of a gun, it is preferable that the subject be encountered as soon as possible to help minimize the possibility of the subject leaving the jurisdiction or disposing of the weapon. However, it would be wrong to discount the validity of information and refuse to attempt to interdict a wanted party simply because of the passage of time. It should be noted that had the officer completed the proper paperwork, it is likely that the complainant would have been pulled over shortly after the information became common knowledge among the rank and file through the department-wide dissemination of the report.

2. *The person who filed the domestic violence complaint alleged that the subject had given a gun to another person with the same first name as the complainant and she described a vehicle with the same license plate. Why wasn't another person, this car, or gun mentioned in the report?*

The NYS form that is completed upon report of a domestic incident has an area where the reporting officer must fill-in if there are any guns in the house and/or seized, any household member possessing a pistol permit (and, if so, was it seized) and the permit number, issuing county and name on the permit. However, the form does not have any place to indicate any type of handgun that may be present outside the home and/or illegally possessed without the authority of a NYS pistol permit. Simply put, this information (although extremely important) has no place on a standardized NYS Domestic Incident Report form, though it should be recorded on an Investigation Report.

3. *Why was the State Trooper's explanation for the vehicle stop inconsistent with the explanation given by the subject officers of the domestic violence complaint?*

The main discrepancy is over the other Ellis' warrant status because both the trooper and officer state that the other Ellis was supposed to have a gun in his possession and was known to frequent a dark colored car with NYS vanity ELLIS11. The trooper incorrectly remembers that the other Ellis was wanted on drug charges. The officer recollects that the other Ellis was wanted on family court charges. Both indicate that the other Ellis was sought for a warrant. The fact that there is a discrepancy over what the warrant was for indicates the officers did not conspire to get their stories straight.

4. *Why didn't the subject officers conduct a search of the visible area in the car if they stopped the complainant based on the possibility that there was a gun in the complainant's car?*

There was no legal basis for a search of the vehicle based on the factors present the night of the stop.

5. *How was a warrant issued for the complainant's arrest when his license was just checked and there were no warrants issued at that time?*

There was not any indication that the complainant ever had a warrant. There further was never any warrant associated with ELLIS11, when the vehicle registration was checked. There was a warrant issued for the other Ellis from the Albany County Sheriff's Department for a family offense. The officer stated he stopped the vehicle based on the police information received from a walk-in complaint at the North Station and relayed to him by the desk officer via a cellular phone. The officer stated, "My reason for stopping that vehicle was to investigate whether or not the other Ellis, who did have an active warrant was in the vehicle and/or operating that vehicle."

6. *When did the subject officers realize there were warrants issued on the complainant?*

As noted above, there were never any warrants issued on the complainant, the warrant was issued for the other Ellis.

7. *Why was the complainant pulled over?*

Again, as noted above, the officers initiated a traffic stop upon the complainant's vehicle, ELLIS11, based upon the fact the officer received information that was relayed from the North Station Desk Officer pertaining to the other Ellis. The complainant was not the intended target of the officer's investigation and once they learned the other Ellis was not in the vehicle, the complainant was released. The entire stop lasted 3 minutes.

Chairman Allen noted that the letter was signed by Chief of Police James W. Tuffey. He also noted that the Board also received a follow-up report from the monitor. He stated that the monitor had fewer concerns than what the Board stated in its letter. Chairman Allen read the monitor's report verbatim.

Monitor Joel Pierre-Louis was acknowledged. He stated that he had nothing further to add.

Chairman Allen acknowledged that the failure mode was recognized at the time of the domestic incident report and corrective action was taken against the officer who was responsible for the failure mode. Chairman Allen asked the complainant if he had anything to add.

The complainant's attorney, Mark Mishler, was recognized. Mr. Mishler stated that the complainant would like to comment, but he would like to make a comment first. Mr. Mishler acknowledged listening to everything presented, and was still left with a seven week gap of sketchy information provided by the police departments, and the stop of the complainant's vehicle was still unanswered. Mr. Mishler stated that during the seven weeks, the complainant was out in public, drove his vehicle with the vanity plates, and was easily identifiable. Mr. Mishler further stated that it still didn't make sense and he wasn't sure if the police department agreed that it didn't make sense or how the Board felt. Mr. Mishler noted that he wasn't satisfied with the investigation.

Chairman Allen explained his understanding of the case from his review of the file. He explained that first was the question of the pullover and the conduct of the officer after the pullover. When the other Ellis' girlfriend filed the Domestic Incident Report, the officer spoke to one of his co-workers on a cell phone. The officer was at the Gateway Diner having dinner with other officers, and said that he received a complaint on the other Ellis, who was known to be with the complainant, and gave the complainant's name and license plate, which is a vanity license plate. Chairman Allen questioned that if a woman gave a report that an individual was running around with a gun and could be in a car with the gun, why didn't every police officer know this, why was he able to drive around for several weeks campaigning with high visibility license plates? Chairman Allen noted that the failure mode occurred when the domestic violence

report was filed in the system, but then an incident report was not filed which would have sent an All Points Bulletin to every officer. The complainant would have been pulled over much sooner, but only a limited number of officers knew. Chairman Allen further noted that seven weeks later the same officer who received the phone call saw that license plate, remembered it, ran a check, didn't see a warrant, but knew that the other Ellis may be with the complainant. The officer made the stop and realized that the complainant was not the other Ellis and let him go. Chairman Allen summarized that this is how he understood how it unraveled based on his interviews with the OPS. He further stated that the APD admitted that the stop was improper due to faulty information. The Domestic Incident Report was filed that evening and the APD Domestic Violence Unit followed up with the woman, but she refused to press charges. The second failure mode was that the officer didn't follow up with his co-worker to say that the case was closed.

Mr. Mishler commented that he didn't hear in Chairman Allen's initial review that the APD acknowledged that the stop was improper. If that was the case, then he really appreciates that acknowledgement. Chairman Allen clarified that the case was closed within a day or two of the complaint being filed. If the process was followed, the officer wouldn't have pulled over the complainant.

Assistant Chief Bruno summarized the major failures as lack of communication through the proper channels. It was not documented on the incident report and forwarded to the officers as it should have been. Without that being done and the information passed by word of mouth by a small group of officers who had knowledge of this information is what led to the seven week gap. Assistant Chief Bruno stated that based on that information, it was inappropriate. Assistant Chief Bruno further stated that making the investigative stop based on that information itself was inappropriate and never should have happened. If that information was properly documented and sent to the Detective offices where the complainant would have been contacted right away, then the issue could have been resolved prior to the stop. In addition to addressing the issue where the officer failed to submit his paperwork to his supervisor, steps were taken by the Department's reorganization to change the paperwork and information flow, with the creation of the Information Coordination Unit which is headed by a Detective Sergeant, so all information that officers receive goes into one centralized location.

Mr. Mishler commented that there were three significant failures by the APD: failure to provide proper report; failure in the manner the information was obtained and disseminated, assuming that one officer calling another on a cell phone is not proper procedure; and the failure to document and disseminate the proper information.

The complainant was recognized. The complainant summarized that a piece of paper was the reason why he was pulled over. He stated that his statement dealt with why the officer pulled him over. The complainant noted that when he asked the officer why he was stopped, the officer didn't mention anything about a previous incident, or that he spoke to another officer. The officer said that he pulled the complainant over because he had an outstanding license plate and a warrant out for his arrest. The complainant stated this review meant that he was mistaken or not telling the truth. He noted that he was pulled over prior to this incident by an officer and the officer had no knowledge of a domestic violence incident. But the target officer miraculously

remembered that a domestic violence incident occurred. The complainant summarized that this was about lost papers, reports, and gaps in the reports. The complainant asked what the officer said about the complainant when the officer gave his statement. The complainant further asked what the complainant said to the officer and what the officer said to the complainant. He stated that those questions weren't answered. He further stated that a finding of not sustained meant that he wasn't telling the truth about why the officer pulled him over. The complainant stated that he had a problem with the huge gaps in the report. He noted that he had a problem with it when he was told about the domestic violence incident and there was no mention that the young lady retracted her statement. The complainant commented that it took seven months to hear this. He stated that he is very emotional about what happened to him because he hears about unfortunate incidents like his everyday. He commented that this was not about him but about the practice of the local police department. He stated that case proves that there were holes with not only the pull-over but with the investigation and how information was transferred between officers. The complainant asked why the officer didn't tell him about the domestic violence incident. He noted that the public needs to know if this was an illegal form of policing. The complainant questioned why anybody would come in front of the Board with a legitimate complaint. The complainant stated that if a person who has "Honorable" in front of his name cannot be believed then why should any other citizen feel that his statement would be believed.

Chairman Allen informed the complainant that the Board is taking the complaint very seriously and had tabled it and sent it back for reinvestigation twice due to the discrepancies. There were two issues. One was the reason for the pull-over. Chairman Allen and the monitor recognized that corrective action had been taken to address that. The second was the conduct of the officer. One of the questions asked of OPS was why couldn't the officer just say that he was pulling the complainant over because somebody filed a complaint against this person who had a gun and they were looking for him. The answer Chairman Allen was given was that it could compromise the investigation and it was standard operating procedure not to provide that information right away. Unfortunately the Board is in a position regarding that portion of the complaint- where it is the officer's statement and complainant's statement- the Board doesn't have any other means to ascertain what was said that evening.

James Malatras concluded that the conduct of the officer focused on two (2) main issues. Assistant Chief Bruno reported that there was a systematic breakdown of the process, while the complainant alleged that it was not the system but that there was some sort of intent present. James Malatras stated that in the review of the complaint there was nothing to prove intent or if there was a systematic failure.

Chairman Allen stated that the search didn't occur and the stop was relatively short, which was the only indication that the intent was not as ill-thought as one could believe. He added that everyone admitted that it wasn't a long stop and a search wasn't undertaken.

Daniel Fitzgerald stated that while he appreciated the Chief's response to the Board's questions, even if it was 2 days after or 7 weeks later, if an officer saw a license plate that had been listed as possibly having a weapon in it then they should pull it over. Dan Fitzgerald questioned whether

the officer would have called this in to see if there was still an active complaint. He further questioned if it was common practice to call and get an update before taking any action.

Assistant Chief Bruno replied that the officer could certainly do that, to see if there was any updated information, but in this case it would not have been available because it was never documented appropriately in the first place. Dan Fitzgerald asked if the officer radioed this in would it have shown that there were no warrants out and no current lists to look for this plate. Assistant Chief Bruno replied that this was correct.

James Malatras added that the issue was not the length of the stop, but the reason for the stop. He questioned if the reason for the stop was based on some sort of breakdown or if there was some other reason that the Board didn't know about.

Mr. Mishler added that the reason for the stop could be based on the manner in which the complainant was treated after he was pulled over, which was significant in regard to understanding the officer's intention. Mr. Mishler commented if someone made an allegation, unless there was a third party to corroborate the complainant's story, then the OPS and the Board would vote unfounded or not sustained. He noted if the officer denied the allegation then we're stuck with a not sustained finding. Mr. Mishler further commented that he wasn't sure if this finding was appropriate in this situation. He suggested that the Board get information that would give them some insight into the officer's intentions. Mr. Mishler added that he didn't think that the racial profile question was adequately answered. He questioned whether the officer would have done the same thing if it was an old white man instead of a young black man in a nice car with vanity plates. Mr. Mishler commented that it would not be handled the same way. Mr. Mishler stated that he was not satisfied with the investigation. He suggested that the next step would be to exercise the Board's authority under its legislation and forward the complaint to the Common Council. The Common Council would then use its own power and authority to conduct an investigation and truly report the facts and circumstances. Mr. Mishler noted that a year and a half has passed since the complaint was filed, so it was time to move the complaint to the next level because there were still many unanswered questions.

Chairman Allen asked if this was based on why the complainant was pulled over, or the conduct of the target officer, or both. James Malatras added that if the Board supported the findings then it was not a failure of the individual members of the Board, it may be a failure of the authority that the Board has. He explained the definition of a not sustained finding. Mr. Mishler noted that he understood James Malatras' point and he believed that there was a failing in the legislation. The determination that there wasn't enough evidence was subjective on some level, so each of the members made that determination based on the evidence that was provided. Mr. Mishler commented that he was in favor of the Board having greater power and authority in terms of investigation oversight. Even with the power the Board has, it can decide that the information is reliable and credible in the complainant's case by how he was treated and reject any findings that can be determined because the officer denied it. James Malatras commented that in the past, the Board sent back those complaints and requested more information where the reports were insufficient.

Chairman Allen noted that the OPS finding regarding the pullover was unfounded. He explained the definition of an unfounded finding. Chairman Allen further noted that the conduct allegation of the officer was not sustained. He explained the definition of a not sustained finding.

Chairman Allen noted that based on the review, there was an explanation backed up by witness statements and documents as to why the complainant was pulled over. Chairman Allen stated that regarding the conduct of the officer, he was not convinced that a further investigation would glean any more information being that only two parties were involved. If what the complainant alleged was true then it would be most unfortunate. Chairman Allen recognized that the APD recognized the failure mode and corrective actions were taken against that officer as well as addressed in its policies and procedures.

James Malatras commented that there clearly was a failure, but the question remained as to why that failure occurred. Either there was a systematic breakdown or something else. James Malatras stated that the Board didn't know the answer to that question. Chairman Allen acknowledged that there was human error and to eliminate the risk of human error, system and processes were designed. He noted that Assistant Chief Bruno mentioned that the APD's new automated system and reorganization are supposed to streamline human error. Therefore, the human error in this case was founded and addressed.

John Paneto commented that the complainant's main concern was if he was stopped based on an act of racial profiling. John Paneto noted that he did not hear a determination for that allegation. The basic question of was the complainant stopped because he was black had not been addressed. John Paneto commented that he agreed with the complainant that the answer to that question was missing. He also noted that the Board had a preponderance of complaints that are allegations of lack of respect by police officers to the general public. John Paneto commented that he assumed that there is a lack of respect issue where the Chief, Assistant Chief, Deputy Chief or the APD would say a mistake was made, apologize and an officer admit that he stopped an individual because he/she was black. If a mistake was made, recognized and corrected, then hopefully from that process, the organization would learn that there was a pattern or history of continued misdeeds by a certain group of police officers who still didn't get it. John Paneto reiterated that he agreed with the complainant that the racial profiling question was not addressed.

Dan Fitzgerald noted that a portion of John Paneto's comments could have been addressed through mediation if it were set up, so the need for mediation is still necessary. James Malatras addressed John Paneto's comments as well. He stated that the Board didn't know for a fact whether or not there was racial profiling. Chairman Allen added that the Board didn't know but based on the OPS and monitor's investigation, there was a logical sequence as to why the stop occurred.

The complainant asked for clarification of what the officer said to the OPS as to the reason why he pulled him over. Chairman Allen responded that he didn't have the officer's statement in front of him, but the essence of his statement was that he pulled the complainant over because the other Ellis might have been with the complainant. When the officer saw the complainant's license he realized that the complainant was not the other Ellis, so he didn't search the

complainant's car. Chairman Allen stated that he asked the OPS why the officer didn't ask questions and was told that it was standard operating procedure not to do so because the complainant could have driven away and warned the other Ellis that the police were on to him.

Monitor Joel Pierre-Louis noted that based on his initial report dated March 27, 2006, in response to the complainant's question, the subject officer denied the complainant's allegation that he informed him that the reason for the stop was that the complainant had an outstanding warrant. Joel Pierre-Louis also noted that the officer further denied that he was unprofessional and sarcastic towards the complainant.

Chairman Allen motioned to agree with the OPS findings of *unfounded* regarding the pullover of the complainant and *not sustained* as to the allegation in the complaint regarding the conduct of the officer. Hon. Fowler Riddick seconded the motion. Dan Fitzgerald and James Malatras voted against the motion. Mauri Davis Lewis abstained from voting. The motion carried. James Malatras noted that he voted against the motion because there were enough facts to either send the case back for further investigation or take it to the next level as cited in the Board's legislation. In the Board's by-laws, civil rights and use of force violations should get the highest attention, so he said this would have been the perfect case to exercise the Board's authority.

V. New Business

A. *New Complaints*

1. New Complaints Received Since February 13, 2007 Meeting

Chairman Allen reported that there were five (5) new complaints received by the Board since its February 13, 2007 meeting. Andrew Phelan read a summary of each new complaint.

CPRB No. 2-07

On June 28, 2006, the complainant alleged that while outside her residence, police officers violated her civil rights; subjected her to excessive and unreasonable force; were disrespectful and rude; falsely arrested her; prepared charges and other documents that contained false information; subjected her to racial discrimination; and subjected her 13-year old daughter to excessive and unreasonable force.

A monitor was appointed to this complaint.

CPRB No. 3-07

The complainant alleged that after an officer handed him traffic tickets, the officer said "we don't have summary judgment around here" in reference to NY Slip OP 19386 Canavan vs Galuski. The complainant alleged that the statement was a form of harassment.

A monitor was not appointed to this complaint.

CPRB No. 4-07

The complainant alleged that on January 21st between 3am and 4am, while she was waiting for her friend to be processed for a disorderly conduct charge she asked an officer behind the desk if the heat was on in the building or was there anywhere else they could sit. The complainant further stated that the officer then fused together the inside and outside doors with a coat hanger, making cold air flow into the waiting room. The complainant then got up to close the door and the officer told her to sit back down. She alleged that when she didn't obey him, the officer grabbed her and threw her forcefully out of the building causing her to have scrapes and bruises on her arms and legs and then threw her boyfriend out and they had to walk from the South Station to Jillians for shelter at 4am in below zero degree weather.

A monitor was appointed to this complaint.

CPRB No. 5-07

The complainant alleged that on February 24, 2007 at 3:19am, he and his girlfriend were arguing on Madison Avenue & Ontario Street. The complainant stated that his girlfriend gets pretty animated when upset which drew attention to them, so he made numerous attempts to calm her down. When his girlfriend started walking away from him, the complainant pulled her around with his hand on her coat saying "please look at me baby." At that point, the complainant stated that he heard yelling from across the street and he immediately put his hands down to his side surrendering to the officer. The complainant alleged that the officer grabbed him and pushed him 15-20 feet back slamming him into the brick wall of a building and then violently pulled him away from the brick wall and told him to put his hand on his head. The complainant further alleged that the officer screamed in his ear accusing him of beating up his girlfriend. The complainant's girlfriend was hysterically asking the officers why they were doing this to him. The complainant alleged that because of what his girlfriend said, the officers let him go and he had bruises all over his arm.

A monitor was appointed to this complaint.

CPRB No. 6-07

The complainant parked in front of 537 Hudson Ave at 10:49am and unloaded his tools and supplies to store in the basement of 312 Western Ave, which shares a backyard with 537 Hudson Ave. The complainant stated that he put the materials into the van, took out 2 cans of paint and started walking up the driveway when he remembered that he had to see if the new security door was installed at 537 Hudson. As the complainant was walking up the driveway to 537 Hudson Ave, he noticed the police car drive by and look

at him. The complainant then came out of the basement with more materials in his hand. As he came down the driveway, he saw the police car again coming up Hudson. The complainant put the materials into the van and grabbed a bag of electrical supplies. He was halfway up the driveway when the police car stopped at the end of the driveway. The officer asked the complainant his name and if he lived there and the complainant answered the officer. The complainant stated that after he told the officer that he didn't have time now because he was busy and continued walking, the officer grabbed his left shoulder, another hand grabbed his right wrist, he was pulled back 17 feet, and was spun 90 degrees to the right. The complainant claimed that his left shoulder was jammed into the garage wall and his right hand shoved into the rose bushes where he got a dozen scratches.

The complainant alleged that the officer shoved his crotch into his left thigh and his chin into his left shoulder and screamed in his ear twice "make me bring you down." The complainant claims that he kept telling the officer that he works here. Another officer came and told the first officer to cuff the complainant. As they walked down the driveway, the complainant asked the officers if he could get his ID out of the van or they could check the Archer Brown website on their computer and they would see his picture on it.

As they approached the police car, the complainant claimed that the officer pushed him into the right rear fender of the car. The officers asked the complainant if he was on probation, if he had a weapon, was he ever arrested, who's Archer Brown. The complainant responded that he wasn't on probation, didn't have a weapon, was arrested when he was a teenager for being a teenager, Archer Brown owns seventeen buildings in town and he worked for Archer Brown since 1999 or 2000 doing general maintenance. The complainant alleged that the officer said that they were on special burglary detail and asked for his ID. He told them it was in his glove compartment, which was where they found it. The complainant further claimed that the officer stated that they stopped him because of the way he was dressed and that he looked like a burglar.

A monitor was appointed to this complaint.

2. New Complaint(s) For Review

Chairman Allen reported that there were three (3) new complaints on the agenda for review by the Board.

CPRB No. 19-06/OPS No. C06-282 (Presented by Anthony Potenza)

Anthony Potenza summarized the complaint. Anthony Potenza noted that the OPS conducted an investigation based on five (5) allegations in the complaint. The first allegation was that the complainant was stopped for no reason. The second allegation was an unauthorized search of the vehicle. The third allegation was unprofessional conduct by the officers when handling the complainant's property which was a video

camera. The fourth allegation was that the officers planted evidence in the complainant's vehicle. The fifth allegation was that the officer's canine scratched the complainant's vehicle during the search of the vehicle.

Anthony Potenza noted that a monitor was assigned to the complaint. Upon review of the complaint, the OPS report, and the monitors report, Anthony Potenza moved that the Board concur with the findings of the OPS. Anthony Potenza moved that allegation numbers one (1), two (2), and four (4) be closed as *unfounded*; allegation number three (3) be closed as *no finding* since the complainant withdrew the complaint; and allegation number five (5) be closed as *not sustained*. Anthony Potenza noted that the complainant was not present and that the monitor was present.

Chairman Allen asked if anyone was ticketed or arrested. Dan Fitzgerald asked why the vehicle was confiscated. Anthony Potenza noted that the initial stop was for failure to keep right. Monitor Theresa Balfe was recognized. Theresa Balfe added that the vehicle was confiscated because of the marijuana. Anthony Potenza added that when the officer asked for the license and registration of the vehicle, when the complainant opened the window, there was a strong odor of marijuana coming from the vehicle.

Dan Fitzgerald asked what the complainant was arrested for. Anthony Potenza noted that when the officer searched the vehicle, the canine alerted him to the console between the two front seats and the officer found an empty baggie with a strong smell of marijuana. Theresa Balfe added that it was not enough to charge the complainant with drugs. James Malatras clarified that the complainant was ticketed for that but arrested for disorderly conduct. Anthony Potenza noted that a crowd had gathered around the scene and the complainant was trying to excite the crowd. Theresa Balfe added that the OPS asked the complainant numerous times for the tape and he refused. She noted that if you are going to accuse an officer of snatching your personal property such as a video camera, while you are recording, the camera is going to shake. Theresa Balfe further noted what better way to prove it than to have that video with the sound and audio. Anthony Potenza noted that in regard to that allegation, the complainant recanted that allegation and said that the camera was directly taken from him and placed on the seat of the vehicle. Anthony Potenza further explained that because the complainant withdrew that allegation he recommended that allegation be closed as no finding. Theresa Balfe explained that the complainant withdrew that allegation because the OPS were pressing him for the tape. Anthony Potenza added that the complainant didn't produce the vehicle for inspection to ascertain that damage was done by the officers' canine. Theresa Balfe further added that the vehicle was requested several times.

Chairman Allen asked if the Board was in favor of Anthony Potenza's motion. James Malatras seconded the motion. The motion carried unanimously.

CPRB No. 37-06/OPS No. C06-683 (Presented by Mauri Davis Lewis)

Mauri Davis Lewis summarized the complaint. The complainant alleged that he was arrested by the Albany Police Department and that during the arrest he was injured. The complainant stated that he remembered waking up and there were many officers holding him down. The complainant alleged that he was handcuffed and shackled on the ground when he woke up yelling obscenities at the officers. The complainant alleged that he felt two fingers go two (2) inches deep into his throat and a foot drive his face into the concrete and a knee in his lower back. The complainant alleged to have suffered a concussion, a broken nose and multiple bruises. The complainant alleged that the officers refused to get him medical attention for his injuries.

Mauri Davis Lewis noted documents she reviewed at the OPS. The incident occurred on October 20th at about 10pm. The complainant entered Sneaky Pete's night club with a friend. Prior to that, the complainant had been at home drinking and wrestling with his friends. The complainant had two or three Long Island iced teas before going out. It was during the wrestling encounter that he sustained a bruise. Upon arriving at the club, a bouncer noted the bruised eye. It was also noted by a member of the security staff that the complainant got the bump over his eye while wrestling with his friends. The complainant's friends attested to the fact that the complainant was intoxicated when the incident occurred. After the complainant entered the club, he had two or three more Long Island iced teas. While on the dance floor, the complainant caused a disturbance while bumping into other patrons. Mauri Davis Lewis noted that a Long Island iced tea is a very potent alcoholic beverage. Each drink contains about two (2) ounces of liquor. If a person drinks two (2) to four (4) at the low end, they're drinking about eight (8) ounces of liquor, while on the high end they'll consume anywhere from twelve (12) to fifteen (15) ounces.

Mauri Davis Lewis added that the club's bouncer saw that there was a disturbance on the dance floor, approached the complainant to ask him to calm down, and the complainant became aggressive and swung at the bouncer. The other bouncers went to assist their co-worker and at that point one of the bouncers was punched in the mouth. The complainant was carried out of the bar and the bouncers were directed to sit the complainant on the ground. The complainant was offered assistance but shoved the hand away. The complainant was told to leave the premises. The complainant pushed and shoved at the hand of the bouncer who was at the door and the bouncer asked the complainant's friends to persuade him to leave before there was any further trouble. The complainant walked as far as the gates that were set up, then turned around and walked to where the bouncers were. The complainant then grabbed one of the bouncers who attempted to push him off. As the bouncer turned to walk away, the complainant was said to have picked up a construction cone and throw it at the bouncer. As this was occurring a police officer came over and instructed the complainant to leave. The officer was talking, when the complainant began shouting racial epithets repeatedly. The officer grabbed the complainant by the wrist and told him that he needed to leave now. The complainant put up both his middle fingers and repeated the racial epithets. The complainant attempted to run away and fell face first on the ground. The officer and bouncer caught up with the complainant and attempted to handcuff him. The complainant kicked violently, cursed,

screamed racial epithets, and spit on them. The complainant was restrained in order to hold him down and placed face down to stop him from spitting.

Mauri Davis Lewis summarized the resistance report, which was filed that evening. The report stated that the complainant was first told to leave the parking lot and when he refused to comply he was placed under arrest. The complainant attempted to run away to evade arrest, but was caught by the officers. He refused to be handcuffed or follow verbal commands. The bruise on the complainant's cheek was the result of the complainant resisting arrest. There were seven (7) witness statements from the employees of the club, two (2) witness statements from the complainant's friends, and a videotape from the camera facing the lot, but the quality was extremely poor. Mauri Davis Lewis further noted that there were interviews conducted over a period of time of the club owner and several of the security staff and there was also a booking video which showed that the complainant was assisted to his feet from the vehicle and escorted into the booking room. At the booking, the complainant continued to be combative, non-compliant, yelling obscenities and racial epithets. The complainant was uncooperative at being photographed and continued refusing to follow directions. Mauri Davis Lewis noted that there was an interview on December 5, 2006 of the police officer. The officer was on the scene for another call and heard the commotion caused by the complainant and walked over to investigate the disturbance. The officer observed the complainant being asked to leave the scene and the complainant refused and began cursing at the officer. The complainant was told that he was going to be taken into custody for disorderly conduct and trespass. The complainant attempted to run away, but tripped over some obstruction there and fell hard on the pavement. Additional officers attempted to gain control of the complainant's arms and legs but the complainant was non-compliant. The officer had to use a restraining technique called the "mandibular angle" to subdue the complainant, which is a pressure point technique that applied pressure with the second and third finger into an area at the base of the neck. This allowed the police officer to finally be able to handcuff the complainant. The injuries observed in the booking video are consistent with someone being restrained on the ground while resisting arrest. Mauri Davis Lewis noted that on December 6, 2006, numerous attempts were made by the OPS to contact the complainant to set up a meeting and a registered letter was finally sent. The complainant responded that he was attempting to retain counsel.

Mauri Davis Lewis further noted that an interview statement of police officer dated December 7, 2006 on the event of October 20, 2006 stated repetition of explicatives, resistant behavior, complainant action taken, complainant continued to kick at the police officer in the groin, discussion of attitude and behavior upon arrival at the South Station. On December 8, 2006, the complainant called the South Station to make a complaint. He was told to go to Henry Johnson Blvd. The complainant was verbally abusive over the phone. His mom overheard the complainant ranting and told him to stop because the call might be recorded. The complainant cursed and hung up the phone. On December 11, 2006, two detectives spoke with the complainant's mom. The mom stated in the interview that her son didn't remember his actions at the bar on the night he was arrested. On December 12, 2006, Detective Romano met with OTB security manager and agents

who worked at the security desk. The agents reported noticing the eye injury on the complainant when he entered the bar that night. The complainant told the agent that he and a friend were wrestling when he got the bump. He remembered the complainant stating that he intended to sue the club and the police. On December 13, 2006, Detective Romano met with the club bouncer who was punched in the face by the complainant.

Mauri Davis Lewis summarized the complainant's recollection of facts dated January 3, 2007. The complainant stated that his friends knew he had at least two to three drinks before arriving at the bar. He left home at 9:30pm and arrived at 10pm. He drank at least two Long Island iced teas, but didn't finish them. The complainant admitted to calling out racial epithets to only what he remembered as people who were male and black holding him down. The complainant acknowledged that he was wrong for using those words. He remembered coming to awareness outside the club on the pavement being handcuffed with someone on his back. He further stated that he had gotten into trouble before while drinking but that wasn't his fault. The complainant claimed that the amount of pressure on his neck was excessive and caused pain long after the incident. The complainant admitted that he sustained the eye injury while wrestling with his friends before going out to the club. Mauri Davis Lewis added that this was overheard by several other people in the nightclub. She noted the other injuries were sustained when the complainant engaged club bouncers in defensive exchanges such as punching people in the face, spitting, running and attempting to flee by jumping over a trail and falling to the ground face first. Mauri Davis Lewis further added the complainant's continued resistance to arrest by police by kicking, spitting, cursing and causing the officers to resort to defensive tactics. Chairman Allen acknowledged that the complainant was present, but asked to hear from the monitor first. Monitor Al Lawrence had nothing further to add.

The complainant stated that he felt emotional from what he heard. He stated that he had five (5) witnesses who knew that he did not go into the bar with a black eye and he did not have any drinks. The complainant ordered and accepted Long Island iced teas from friends which he never finished. The complainant noted that he has a long history of not drinking and driving, and not drinking in the club to get wasted. The complainant stated that his father is an alcoholic and he isn't. The complainant alleged that Detective Romano switched his story around. The complainant explained what gastrointestinal bleeding is and that the amount of blunt force the officers put on his back caused his rectum to bleed. The complainant stated that Detective Romano admitted that the bruise on his back was caused by the officers. The complainant admitted that he didn't remember what happened on the dance floor. He didn't know if he was drugged or if someone knocked him out from behind, but Detective Romano told the complainant that he grabbed a girl's ass*. The complainant stated that he wasn't raised that way and would not do that. The complainant noted that if he had a black eye the cameras which faced down would have captured it. Even the poorest cameras would have captured it. The complainant asserted that he never had a black eye before then. The complainant asserted that he didn't remember anything between going out to the dance floor and ending up in the parking lot. He woke up handcuffed, shackled, in a puddle with police

officers on his back, one on his head and puke next to him that wasn't his. The complainant stated that the officer took his hand and rubbed his face in the puke. He stated that he has pictures of it. The complainant stated that this is a cover-up. He has a friend who works at Sneaky Pete's who told him that an investigator bragged about how bad they beat him. The complainant questioned if he was fighting so bad why wasn't he tased or maced. The complainant further added that he was arrested for disorderly conduct with a full blown concussion. The complainant recalled that people including one of his friends who was also arrested were saying "leave him alone." One officer had his foot on the back of his head while the other officer was putting force on his neck. The complainant admitted that he was yelling obscenities and racial slurs. The complainant stated that this happened November 20, 2006 and his face is still swollen. He never finished the Long Island iced teas. The complainant stated that he was treated unprofessionally while at the South Station. The complainant further alleged that he was thrown into the truck and laid on the floor soaking wet and bleeding from his rectum. The complainant acknowledged that his mother was present. The complainant's mom stated that she told Detective Romano that no one was at the house before then and her son doesn't drink at home. The complainant further stated that he stayed at the police station with a concussion, bleeding profusively, with a long scar on his knee, and a bruise the size of a football on his back, a bruise that looked like he was hit with a club across his buttocks. The complainant questioned if the Board was allowed to see any of the pictures taken of his bruises. The complainant stated that he never threw a punch. Detective Romano told him that he pushed a bouncer away. The complainant stated that he doesn't remember and that he's outraged because it's a complete cover-up.

The complainant noted that he was told by a Sneaky Pete's manager that all security was pulled into a meeting and was told what to say by the APD which consisted of about 5-6 officers. The complainant stated that Detective Romano told him that the bouncers said that he arrived with a black eye at the club drunk and caused problems at the door. He questioned why he was allowed into the club under those circumstances. Detective Romano also told the complainant that the back injury and bruising was from the officer jumping on his back and one of the bouncers admitted to pushing/slamming him against the fence which created the bruise on his back.

The complainant asked why the bouncer wasn't arrested for assault. The complainant stated that he doesn't deny that he was irate which was why the bouncer wasn't arrested. He further stated that he was indeed handcuffed and shackled. The complainant commented that Detective Romano told him that he wasn't shackled. The complainant stated he had the bruises and cuts around his ankles which proved that he indeed was shackled. The complainant asked the Board in its report, what was the initial disturbance on the dance floor.

Mauri Davis Lewis stated that it wasn't clear; but that the complainant was on the dance floor disturbing other patrons. Mauri Davis Lewis further stated that the complainant said he wasn't drinking but his witnesses who were his friends, stated that he had a couple of drinks before going out. The complainant denied that both friends said that he

had drinks before. He further clarified that there were three (3) and not two (2) Long Island Iced teas which he never finished. Chairman Allen stated that one of the witness reports stated that the complainant was intoxicated. Mauri Davis Lewis reiterated that both witness statements said that the complainant was intoxicated, but it wasn't bad. However without a breathalyzer there was no way of telling what the complainant's blood alcohol level was. The complainant stated that the hospital said that he had no alcohol in his system. He further stated that while at the hospital he was soaking wet and was denied a gown and medical treatment. Mauri Davis Lewis stated that the complainant signed a statement in which he refused medical attention. The complainant asked was this when he was highly intoxicated or when he had a concussion. Mauri Davis Lewis replied that according to the record in the booking statement the complainant was asked if he wanted medical attention and his signature indicated that he didn't. The complainant asked if the report stated that in his own words he insulted the men who were black. Mauri Davis Lewis agreed that the report did say this. The complainant stated that was not true and that he clearly denied the black eye.

Chairman Allen asked the complainant if he didn't really remember anything, then how could he maintain that he wasn't causing a disturbance. The complainant replied that he could not reconcile this and that he may have been drugged by someone. The complainant stated that he did not take anything knowingly and clearly he was knocked out by a bouncer. Chairman Allen asked the complainant if he was causing a commotion or if he didn't remember. The complainant stated that he didn't remember but he did remember being on the dance floor by himself having a good time. He didn't remember being dragged or hit and when he woke up he was in police custody handcuffed and shackled. Chairman Allen asked the complainant why he didn't sign a sworn statement with the OPS. The complainant replied that he was being incriminated into changing his story. Furthermore, Detective Romano went to his mom's house and stated that a video tape existed, but now he is told the video tape is not legible. The complainant further stated that an attempt was made to put him in a situation where he would admit to stuff he did wrong.

Dan Fitzgerald questioned whether the complainant's friend who heard the officers the next day witnessed this and were statements taken from them. Mauri Davis Lewis replied in the affirmative and clarified that there were two of them. The complainant also alleged that another person who was arrested with him (arrested for trespassing and he had paid a \$10 cover charge) kept saying just put him in the car and stop beating him. Mauri Davis Lewis stated that he had been directed by the officers to leave the premises. The complainant replied that he was backing off, and that was when a police officer hit him in the groin, which was all stated in the report.

James Malatras asked if this person who was an employee of the club and interviewed said that the complainant received a real beating that night. The complainant stated that the person at the club said that the following night they had an incident as well. He further stated that the Chief that was on call that night and who was there with him, was the one that actually applied the pressure point. The complainant commented that those

were Bill's words not his. They were in the bar the next night bragging how tough I was to take it all.

Dan Fitzgerald asked if there was a written statement from Bill. Mauri Davis Lewis responded that she didn't see one in the file and this was the first time she heard of this. The complainant further stated that there were many conflicting stories from the bouncers. Mauri Davis Lewis noted that the statements seem to be consistent with the fact that you were having an altercation with the bouncers and there were six (6) people interviewed. Mauri Davis Lewis further stated that the bruises look consistent with someone resisting, which didn't necessarily have to come from the police. The complainant stated that the bouncers had no right to touch him once he left the club and they clearly admitted to slamming him into the wall, which is assault. He further stated that Detective Romano admitted that the bruises on his back were caused by the bouncers.

The complainant asked if everyone saw the pictures of his bruises. Chairman Allen replied that he saw the pictures on television and asked the other Board members if they saw the pictures. Mauri Davis Lewis replied yes. The complainant described the photos and handed them to the Board. Dan Fitzgerald asked the complainant whether some of the bruises occurred from the bouncers and some from the police. The complaint described the photos and his injuries. James Malatras asked what the complainant's friends testified to the police, and whether they talked about the state of his eye. The complainant stated that this was never asked or talked about until after the bouncers were interviewed. A follow-up was conducted immediately and both friends went in and they never said anything about a black eye and never asked the questions because it was never a concern until after they went to the bouncers and the cover up story came about. James Malatras questioned whether the monitor was present for any of the interviews. Monitor Al Lawrence responded no. Al Lawrence noted that two (2) to three (3) bouncers stated that the complainant had a black eye. Chairman Allen asked the complainant when he went to the hospital. The complainant stated that he was placed into custody at around 4 a.m. and then sat in the South Station all night without medical attention. He then was brought out to the courtroom. He commented that no bail was placed and he was released on his own recognizance. He contacted his mother and went to Albany Medical Center around 11am. The complainant again stated that he did nothing to deserve the treatment he received. When he was handed his personal effects, the shoe laces for his dress shoes were missing. He was forced out in the cold freezing temperatures in November with soaking wet clothes. The complainant admitted to being furious and went around to the courtroom in an attempt to speak to the judge and explain what was going on. The judge told him it that it was nothing new to him. After this he went to the emergency room.

Chairman Allen commented that a lot of things such as medical records and pictures are being introduced for the first time at tonight's meeting. He further commented that it didn't help the complainant's case that there wasn't a sworn statement taken on his behalf. There are statements by (witnesses) who are two of the complainant's friends

who indicated that the complainant was intoxicated. The complainant denied that he was intoxicated. Mauri Davis Lewis noted that the complainant's friends stated that he was intoxicated, not bad, but he was intoxicated.

Chairman Allen asked the complainant if he understood the facts in the reports which are: two of the complainant's friends stated that he was intoxicated; the complainant didn't remember what occurred until he was outside; the complainant didn't have a sworn statement and he used racial epithets against the officers. The complainant denied that racial intention and the word just popped out. The complainant stated there is a lot more to this story and there is a cover up.

Chairman Allen again stated that it didn't help the investigation that a lot of what the complainant told them tonight was omitted from the report. The complainant stated that he wouldn't do a sworn statement because Detective Romano was attempting to change his statement. He further stated that if the Board watched the interview with WTEN, not one bit of his story changed. He commented that the OPS interview was not done properly and if the APD did not want to take the blame, then why haven't other people been arrested. James Malatras asked if the employee who has a different statement would be willing to offer his statement to the OPS. The complainant replied that he did not know because the employee has worked at the club for a long time. James Malatras further stated that if you have someone that can attest to different facts but doesn't say anything you don't have anything to go on. The complainant said that if someone asked Bill, he would tell the truth.

The complainant offered to make a speaker phone call to his friend. As far as the testimony from one witness saying that the complainant had drinks with him prior to Sneaky Pete's, he was at Terry's house (one of the witnesses) prior to Sneaky Pete's. That witness wasn't with them at that time.

Mauri Davis Lewis noted that the complainant was very passionate about this and stated that his complaint warrants further investigation. Chairman Allen stated that resources have been spent on this investigation; statements have been made; people have been called; and what is lacking from this case is the complainants' statement. Chairman Allen stated that he would support a motion for reinvestigation, contingent on the complainant participating in the interview with the CRPB monitor present.

The complainant stated he had no problem with that, but would like to see each person who gave a statement re-interviewed. Chairman Allen explained that he could not guarantee that. What is lacking in this investigation is the complainant's statement and it is not fair to the OPS that the complainant is now introducing new facts about the case when they have already closed the case and it is in front of the board for approval.

Mauri Davis Lewis motioned to return the case to OPS in order to gain a statement from the complainant with the monitor present and to introduce other evidence or witnesses.

James Malatras seconded this motion. All members in voted in favor of the motion, except John Paneto.

CPBR 40-06/OPS No. C-06-762 (Presented by Daniel Fitzgerald)

Dan Fitzgerald summarized the complaint. A CPRB monitor stated that he contacted the OPS and they stated that this did not involve an Albany Police officer. Dan Fitzgerald asked if the monitor was present. Monitor George Kleinmeier was recognized. Dan Fitzgerald asked the Board if anything like this has appeared in front of the board in the past and if so, would the CPRB go beyond the Albany Police Department.

Chairman Allen stated that the Board did not have standing on any other jurisdiction outside the Albany Police Department (for example with Albany County, NY State Police, or SUNY Campus Police) to review those cases. Dan Fitzgerald asked if the Board process included notifying the complainant as to where the case was referred to and how to follow up. Chairman Allen commented that he read that there was a statement from the Albany Police Department that the information was sent to a specific person at the NY State Police, the complaint was processed and the complainant was notified of this fact.

Chairman Allen summarized that if the Board supported the OPS's finding then a letter will be sent to the complainant signed by the complainant explaining that it would be handled by another agency. Dan Fitzgerald motioned to support the OPS findings of *no finding*. The motion was seconded by Chairman Allen. The motion carried unanimously.

Chairman Allen requested that Sharmaine Moseley draft a letter to the complainant from the CPRB with his signature stating that the review will be done by another agency, and that the Board has been ensured by that agency that they have contacted him, and to please contact the Board if he didn't receive notice. Chairman Allen called for a motion to approve. The motion was seconded by Mauri Davis Lewis. The motion carried unanimously.

B. *Approval of the 3rd Quarterly Report*

Chairman Allen explained the importance of complaint status chart in gathering statistics for the quarterly reports and that the chart shows complaints in the queue since the start of the year, status, note section and if they go over 60 days, the complaint turns red. The Board's by-laws state that after 60 days the Board is to receive a letter from the OPS explaining why the investigation is taking longer than 60 days. The notes column is also included; which the GLC will start to input information. The purpose of this report is to give the Board discrete data as to where the complaints are, what the status is, who has them, how many days they have aged, and a communication tool with the OPS. This is a good tool for the board to assist in communications. A Board member noted that CPRB #24-05 was presented and reviewed tonight and it was open for 1700 days, but had an open civil case.

Chairman Allen added that the notes section has not been populated yet and any suggestions to improve the form are welcome. The Board would expect notes to be input at the right margin. It is a self calculating field, however and they may need to manually input from time to time. Chairman Allen asked the Board to provide feedback to Sharmaine Moseley. John Paneto suggested adding the monitor's names. Chairman Allen agreed to add monitor's and Board member's names. Anthony Potenza motioned to approve the 3rd Quarterly Report. The motion was seconded by all Board members. The motion carried unanimously.

C. *Appointment of New Members to the Committee on Complaint Review for April 2007*

The following Board members were appointed to the Committee on Complaint Review for April 2007: Mauri Davis Lewis, Daniel Fitzgerald, James Malatras, Andrew Phelan, John Paneto, and Anthony Potenza.

It was noted that on the Agenda under item V. B. Appointment of New Members to the Committee on Complaint Review for April 2007, Andy Phelan should be inserted instead of Jason Allen. John Paneto added that the Board members are receiving too much paperwork too soon before the Board meetings. Chairman Allen proposed a ten (10) day rule. If a complaint is not ready ten (10) days before the next meeting, then it will be tabled until the next month's meeting. Chairman Allen made a motion. Mauri Davis Lewis seconded this motion. The motion carried unanimously.

D. *NYCLU Meeting*

Chairman Allen made reference to the copy of an email from NYCLU which was in the Board packets. He noted that the email has three (3) suggested dates to meet with the NYCLU outside of the Board's regular venue. Mauri Davis Lewis commented that she didn't want the Board to be rapped on its knuckles for the previous Board's activities. A discussion ensued between board members whether to meet with NYCLU outside of the Board's regular meetings or to address their concerns during the public forum session of the regular meetings. Chairman Allen called for a motion to send a letter to NYCLU for them to attend regular meetings and to speak during public comment. If the NYCLU feels that this time is not adequate, they can send a letter with their concerns to the Board and the Board will address them in a timely fashion. James Malatras seconded the motion. The motion carried unanimously.

E. *Committee/Tasks Force Report*

By-Law and Rules Committee

Chairman Allen reported that the standing document is before the Common Council right now.

Community Outreach

James Malatras reported that he and Chairman Allen worked on a slideshow to present at the Community Outreach meetings. He noted that he would email the document to the Board members. James Malatras added that the Board had received several requests after reaching out to a number of neighborhood associations. The West End Association would like members of the Board to speak at their April 23rd meeting at 7pm at the West End Presbyterian Church. James Malatras asked Sharmaine Moseley to send Board members an email with the details. He noted that Chairman Allen will be speaking to Ron about the new brochure and will have a draft copy for comments from the Board within the next few weeks. He also noted that he and Chairman Allen went to SUNY Albany to do a class on police oversight and they tested the outreach pitch. Chairman Allen commented that the Board needs to educate with a common message and a brochure. The Board is a resource for the city.

Mediation

Chairman Allen reported that he sat down with Ms. Moseley, John Paneto, Assistant Chief Bruno and Assistant Chief Tuffy to discuss mediation. They want to see this go forward, want to see the Board go forward, and want to come together with the unions to work through this. Chairman Allen has seen data from other agencies supporting how mediation works.

Police Department Liaison, Policy Review/Recommendations

Chairman Fitzgerald tried to get a meeting together. He will be working with Ms. Moseley to get all of the players together for the next meeting.

Public Official Liaison

Chairman Allen reported that the Public Official Liaison Ronald Flagg was not present to give the committee report.

Task Force on Monitors

Chairman Allen reported that Assistant Chief Bruno and Chief Tuffy will propose some changes in the language to the monitor protocol. This will be forthcoming for the board to discuss.

F. *Report from the Government Law Center(GLC)*

Complaint Inventory

It was reported that there are currently twenty-two (22) active complaints before the Board for review. Of those twenty-two (22) active cases, four (4) were reviewed at

tonight's meeting and three (3) sent back to the OPS for further investigation. Two hundred twenty-two complaints have been closed and ten (10) complaints suspended from review. The total number of complaints filed to date is two hundred fifty-four (254).

Training

It was reported that the new members are enrolled in the Citizen Police Academy and went to their first class last week. All new members have either completed their ride-alongs or are scheduled to complete their ride-alongs by the end of this month.

Correspondence

It was reported that the GLC had forwarded the following items to each member of the Board as part of their meeting materials: correspondence from Chief Tuffey regarding CPRB No. 2-05/OPS No. C05/35; correspondence from Melanie Trimble from the NYCLU making available to the Board the DVD from the October 2006 Taser Program; and a copy of the NACOLE Winter 20067 newsletter.

Reports

It was reported that the 2005 annual report is near completion. The GLC is finalizing the statistics and will forward a draft to the Board before the next meeting. The GLC will begin drafting the fourth quarterly report and hope to also have a draft ready for review by the next meeting.

G. Report from the Office of Professional Standards (OPS)

Commander Beattie reported that Assistant Chief Bruno's Information Coordination Unit is now up and running. There is some news on the accident reporting that was discussed by James Malatras' case. Commander Beattie reported that the officers are training, and the electronic accident reports and electronic incident reports will go live by the end of the month. John Paneto questioned if there are lessons learned from the board being taken back to the police department for the rank and file officers to review. Commander Beattie stated that he takes notes and collaborates. Detective Sergeant Kuck has been transferred and is no longer with the OPS. They are mandated by law, to have 21 hours of training per year. Commander Beattie noted that one suggestion to the Chief will be to get the OPS to reinforce some of the issues that come up in the Board meetings. The code of conduct seems to be a continuing issue in front of this board. He also noted that the Chief wants to continue to address this, and will do this through formalized training. Commander Beattie noted that the APD needs to incorporate information on how to converse with the suspect into the basic training.

H. Report from the Chair

Chairman Allen reported that he was going to make a speech out of the email sent last week about the Standing document but will hold off until the next meeting. He asked if anyone had any questions. Chairman Allen reminded members that on Thursday the Board is having a farewell reception for former Board members and Ms. Cintron Perino. He noted that it is a great opportunity to say thank you and many elected officials will be in attendance. Chairman Allen commented that he had a conversation with Sergeant Alberti regarding the police academy and the thirteen (13) classes and that the APD is willing to work with the Board if members have other commitments.

VI. Public Comment

The floor was opened for public comment.

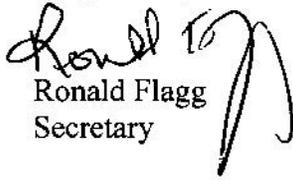
Monitor George Kleinmeier was recognized. He asked if the monitors will be getting a raise and if so, how much. Chairman Allen noted that this is a part of the Monitor Protocol and he apologized for how long it has taken. Chairman Allen stated that the Monitor Protocol is the standards that are expected of the monitors in their reports so there will be due diligence during the investigation process. The Board will continue developing this document by working with the OPS and monitors and then vote to approve it. Chairman Allen noted that it wouldn't have to go before the Common Council. George Kleinmeier asked if the monitors will have by-laws. Chairman Allen stated that currently there are no monitor protocols and it won't conflict with anything in the Board's by-laws. One thing the protocol does list is a rate of pay for the monitors. The monitors are currently paid an hourly rate and there are no standards about how much they get paid for a working fraction of an hour. Chairman Allen noted that the monitor protocols may need to go before the Common Council. Chairman Allen also noted that the Board got final feedback from the Albany Police Department.

An unidentified man was recognized. He noted that he attended tonight's meeting to encourage the Board to do outreach to the community as much as possible. James Malatras offered to listen to suggestions on where to go and people to meet. The unidentified man added that a part of community outreach is not just waiting for people to come to you; you must also go to other meetings. James Malatras added that they met a group at the police academy and it has been conducted both ways. The unidentified man also questioned whether the committee meetings before the Board meeting will be open to the public. Chairman Allen stated the purpose of the policy committee meeting. He explained that whatever is discussed in the meetings will be brought before the entire board for review, but that the meetings are not open to the public.

VII. Adjournment

Chairman Allen moved to adjourn the meeting. Hon. Fowler Riddick seconded the motion. The meeting was adjourned at 8:50 p.m.

Respectfully submitted,


Ronald Flagg
Secretary