

City of Albany
Citizens' Police Review Board
Albany Public Library
161 Washington Avenue – Large Auditorium
June 12, 2007
6:00 p.m. – 8:00 p.m.

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

Absent: Ronald Flagg and John Paneto.

I. Call to Order and Roll Call

Chairman Jason Allen called the meeting to order at 6:05 p.m. He noted that a quorum of the Board was present.

II. Approval of the Agenda

The agenda was reviewed. Chairman Allen noted that there was one change to the agenda. He explained that Board member Fowler Riddick may be late to the meeting so CPRB No. 21-05/OPS No. C05-231 will be reviewed when Mr. Riddick arrives. Chairman Allen moved to approve the agenda. Board member Anthony Potenza seconded the motion. The motion carried unanimously.

III. Approval of the April 10, 2007 Meeting Minutes

Chairman Allen asked board members if they had adequate time to review the April 10, 2007 minutes and if anyone had comments. It was noted that there were no comments. Chairman Allen moved to approve the minutes. The motion was seconded by Board member James Malatras. The motion carried unanimously.

IV. Old Business

CPRB No. 4-05/OPS No. C05-63 (Presented by Chairman Jason Allen)

Chairman Jason Allen explained that this case has been tabled by the Board a couple of times in efforts to reach the complainant. He noted that the Board sent correspondence to the complainant to see if she was still interested in having the case mediated. Chairman Allen stated that the Board and the City of Albany Police Department have reached an agreement on the mediation program so it'll be a matter of three to four months before the program is up and running. Sharmaine Moseley stated that the Government Law Center is looking at best practices for the program and hopes to have everything in place by January 2008. Chairman Allen agreed that it was a good idea not to reinvent the wheel. He also noted that he still feels that this case

would be perfect for mediation. Chairman Allen moved to delay the review of this case by tabling it pending the outcome of the mediation program. The motion was seconded by James Malatras. The motion carried unanimously.

V. New Business

A. *New Complaints*

1. New Complaints Received Since May 8, 2007 Meeting

Chairman Allen reported that there were two (2) new complaints received by the Board since its May 8, 2007 meeting. Board member Andrew Phelan read a summary of each new complaint.

CPRB No. 14-07

On April 22, 2007 at around 4:30 p.m., the complainant states that he was on the corner with some friends who were on bikes and friends who were standing when officers jumped out, checked their pockets and took their bikes on Lark & Sheridan. The complainant alleges that the officers who were detectives in plain clothes took his mother's Schwinn bike and put it in the trunk of their car. The complainant further alleges that he spoke to a sergeant & a detective and they couldn't find the bike.

A monitor was not appointed to this complaint.

CPRB No. 15-07

The complainant alleges that she was stopped in her vehicle outside of her house. The officers had her exit her vehicle and began searching her vehicle while asking her for marijuana and/or money which she told them she had none. The complainant further alleges that three (3) officers searched her car while one officer told her she was being checked because she drove through Colonie Street which is a block from her home. The complainant claims that she was told not to speak to the people in that area. Her information was recorded in the canine officer's notebook. The complainant alleges that this is harassment and her children were afraid and upset.

A monitor was not appointed to this complaint.

2. New Complaints for Review

Chairman Allen reported that there were five (5) new complaints on the agenda for review by the Board.

CPRB No. 25-06/OPS No. C06-357 (Presented by Andrew Phelan, Jr.)

Andrew Phelan, Jr. summarized the complaint. The complainant alleges that she came home to find her minor daughter alone in their home being questioned by an officer. The complainant claims that when she asked the officer why he was questioning her daughter in their home without an adult present, the officer “said you could be picking her up from downtown right now and if she does something else this will come up and she will have a record.” The complainant further claims that when she asked him to leave, the officer commented, “why is it that you seem like you don’t trust the police?” According to the complainant, when she asked the officer to leave a second time, the officer stated “‘you people’ have a habit to taking things and turning them into a black and white issue and it is not,” and further stated “‘you all’ are always trying to make things into a race issue and race has nothing to do with it.”

Following an incident with the grandmother of a young girl with whom the complainant’s daughter had an issue earlier and where the complainant’s daughter was threatened, the complainant alleges that she went to the police station to file a complaint, but no one wanted to take a statement from her. She alleges that it was not until she said that she would contact the newspaper to tell them how she and her daughter were being treated that a statement was taken. The complaint claims that the officer taking her statement and another officer in the station “were laughing and making funny faces.” She further claims that while at the station, she exchanged words with the officer who was at her home earlier and told him that she was aware of the real reason for his visit to her home.

Following the incident with the officer at her home and the officers at the station, the complainant alleges she asked to speak with a supervisor, but was told no supervisor was on-site. She was instructed to come back the next day and given directions to the Office of Professional Standards. After explaining what had happened, the complainant claims the officers with whom she spoke did not see any problems and wanted to know why she was so upset. According to the complainant, “their unwillingness to help was so upsetting [she] left without filing a complaint.”

Mr. Phelan noted that he visited with the OPS several times to look over the case file. He summarized the OPS’ report which consisted of an *exonerated* finding for the call handling allegation that the complainant came home and found an officer in her home questioning her daughter; a *not-sustained* finding for the conduct allegation where the officer used the term “you people” have a habit of taking things and turning them into a black and white issue; a *not-sustained* finding for the call handling allegation that no one wanted to take the complainant’s statement at the station until she threatened to contact the newspapers; a *not-sustained* finding for the conduct allegation that while at the station the desk officer and the officer who responded at the complainant’s house were making funny faces and laughing, a *not-sustained* finding for the call handling allegation that when the complainant requested to speak to a supervisor she was told there was no supervisor on site and to come back the next day; an *unfounded* finding for the call handling allegation that the officer said that the complainant could be picking her daughter up from downtown and her daughter could have a record; and an *exonerated*

finding for the call handling allegation that while at the OPS, the detectives were unwilling to help the complainant so she left.

Mr. Phelan stated that a monitor was assigned to investigate the case. Monitor Richard Lenihan was acknowledged. Mr. Lenihan reported that the concern he had with the investigation was that if an allegation is against an OPS detective then fellow co-workers should not conduct the interview of the detective. He further noted that a supervisor should conduct the interview.

Board member Daniel Fitzgerald asked what is the SOP for interviewing a minor. Commander Beattie responded that minors can be questioned to obtain pedigree information. Mr. Fitzgerald asked if a contact card was filled out by the officer. Mr. Phelan responded in the affirmative. Chairman Allen asked if it's mentioned in the SOP that an effort should be made to contact the parent or guardian of the minor. Commander Beattie responded that he wasn't sure. Mr. Malatras added that the complainant was uncooperative because she walked in and the officer was alone in her house with her daughter. Mr. Phelan further explained the complainant's allegations and moved to accept the OPS findings for all seven allegations. The motion was seconded by James Malatras. The motion carried unanimously.

CPRB No. 39-06/OPS No. C06-756 (Presented by Mauri Davis Lewis)

Board member Mauri Davis Lewis summarized the complaint. On October 12, 2006 at about 12:15 a.m., the complainant claims that he was arrested by the Albany Police Department and State Troopers. The complainant alleges that after the officers handcuffed him they proceeded to kick and punch him in the head and body. The complainant claims the he lost his boots and was soaking wet from lying on the street. The complainant claims that he was transported downtown after an officer stated that a videotaped was recording their actions. The complainant says that after he was downtown he was then transported to the hospital for x-rays, a CAT scan and treatment. The complainant was informed that he had multiple contusions and abrasions but no broken bones. His ears were still ringing and his vision blurry. After he was transported back to the station about 3:45 a.m. the complainant claims that he was handcuffed to a bench and made to sleep on the bench until 8:30 a.m. The complainant alleges that the officers made racial slurs and jokes about sexual acts with black women and that when you run that's what happens to you. The complainant claims that he was denied access to a phone call for three (3) days and that he has pictures of his injuries and the hospital report to support his claim of excessive use of force. Mauri Davis Lewis reported that she reviewed the case file at the OPS which included sworn statements from the complainant's witnesses, IDC's from the OPS, and the complainant's medical documents from St. Peter's Hospital. She further stated that from her review of the medical documents the complainant's injuries seemed to be consistent with him being tackled onto the concrete.

Ms. Davis Lewis noted that a monitor was assigned to the case. Monitor Al Lawrence was recognized. Mr. Lawrence reported that the complainant ran fifteen (15) feet, when the officers tried to talk to him after the assault. The OPS was not able to locate the son for a statement. The sister-in law statement was the same as the officer's statement that he was stopped or beaten after being subdued and arrested. All of the other officers came on the scene after the complainant was apprehended. Chairman Allen asked if they were documentation of the complainant's injuries. Ms. Davis Lewis responded that there were medical documents from St. Peter's Hospital. She read the emergency room notes. Chairman Allen asked if the injuries were consistent with being tackled on concrete. Ms. Davis Lewis replied that they were. She added that the complainant was examined at the correctional facility. The complainant was seen at St. Peter's Hospital at 3 a.m. and it was noted that he had abrasions consistent with falling. Mr. Lawrence added that the complainant's treatment was a prescription for an over the counter pain relief medicine. Chairman Allen asked if the complainant was present. He noted that the complainant was not present. James Malatras stated that in lieu of the witnesses, only the officers were present for the allegations of racial slurs. Mr. Lawrence stated that the only officer who had any recollection of the alleged attack in the police station was the assisting officer. He added that the booking clerk and booking officer had no memory of the event. The assisting officer said that he heard no racial slurs. The records do not show that he was kept at the station for three (3) to five (5) hours. He was taken there at 12:47 a.m. The wagon was dispatched to take him to the hospital at 1:46 a.m.

Ms. Davis moved that the allegation of use of force be ***unfounded***; the second allegation of use of force be ***not sustained***; the allegation of conduct that the complainant was soaking wet from laying in the water in the street be ***exonerated***; the allegation of conduct that the officers stated to the complainant "that when you run that's what happens to you" be ***not sustained***; the allegation of conduct that the officer made racial slurs and jokes about having sexual acts with black women be ***not sustained***; the allegation of conduct where the complainant was handcuffed to a bench and made to sleep on the bench like a dog be ***unfounded***; the allegation of conduct where the complainant was denied access to make a phone call be ***unfounded***; the allegation of conduct where the complainant was not allowed to make a phone call for 3 days as ***no finding***; and the allegation of call handling that the officers claimed that they didn't have the complaint form at the station as ***no finding***. Ms. Davis stated that her motion is consistent with the OPS findings. The motion was seconded by James Malatras. The motion carried unanimously.

CPRB No. 21-05/OPS No. C05-231 (Presented by Hon. Fowler Riddick)

Hon. Riddick recognized that the complainant was present and asked the complainant if there was anything she would like to add. The complainant stated that she would like to hear from the board and monitor first.

Hon. Riddick summarized the complaint. According to the complainant's signed statement, she alleged that on May 10, 2005 at 5:30 p.m., shortly after coming out of her

apartment, located at 624 (D) S. Pearl Street, to check on the status of her four-year-old son, Xyphreson Harris, who was playing in the playground, she was approached in the parking lot of her apartment complex by an APD uniformed officer. The subject police officer was driving a marked patrol unit, along with two other patrol units. All three patrol units were stopped at the red light on S. Pearl Street. The subject police officer turned into the parking lot where complainant was standing. The complainant alleged that upon her arrival to the parking lot, she saw a male get out of his chair and run. She further alleged that she called out to her son in the park and turned to ask for a light for her cigarette. As she proceeded across the grass to get the lighter, the subject police officer exited his patrol unit, "ran up behind" her and asked her "what was going down here?" The complainant responded that she was unaware there was a problem and that she had just come out of her apartment, less than two minutes prior to the officer's arrival to check on her son. She alleged that the police officer asked her who was the person who ran and the complainant replied that she did not know. The complainant further alleged that she proceeded to light her cigarette and to walk back towards the playground to retrieve her son. But the police officer followed her to the parking lot and said "Stop, I'm talking to you." The complainant reportedly replied that she answered his questions and she didn't have anything more to say.

The complainant further alleged that the subject police officer found a lit marijuana dutch on the ground next to the chair where he saw someone run from. She alleged that the police officer accused her of smoking an illegal substance in public and told her that he saw it in her hand. According to complainant, a number of witnesses told the officer that she had just come out of her apartment and that she was not smoking. The officer then allegedly responded that she was not being arrested for the dutch.

Hon. Riddick explained that through his review of the investigation he found out that a dutch is a cigar like a Dutch Master. Hon. Riddick added that the complainant believes that the officer was upset because she withheld information from him. He further added that the complainant believes that the officer was badgering her about something that she knew nothing about, which resulted in her arrest. She alleged that the subject officer was disrespectful and uncouth from the moment he exited his patrol vehicle. She further claimed that this was the second time that this police officer harassed her and a friend at her apartment complex without just cause.

The complainant further claimed that the subject police officer then grabbed her arm and told her that she was under arrest for "disorderly conduct." According to the complainant's statement, she told the police that he could do whatever he wanted as long as another adult got her son out of the park. The complainant alleged that the officer handcuffed her in front of her son. She further alleged that she repeatedly asked the police officer to allow her to get someone to look after her son, but the police officer refused. The complainant claimed that the police officer made no effort to make sure that her son was safe, and that her son remained outside while she was being placed inside the police van.

Hon. Fowler Riddick reported the findings of the Office of Professional Standings. He noted that the report had four allegations. The complainant alleged false arrest, disrespectful and uncouth behavior, harassment and endangering the welfare of a child. Hon. Riddick reported that the OPS recommended that the case file be closed with respect to each allegation as *unfounded*.

Hon. Riddick summarized the OPS findings as follows. In regard to the allegation of false arrest, the OPS recommended a finding of *unfounded* based upon the observation of the subject officer at the scene. According to the subject police officer's internal department correspondence (IDC), he observed three females in the rear of 624 S. Pearl Street smoking a marijuana cigarette and standing next to a six-year-old. The police officer conducted a preliminary investigation based on his observation of illegal activity which gave him probable cause to make an arrest. The OPS cited an internal telephone interview with the witness as supporting the police officer's observation. According to the report, the witness stated to the OPS that there was a marijuana cigarette on the ground in the vicinity of where the complainant was standing. In regard to the allegation of disrespectful and uncouth behavior, the OPS recommended a finding of *unfounded* based on the subject police officer's IDC statement that upon informing the complainant that she was being placed under arrest, she became very irate and began using abusive explicit language toward him. According to the IDC statement the complainant was screaming at the police officer and her witness attempted to calm her down. According to the report, both the police officer and the witness gave a clear indication of complainant's demeanor and disposition. The witness stated that complainant was the one yelling and the officer was trying to calm her down. In regard to the allegation of harassment, the OPS recommended a finding of *unfounded* based upon the fact that the subject police officer based on his observation was investigating illegal use and/or possession of marijuana. According to the report, the police officer was on routine patrol and based on his observation of illegal activity, he investigated the situation. The intention of the police officer was to investigate the illegal activity and not to harass the complainant. Based upon the complainant's decision to engage in illegal activity, the police officer's response to the situation was proper in the complainant's arrest. The complainant was subsequently arrested and charged with smoking marijuana in public view. In regard to the allegation of endangering the welfare of a child, the OPS recommended a finding of *unfounded* based on the testimony of two witnesses as well as complainant's own admission to the detectives during a follow-up interview. According to the report, these individuals informed the detectives that the complainant's son was left under the supervision of the witness.

Hon. Riddick asked if the monitor was present. Monitor Joel Pierre-Louis was recognized. Mr. Pierre-Louis stated that the case was sent back to the OPS for further investigation and the OPS submitted a second confidential report along with additional information which was reviewed. Mr. Pierre-Louis noted that he submitted a subsequent report on or about April 5, 2007 concerning his findings. He reported that in his original report he agreed with the OPS recommendation of a finding of *unfounded*, in regard to the allegation of uncouth behavior. Mr. Pierre-Louis further noted that in his original

report he disagreed with the OPS findings on the remaining three allegations. In his subsequent review of the case and the second OPS investigation report, he agreed with two of the OPS findings with respect to the third and fourth allegations but he disagreed with the OPS findings in respect to the first allegation of improper false arrest. Mr. Pierre-Louis noted that he agreed with the OPS findings as to three of the allegations but disagreed with the OPS finding with respect to the allegation of improper and false arrest.

Board member James Malatras asked Mr. Pierre-Louis to explain his reasons for agreeing with the OPS with respect to the OPS findings on two allegations. The first allegation was based on the mistaken identity of the child and the second allegation was based on the endangering the welfare of a minor. Mr. Pierre-Louis added that he also agreed with the OPS further investigation with respect to the allegation of harassment.

Mr. Pierre-Louis explained that with respect to the allegation of harassment he agreed with the OPS reinvestigation because based on the report and information received, the investigating detective was unable to have a subsequent follow up conversation with the complainant as well as the complainant's witnesses to further investigate. He noted that certain attempts were made in terms of canvassing the neighborhoods and getting statements from the complainant's witnesses as well as trying to reach the complainant and based upon the lack of follow up information and evidence he agreed with the OPS report. Mr. Malatras clarified that Mr. Pierre-Louis agreed with the OPS report due to the inability to find new information to persuade him one way or the other. Mr. Pierre-Louis stated that was correct. He added that the Detective was unable to have a subsequent follow up conversation with the complainant. The records indicated that the complainant did make a phone call to OPS to try and follow up but the investigating Detective was unavailable and there was no subsequent follow-up.

Mr. Malatras commended Mr. Pierre-Louis on making his opinion known in his reports. He asked Mr. Pierre-Louis why he supported the *unfounded* finding instead of a finding of *not-sustained*. A *not-sustained finding* is issued when it can not be proven one way or another based on not being able to find any new information. Mr. Pierre-Louis replied that he felt that the OPS had made diligent efforts in trying to reach witnesses and that it is incumbent upon the complainant and her witnesses to make themselves available. All of this and the burden of proof is on the complainant to the extent that these allegations are being made and these people are unavailable for whatever reason. Board Member Riddick asked Mr. Pierre-Louis if that was why he concluded that the investigation was incomplete.

Mr. Pierre-Louis stated that on the first report he had three reasons why he felt the investigation was incomplete. He explained that there were issues in respect to the allegation. He further explained that there were four allegations: false arrest; disrespect and uncouth behavior; harassment; and endangering the welfare of a child. In his initial report, he agreed with the OPS finding in respect to the second allegation which was the allegation of disrespect and uncouth behavior and disagreed with them on the remaining allegations. Mr. Pierre-Louis noted that after the subsequent reinvestigation and review

of the file, he agreed with the OPS on the two allegations of harassment and endangering the welfare of a child. There was sufficient information provided with respect to item number four that changed his mind. With respect to the allegation of harassment, due to the lack or inability of the OPS to interview the complainant or her witnesses, he agreed with the OPS finding. With respect to the first allegation, the allegation of false arrest, he still disagreed with the OPS findings.

Mr. Malatras asked if that was based upon the officer changing his statement that the conduct was directly observed. Mr. Malatras noted that in the officer's 2005 statement he didn't observe the actual conduct taking place and the other witnesses including two officers didn't see the conduct taking place so the illegal conduct was not an established fact. Mr. Pierre-Louis responded that there was an issue of whether or not there was probable cause to arrest someone. He noted that the officer stated that he was driving on S. Pearl Street. In his initial statement he stated that he saw three women standing around the child smoking marijuana and as he approached the women, they ran.

Mr. Malatras stated that he was trying to re-establish whether there were no new facts but simply the reexamination of the old facts that led to the same conclusion the last time. Mr. Pierre-Louis replied that there were new facts with respect to the issue of unlawful arrest. The officer provided a subsequent statement where he indicated that he saw the complainant. In the officer's recent statement, he stated that he witnessed the complainant allegedly smoking a lit marijuana cigarette and that he also witnessed her throw it to the ground. The officer also provided further information with regard to why the other people were not pursued. Mr. Pierre-Louis commented that that based upon one's recollection being generally fresher the closer they are to the particular incident, if the officer initially made the statement that he saw the complainant engaged in an illegal activity that would have been one thing but he never stated that. It was just a general statement of what he observed which did not focus on the complainant engaged in any sort of illegal activity and now 20-22 months later the officer is able to recall this.

Mr. Malatras clarified that Mr. Pierre-Louis stated that the officer's statements might be contradicting because the officer gave a more generally observable explanation in the first time investigation and a detailed explanation in the second investigation.

Mr. Pierre-Louis concluded that he questions essentially the veracity of what the officer is saying 22 months after the fact. If the officer observed illegal activity which was the basis of his arrest, then he would have indicated that "he saw the complainant" and "this is what I saw her do" in his arrest report, statement to OPS, and/or IDC response. The officer never indicated that. He indicated that he saw three women in general and that they were allegedly engaged in activity. Mr. Pierre-Louis mentioned that Hon. Fowler Riddick talked about the blunt and what the blunt is, which is a cigar. He commented that he sees individuals everyday smoking a blunt not containing marijuana. There is no way of telling if it is an illegal marijuana cigarette. Mr. Pierre-Louis added that he still had questions about how far the officer was when he made this observation and how long he observed these individuals. Mr. Pierre-Louis noted that none of those questions were

answered to his satisfaction. So, based upon the information before him, he could not agree with the OPS finding with respect to that particular issue. Mr. Pierre-Louis concluded that he was satisfied with the explanations given for the allegations of: uncouth behavior, harassment, and endangering the welfare of a child. But he was not satisfied with the explanation given with respect to the first allegation involving unlawful arrest.

Chairman Allen asked for clarification on the endangering the welfare of a child. Mr. Pierre-Louis clarified that different names were given for the child and the witness with whom that the child was left. He concluded that he was satisfied that there was a mix up and somehow the wrong name was given but the child was left with an adult who was reported to be somehow related to the complainant.

Chairman Allen asked if the complainant had anything to add. The complainant stated that she was arrested for loitering, disorderly conduct, smoking marijuana in public and endangering the welfare of a child. She stated that when she asked to have the Dutch tested for saliva or prints if it was in her hand, they refused to send the Dutch to the lab. The complainant stated how upset she was. She lost her job and her son was left outside at four years old by himself. The complainant stated that she was outside not longer than 90 seconds before they arrested her and that she didn't do anything to be arrested. She further stated that the officer asked a question that she had no answer to and he didn't like that. If a uniformed officer were to walk in here right now her son would panic. No child should be scared of the police. The complainant stated that she was not smoking anything. If the officer believed he saw it in her hand why didn't they have that Dutch tested for her saliva? She further stated that she has several witnesses who wrote statements of everything that happened that day. Everyone was upset about what happened. She commented that she did not hear anything about that at tonight's meeting. She further commented that if the officer thought that he saw her smoking, why didn't he say that in the first investigation? The complainant noted that the officer told one of her witnesses that he was arresting her for disorderly conduct. But when she got down to the station she was also arrested for smoking marijuana in public and endangering the welfare of a child. The officer took the name of a child who her son was outside playing with. That child's mother was watching her child because she worked an overnight job. The complainant stated that she didn't hear any witness statements mentioned. She claimed that they were all contacted and she still speaks to them to this day. Her witnesses were only contacted once. The detectives told her witnesses that they would get a return visit but nobody got one.

The complainant noted that the officer's statement reported that he brought her son to her aunt. She stated that the officer did not, which was the reason why everyone made statements. The officer arrested her in front of her son, put her in the paddy wagon, and her son was standing there crying. The officer did not make sure that her son was safe at all. The officer took a name from a kid who wasn't even standing by us when I got arrested. That child came over to her son because they were just playing, and the officer made that little boy give him his name. The complainant concluded that if anyone

reviewed this, case they would have found that out, because everyone who was there was still willing to talk about it. The complainant further stated that that same officer harassed her once before. The same week that she complained of the officer harassing her, two other harassment complaints were made on that same officer. The complainant reported that her son was hurt by this and no child should have to see a cop and think that their mother is going to jail for no reason. She noted that she was arrested in a nightgown and slippers and told to walk home. Her aunt came with the bail money, and that same officer, in front of his sergeant, yelled at her aunt in her face.

Hon. Fowler Riddick stated that he reviewed the witness statements. The complainant said that she heard them say they couldn't contact anybody, but when her phone was cut off she kept contacting the OPS. She further stated that she made it her business to give her address to the OPS and the detective sent her letters in the mail which she received. She concluded that they had her contact information. The same people who wrote the witness statements still live in the same houses, so how could they not have been contacted?

Hon. Fowler Riddick stated that he thoroughly reviewed this case. He stated that based on the investigation the detectives reported that they tried numerous times to contact the complainant. The complainant asked who tried to contact her. Hon. Fowler Riddick replied it was the detectives from the OPS. The complainant stated that she has everything they sent to her. She further stated that the OPS sent her letters in the mail when her phone was turned off. She commented that she knew when her case went back to be further investigated because she received a letter in the mail.

Mr. Malatras commented that the Board takes this complaint very seriously. The complainant stated that she did not think so because of how long it took to get to this point. Mr. Malatras explained that this complaint was reviewed this case before and had similar concerns so this is actually a reinvestigation of this case. He further explained that when the Board received the first report, serious concerns and questions were raised, so the complaint was reinvestigated. This is the second review of this case so it has gone through a really thorough process. He stated that the Board it has taken this long to reach a finding because they are really looking closely and thoroughly at the case.

The complainant stated that she still doesn't understand how the OPS reported that they were unable to contact the witnesses. Chairman Allen explained the role of Mr. Pierre-Louis as one of the Board's monitors. He further explained that the board gets three main reports: the complaint, a preliminary report from the Office of Professional Standards, and a report from the monitor. This case has two reports from the monitor because the first time that this case was presented to the old board we all had issues with it, so we voted to send it back for more investigation because of the questions that remained unanswered. Chairman Allen noted that this was the second time reviewing the case and the monitor still had a problem with the basis of the arrest.

The complainant stated that what was important to her was that her 4-year-old son was left outside by himself and that she went back and forth to court for a year. She further stated that if the officer really wanted to know if she had the duct they could have tested it for her fingerprints. Chairman Allen asked the complainant if she was not arrested would she still be there. The complainant replied yes and questioned how the complaint can be unfounded. Chairman Allen explained that the Albany Police Department recommended that it was unfounded and the Board did not vote on it yet. Mr. Pierre-Louis noted that he was not saying that he agreed. He explained the OPS and Board review process to the complainant.

Mr. Malatras explained that the OPS is recommending to the Board what they believe the findings should be and the Board reviews the investigation to see if the OPS findings are appropriate or not. He further explained the role of the monitor and the Board members in following and reviewing complaints. Mr. Pierre-Louis added that every step taken that is in the report may not be mentioned at the meetings for purposes of presenting the review in a shorter format. He further added that he and the Board take the complaint seriously and are not siding with anyone. Mr. Pierre-Louis noted that his decision is based upon what is in the file which he reviewed twice and he still disagrees with the OPS findings in regards to the arrest. Mr. Malatras asked the complainant if she had any new contact information for the witnesses that she listed on her complaint. The complainant stated that she could provide addresses and phone numbers for the witnesses.

Chairman Allen asked Mr. Pierre-Louis what additional information he would expect to glean from the witnesses. It seemed that the information should come from the Albany Police Department and not the complainant. Mr. Pierre-Louis responded that he based his report on the information in the subsequent report and the explanations that were given to him with respect to why her son was left. He added that he indicated in his report the information that one of the witness statement indicated that the child was left with her. There was a witness who provided a statement to the OPS that said the officer left the child with her. Mr. Pierre-Louis explained that while that person might not be related to the complainant, he did have a name in terms of that person giving a statement. This was why he agreed with the OPS in that respect. The issue with harassment was an issue that he took extremely seriously in light of the fact that the complainant stated that she had a prior run in with the officer. In regard to the allegation of harassment he could only rely on any witnesses who may have been privy to the previous encounter and any witnesses that the OPS was trying to follow up with who may have information concerning this. The information he was given was that, for whatever reason, the OPS was unable to interview or conduct a follow up interview with these individuals. He concluded that was the reasoning behind his change of opinion on those two issues.

Board member Dan Fitzgerald asked Mr. Pierre-Louis if the information about the witnesses who stated that the complainant's son was left with the witness was a written statement or a copy of an interview done by the OPS. Mr. Pierre-Louis responded that he was not sure and would need to look at the file.

Chairman Allen summarized the Board's questions regarding the basis for the arrest. The Board would like to know why was the officer in the vicinity, how the officer knew it was marijuana, more detail regarding where the officer was when he saw the alleged illegal activity, such as which direction he was traveling and how fast he was traveling, and where were the witnesses in relation to where he was traveling.

The complainant stated that the officer said he was just routinely going around. She added that when he first got out of the car, he walked straight up to her and asked her what was going on. She further added that he said that he was down there responding to a call and that was why he was asking about what was going on. Three officers blocked everyone off in two different parking lots.

Mr. Pierre-Louis commented that those questions would be helpful in terms of deciding if it was reasonable for the officer to say that he saw what he saw but not withstanding that the question remains of how did he know that it is a marijuana cigarette. The officer wasn't close enough to smell it and he was not clear about what took place only that he observed three women smoking marijuana and one of them threw it to the ground. The officer didn't say that he observed the complainant smoking in the original report. Now 21-22 months later he remembered seeing her smoking and throwing it on the ground.

Chairman Allen summarized that the complainant was willing to be interviewed again and has witnesses that will come forward on her behalf due to the number of witness statements already. He noted that the OPS detectives had to leave earlier in the meeting, but Sharmaine Moseley from the Government Law Center will make sure that there is a clear line of communication to the complainant and coordinate the attendance of the monitor at the interview of her and her witnesses.

Mr. Malatras explained that the Board was sending the complaint back to the OPS for further investigation to clarify certain questions. He noted the importance of the complainant giving Ms. Moseley the new addresses of the witness which may help in the outcome.

Mr. Fitzpatrick summarized that what the Board is hearing tonight from the complainant versus what happened with the child there seems to be some conflict in that as well which is part of the reason why he asked if there was a written statement. Mr. Pierre-Louis commented that he did not want to give a statement without looking at the OPS records to determine how that information was ascertained. Mr. Fitzgerald agreed and stated his concern of will they get a satisfactory investigation if they send the file back to the OPS. Chairman Allen added that the Board has more specific questions than they had previously.

Hon. Fowler Riddick stated that the credibility of the police officer is questionable because an officer can see what he thinks are people smoking marijuana, but if he gets out of his patrol car and approaches the people, the scent of the marijuana will still be in

the air. The scent would not disappear, and if the Dutch is on the ground and the officer picked it up, that is evidence. Mr. Pierre-Louis added that not only would the scent be in the air, but the odor would be on the individual. The complainant added that she asked the officer to take a urinalysis.

Mr. Malatras summarized that Hon. Fowler Riddick will make a motion to send it back to clarify these questions. Hon. Fowler Riddick moved to send the case to the Chief for further investigation. Chairman Allen added that a letter will be sent to Assistant Corporation Counsel Patrick Jordan for his review before it's sent to the Chief. The motion was seconded by Mr. Malatras. The motion was carried unanimously.

Chairman Allen asked the complainant if she understood what the Board did with her complaint. She responded in the affirmative and requested a copy of her complaint. Ms. Moseley agreed to send the complainant a copy of her complaint.

CPRB No. 1-07/OPS No. C06-596 (Presented by Anthony Potenza)

Board member Anthony Potenza stated that this case involves allegations of use of force and call handling. Mr. Potenza summarized the complaint. On Sept. 19, 2006, the police responded to an anonymous 911 call reporting a female voice screaming and a male voice saying "don't make me hurt you." Police arrived at the apartment where the sources of the voices were reported. The police officer knocked on the apartment door and stated to the complainant that the police received a 911 call of a screaming female voice coming from the complainant's apartment. The complainant stated that he was the only person in the apartment. The police officer asked the complainant for entry into the apartment in order to verify that nothing was occurring related to the 911 call. The complainant refused to let the officer in unless he had a warrant. The police officer made numerous attempts to explain that he was required to check the apartment based on the nature of the 911 call. The complainant attempted to close the door on the police officer in order to deny him entry. The police officer then restrained the complainant by handcuffing him and putting him in to the patrol car. The complainant claims that he was attacked by the police officer in attempts to restrain him causing bruising to his elbow, wrists and knee. The complainant claims that his injuries could be verified at Albany Medical Center. The police officer then conducted, according to correspondence from one officer, a cursory search of the basement premises and released the complainant. In its preliminary findings, the OPS recommended that the allegation of use of force be closed as *exonerated* and the allegation of call handling be closed as *exonerated*. Mr. Potenza noted that a monitor was appointed to this case. The monitor disagreed with the finding of the OPS. At issue is the emergency doctrine enumerated in *People v. Mitchell*, that an officer is obligated to enter the premises even without a warrant to protect life and property. Possibly as a result of the monitor's report, the OPS referred the matter of the application of the emergency doctrine to the Corporation Counsel.

On May 31, 2007, the reporting officer met with Corporation Counsel regarding the case law cited in the investigation of the complaint. Corporation Counsel was given a copy of

the case and asked to review it to ascertain if *People v. Mitchell* fit the criteria for this case. Corporation Counsels' response was that the emergency doctrine as stated in *People v. Mitchell* was appropriate as applied to this case and the circumstances that the officer stated were well within the guidelines to constitute an emergency. Mr. Potenza acknowledged that the monitor was present. He asked the monitor to state his findings and afterward hear from the complainant.

Monitor Joel Pierre-Louis stated that he disagreed with the OPS findings and the application of *People v. Mitchell* because that case is distinguishable from the complainant's case. He explained that the emergency doctrine is a limited privilege afforded to law enforcement officers that does not give them carte blanche to enter a person's home without a valid warrant. He further explained that while the report correctly cited the elements of the emergency doctrine exceptions, in his opinion they failed to adequately analyze the case and the subsequent legal decisions in applying the exception. The first element of the exception is based on reasonableness which must be grounded in material facts. In the complainant's case, the officer by his own omission stated that upon arrival at the scene he didn't see or observe anything out of the ordinary. Mr. Pierre-Louis noted that in his opinion the officer did not engage in any kind of independent analysis or investigation to determine whether or not an exigent circumstance justified his warrant less intrusion into the complainants' home. The radio transmission received by the officer merely stated that an anonymous caller was walking by the complainant's residence and believed that he heard a female making strange noises and a male yelling at her. That was the information that was communicated to the officer. In light of the fact and circumstances as the officer understood the situation at the time, there was no exigency that outweighed the constitutionally protected fourth amendment right of the complainant that would allow the officer to enter his home.

Mr. Pierre-Louis added that warrants are required to search a person or a person's home unless the exigencies of the situation make the need of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment. *People v. Mitchell*, a New York Court of Appeals case, is still a valid law but as a legal matter it is basically standing on thin ice. Mr. Pierre-Louis noted that there have been numerous subsequent cases by the US Supreme Court which is a higher authority than the Court of Appeals that basically deals with this issue. He cited *Mincey v. Arizona*; *Groh v. Ramirez*; *Payton v. New York*; and *Welsh v. Wisconsin* the Supreme Court as examples. The court has recognized that law enforcement officers may make a warrantless entry onto a private property to fight a fire and investigate its cause, to prevent the imminent destruction of evidence, to engage in "hot pursuit" of a fleeing suspect or to protect the life of a law enforcement officer or other person in imminent danger. This exception was used by the OPS in justifying its decision that there was someone in imminent danger. The action of the officer was justified by stating that the 911 call created an exigent circumstance that permitted the officer to enter the complainants' apartment without his consent and without a warrant. Mr. Pierre-Louis further explained that based upon the facts and the circumstances, that assumption was unreasonable and speculative because there were no exigencies that justified the officer's action. Mr. Pierre-Louis noted that

after reviewing the circumstances confronting the target officer, a person would not conclude on the basis of the facts that any exigent circumstance justified the warrantless entry into the complainant's home. The 911 call did not emanate from within the complainant's apartment. The information dispatched to the target officer could not reasonably be said to be an emergency and the lack of any empirical facts or observation on the part of the officer did not justify his actions. There was no extrinsic evidence of "urgency" which the court have frequently relied upon in upholding warrantless entry. Mr. Pierre-Louis asked if someone made an anonymous 911 call or prank call, would that mean an officer could show up at your door and kick in your door. Why do we have 4th amendment and the constitution? Did the passerby stay at the scene to observe and find out what was going on? Mr. Pierre-Louis added that the first issue was one of the witnesses stated that it could have been the loud television. It could have been a show on television that the passerby overheard. The second issue was the communication that the target officer received from dispatch that there was a woman screaming and a man yelling at her. There was no woman screaming for help, rape or murder. There was a women screaming and with all due respect she could have been having an intimate moment with her spouse and the spouse could have easily replied "be quiet." Would that allow the police to enter that persons' home? Mr. Pierre-Louis stated that he did not think so.

Mr. Malatras stated that the complainant raised several really important issues and it is hard for him to say the reason why the police officer used the law under constitutional doctrine. He added that he did not think the Board has the authority to do that. The question remains whether the action by the police officer was a form of misconduct that the OPS thoroughly investigated. He further added that he did not know if a determination could be made whether to agree with OPS or not based on the constitutional circumstance. Mr. Pierre-Louis added that the original transmission was little bit more serious than the transmission that went out to the officer.

Board member Anthony Potenza clarified that the State Police handled the original transmission because the 911 call was from a cell phone. Mr. Pierre-Louis agreed and added that the State Police transmitted that call to an APD dispatch unit and the APD dispatch unit transmitted the information to the officer. Somewhere within that transmission the original text was lost. The only text the officer had to go by was that a woman was screaming and a man was yelling at her.

Mr. Malatras stated that he did not know if the board could second guess based on a legal analysis. Mr. Pierre-Louis commented that without considering whether or not the People v. Mitchell case is applicable here, the facts are the target officer received a transmission about the women yelling, and the man telling her to be quiet. Mr. Pierre-Louis added that the target officer did not stand on the stoop and listen to see if he heard a woman screaming. When the target officer arrived on the scene, he did not call for his supervisor or his sergeant to give an explanation to the complainant. Mr. Pierre-Louis noted that the officer made the wrong judgment call. He added that he disagrees with the

OPS findings and the only reason he went in to the legal analysis was because the OPS determination was based on the People v Mitchell case.

Chairman Allen asked was there an Albany Police Department Standard Operating Procedure (SOP) which explains to the officer how they should behave in this circumstance. Mr. Potenza stated there is a SOP regarding domestic violence. Mr. Pierre-Louis agreed that there was an SOP regarding domestic violence and the OPS determination used it as a basis to support its decision.

Chairman Allen asked if the target officer did what he is trained to do. Mr. Pierre-Louis responded that he could not answer that. He noted the incident that occurred a few years ago that involved a young woman. Officers were dispatched to the young woman's apartment; there was a dog barking so they couldn't get in, and the young woman was killed. He further noted that he understood why the SOP may have been changed, but he does not believe that the situation was an exigent circumstance that would allow an officer to show up at a person's front door without doing an investigation and enter the person's apartment. Mr. Pierre-Louis stated that it would have been one thing if the phone call came from within the apartment and the phone call was cut off. The exigent circumstance would have been created because that phone call would have come from within the apartment and someone may have been in danger; therefore, the warrantless entry would have been justifiable.

Mr. Malatras asked about the allegation of excessive force. Mr. Pierre-Louis responded that the officers stated they took the complainant down; that he was not beaten; he was not being cool; and he didn't want them to enter his apartment. So they dragged the complainant from the stoop within his apartment outside to gain entry to his apartment. Mr. Pierre-Louis noted that was excessive force. He asked if the officer did not have the right to enter the complainant's apartment then how did he have the right to throw the complainant to the ground and restrain him by putting him in custody until he could go and search the person's apartment.

Chairman Allen asked if there were facts in dispute. Mr. Pierre-Louis responded that there were some facts in dispute in respect to the allegation of excessive force, such as the officer saying that they didn't drag the complainant. Also, the officer alleged that the complainant stuck his foot in the door and was being belligerent and uncooperative. While the complainant alleged that he was being cooperative and compliant and he did not want to let them in. Mr. Pierre-Louis added that there are a number of facts in dispute. The major fact in dispute is whether or not the officer could enter a person's apartment without a warrant under those circumstances.

The complainant asked if the OPS interviewed the witnesses who were sitting outside on the steps. He stated that his neighbor asked the officer what he was doing to him and that the noise could have been coming from his apartment. The complainant stated that he worked 12-13 hours daily for the last 20 years. He stated that at 10:27 p.m. when he got home, he called his girlfriend. She wasn't home so he left a message on her answering

machine. Ten minutes later he called her back and they stayed on the phone until 11:30 p.m. He was supposed to go to her house. He heard a knock on the window. He asked who it was. No one answered, so he went to the door, and they say "police." The officer said there was a complaint about some female screaming in my apartment. The complainant stated that there was no one there but him. The complainant added that the officer's response was that they had to take a look. He asked the officer if he had a warrant. The officer said that it was on the thing outside and would the complainant like to see it. The complainant added that he said "sure" and stepped out. As he closed his door and walked out, the officers attacked him and threw him on the ground. The complainant further added that when he made the call his house phone wasn't working because something was wrong with the line outside so he used his cell phone. When he got his cell phone back the call that he made to his girlfriend was deleted.

Chairman Allen asked how long it would take to get a warrant from a judge. Mr. Pierre-Louis responded that a judge could be called in the middle of the night. Discussion ensued between Mr. Pierre-Louis and assistant corporation counsel Patrick Jordan about how long it takes to obtain a warrant.

Chairman Allen asked how much time elapsed between when the time the 911 call was made and the officer showing up at the door. Mr. Pierre-Louis responded that it was within minutes.

James Malatras stated that one witness told the officer to leave the complainant alone because he never does anything wrong after the complainant was already out of the house. Mr. Malatras stated that he was uncertain of whether the initial walk to the house was a form of misconduct. Chairman Allen asked Mr. Pierre-Louis if there was anything in the file which indicated that the officer contacted his supervisor for guidance. Mr. Pierre-Louis responded "no." Chairman Allen commented that he would have been interested to know if the officer had received a second opinion what would the sergeant have done. Was the officer doing what he was trained to do. Mr. Malatras stated that while working at the LOB sometimes he unintentionally dials 911 (sometimes it's dialed accidentally) but automatically a trooper comes to the door. Even if it's a mistake the trooper follows up. Mr. Pierre-Louis stated that is inside a building. But what if he was standing outside and just because he does not like this person he calls 911 and reports that there is something going on inside this person's apartment. Mr. Pierre-Louis added that just because there is an SOP doesn't make it right. He stated that he takes this case extremely seriously because we are all threatened by the officer's actions and it does not make it right because the police officer is trained to do something. The only explanation that the officer gave for his action was that he could do it based on the SOP. Did the dispatch say it was a 911 call from within the apartment, outside the apartment, do you call a supervisor, do you call a sergeant and do you then try to reach out to the judge for a warrant. Mr. Pierre-Louis summarized that all of these questions may be helpful to the APD.

Mr. Malatras stated that if the officer acted in a way that was consistent with the SOP, that there may be a fault with the SOP but that it was not misconduct on the officer's part. He added that the complainant may have to file a judicial claim through the courts. If there are rules established in the SOP for a police officer to follow, then the police officer followed the rules.

The complainant asked why he was assaulted for doing nothing. Chairman Allen stated had the SOP been clear and the officer trained, then the other allegations wouldn't have happened. Mr. Malatras stated that the complainant may be in the middle of an unfortunate scenario of where there was misconduct by the officer and the actual rules that the officer followed might have been bad.

The complainant asked whether if at any time a police officer wanted to gain access to anyone's apartment all a person would have to do is call and it's o.k. for them to enter the apartment. Mr. Malatras stated that is what the Board is trying to figure out. We are trying to figure out whether the conduct of the officer or the rules should be looked at or changed.

Anthony Potenza stated that the case should be sent back to the Office of Professional Standards asking how can the actions taken by the officer be justifiable, whether it was an SOP or judgment call by the officer and request that if it was a rule in the SOP, then the SOP should be thoroughly examined and updated.

Dan Fitzgerald mentioned that he looked through the file hoping to find something and could not find any SOP that was specific enough about this which leads him to believe that it was a judgment call by the officer.

Mr. Pierre-Louis stated that based on the file, the assumption was that the officer made the call believing there was a domestic disturbance. Mr. Potenza stated that if there was a serious incident going on, the police did not go into the apartment to ascertain that there was nothing going on and something serious happened, then the community would be angered regarding police inaction. He added that it is imperative that the Office of Professional Standards give the Board a clearer, more concise and explicit explanation to justify these actions.

Chairman Allen stated that what made him feel better about the 911 call was that the dispatcher called the caller back, he answered and he gave more information, so it was not just an anonymous phone call. The caller also gave a witness statement.

Mr. Pierre-Louis stated that this is a case where he has taken a strong position on and completely disagree with what the officer did.

Mr. Malatras stated that the OPS exonerated these allegations based upon the emergency standards. There is disagreement with whether or not the complainant was restrained

within the sort of non-existent boundaries, and whether or not he was dragged out properly.

Mr. Pierre-Louis agreed that this is a major dispute. He noted that the complainant said that after the officer asked him if he wanted to see the computer screen, he turned around and closed his apartment door. The minute he got to the top stairs the officers tackled him and threw him in the back of their patrol car. Mr. Pierre-Louis further noted that the officer's version is quite different. According to the officers, one officer said that the complainant stuck his foot in the door, he tried to grab him, he pushed his arm, and he dragged him up to the top of the stairs and the other officer that showed up said that he observed the officer struggling with the individual so he went to assist him.

Chair Allen asked if any witnesses saw the scuffle or altercation. The complainant responded that there were two witnesses who are listed on his complaint. Mr. Malatras asked if there was anything in the record that stated the witness observed the altercation. Mr. Pierre-Louis responded that there were several witnesses. One of the witnesses said that he observed the complainant handcuffed up against the wall, placed in the back of the patrol car, the officer talking on cell phone and then the complainant's handcuffs being removed and him released. The other witness was the complainant's girlfriend. She gave a witness statement. The next witness statement was from the 911 caller. He noted that he read statements from those witnesses. The complainant stated that the witnesses live in the same building as him.

Chairman Allen noted that if the Board voted to send this case back to the OPS, they would ask if it is the Albany Police Department's policy to enter homes without a warrant on the basis of a 911 call. If the answer is yes or no, then there should be a discussion because this case sets a precedent within the Albany Police Department.

Mr. Malatras asked what about the finding of exonerated on the allegation of excessive use of force. There seemed to be conflicting stories for that allegation and generally those findings are either not sustained or unfounded. Chairman Allen asked if any of the witnesses saw the officers use excessive force. The complainant responded that the witnesses were sitting outside when they got there and they saw the officers attack him. Chairman Allen noted that the Board will address that as well.

Mr. Potenza noted that he made a motion to send it back to OPS for clarification with regard to response to 911 calls and if the standard operating procedure for the department states that an officer when responding to a 911 call can consider it exigency under *People v. Mitchell*. Chairman Allen clarified whether it is ok to go into an apartment without a warrant for a 911 call and if the officer is authorized to use force in order to enter the apartment. Mr. Malatras added that there are conflicting stories as to the level of force used from the complainant and the officer, whether force was used and if it was excessive or not. Mr. Malatras stated that generally in these cases there is another finding where it can't be proven one way or another way or it's misconstrued as something else.

Mr. Potenza stated that he is not disagreeing with the Chairman. He noted that his motion was to send it back to the OPS for clarification.

Chairman Allen added that he wanted to get the questions right so when the Board has the answers there are not any other questions. Dan Fitzgerald added that the Board should ask why was the finding for the use of force allegation *exonerated* instead of *not sustained*.

Mr. Potenza moved to send the case back to the OPS based on the comments made in the minutes. He added that his motion includes asking for clarification regarding responses to 911 calls. The motion was seconded by Mr. Malatras. The motion carried unanimously.

CPRB No. 3-07/OPS No. C07-99 (Presented by James Malatras)

James Malatras summarized the complaint. The complainant alleged he was stopped by an officer and during the course of the traffic stop the officer harassed the complainant when the officer stated, "We don't have summary judgment around here." The complainant further alleges the officer's statement was in reference to the complainant's involvement with a civil matter. The complainant was further issued four (4) traffic stop tickets.

The OPS received correspondence from the officer, a telephone interview was conducted with the complainant and several attempts were made to get the witness information from the complainant.

The OPS recommended closing the case as *unfounded*. The officer stated that at no time was he rude or did he harass the complainant in any way. The officer did however indicate that he did use the term "summary judgment" numerous times in his career, but did not recall the specific use of the term while engaging in conversation with the complainant. With respect to the reference to a civil matter which the complainant was a part of, the officer stated he had no knowledge of the complainant being a part of that matter. Finally, the OPS also stated that the complainant did not provide witness information from the passenger in the car and several attempts were made to contact that person.

The complainant was acknowledged. The complainant stated that the tickets were issued before the statement was made. He added that the statement was made while the officer was walking away from his car after giving him the tickets. The tickets were invalid, and there were no fines. Mr. Malatras asked if the officer handed the ticket to the complainant and then made the statement. The complainant responded that the officer stated "there is no summary judgment around here." Mr. Malatras asked the complainant if he asked the officer how much those fines would be. The complainant replied that he did not. He added that the officer said that he had to go to the basement of 23 Eagle Street and then he made the statement about there is no summary judgment

around here. The complainant added that it made no sense for an officer in a traffic situation to make a statement in that manner. He did not know if he was or was not related to any other officers or people that were involved with in his civil manner.

Chairman Allen summarized that the complainant was driving, got pulled over, and got four traffic tickets. He asked the complainant if he asked the officer anything to get that response. The complainant replied that he did not ask the officer anything to get that response. He added that the officer made that statement after the tickets were issued. When he thanked the officer, the officer got rude.

Board Member Malatras asked the complainant to explain how it happened. The complainant responded that after he gave him the tickets the officer made the statement five feet from his vehicle and then he told the officer thank you very much.

Mr. Malatras asked if there was a passenger in the car with the complainant. The complainant stated that there was a passenger in his car. Mr. Malatras asked why the passenger was not willing to make a statement. The complainant responded that the passenger does not want to be involved with this kind of stuff.

Dan Fitzgerald asked for an explanation of summary judgment. The complainant responded that a summary judgment is a civil case that does not go through the normal court procedure. Mr. Jordan added that one side would make a motion to the judge, generally before a trial begins and sometimes at any time during the trial if something else comes to light. The judge can make a summary judgment by looking at the facts and it would not have to go through a trial.

Dan Fitzgerald asked if this is something that is usually applied to vehicle and traffic stops. Mr. Jordan replied that he did not know where that would fit in to the traffic stop. Discussion ensued about the relation of the judgment summary to the traffic stop.

Mr. Potenza asked what happened to the tickets that were issued to the complainant. The complainant responded that the tickets were irrelevant. Mr. Malatras summarized that the officer pulled the complainant over, the complainant handed the officer his license and registration, the officer went back to his car and checked the registration and license, wrote out the tickets, went back and handed the tickets to the complainant and as he walked away he stated we don't have summary judgment around here. The complainant stated that was correct. Malatras asked the complainant if he personally knew the officer. The complainant responded that he had no recollection of ever meeting the officer.

Chairman Allen asked the complainant had the officer not made that statement would he have filed a complaint. The complainant stated that he filed the complaint because the officer made the statement about summary judgment. He further stated that he believed the traffic stop had to do with the civil case he was a part of. He added that there may have been relations in the community who were a part of the civil case.

Mr. Potenza asked the complainant why he believed that the officer knew about a pending civil case or his involvement in an unrelated civil matter. The complainant replied that there was no relation between traffic tickets and civil case judgments, so he did not know why the officer made this statement. He stated that maybe the officer is related to the individuals that were part of the civil case.

Mr. Malatras asked the complainant if the officer handed him the tickets and walked away and the complainant did not say anything to him. Mr. Malatras added that the officer indicated that he uses that term if a motorist inquires how much the fine would be.

The complainant replied that he did not ask any questions about the fines. Chairman Allen asked the complainant if he had another case in addition to this one. The complainant replied that he was not aware of another one. He added that the investigator should ask the officer if he is related at all through work or through business to any of the individuals who were a part of his civil case. Mr. Malatras stated that those questions were asked and the officer claimed that he did not know the complainant or his family. He added that these issues can be forwarded to the Board's policy committee to be discussed with the police department. Mr. Malatras motioned to accept the finding of *unfounded* and add this issue to the list of things to discuss with the police department.

Mr. Malatras explained that the issues raised at tonight's meeting were not raised in the complaint. He added this is an important complaint that will be closed and the issues addressed by the policy committee. Mr. Malatras moved to accept the finding of *unfounded* and add the issues to the list of things for discussion with the police department. The motion was seconded by Chairman Allen. The motion carried unanimously.

CPRB No. 7-07/OPS No. C07-239 (Presented by Dan Fitzgerald)

Dan Fitzgerald summarized the complaint. The complainant prefers not to disclose his name or any personal information about himself. On the morning of Tuesday March 20, 2007, the complainant walked outside his house and noticed that his car was missing. He was swamped at work over the past three days and had been spending extensive time at the hospital with my mother, and did not know that there was a snow emergency in effect and that his car had been towed. He had a family emergency because his mother was taken to the hospital. He rushed over to see her and speak to her doctor immediately. He called up the local precinct number at approximately 11:30 a.m. and a female picked up the phone. He was unsure of her name because he was in a frenzied hurry and panic. He asked if she could look up his car to see if it had been towed and she rudely responded, "if your car isn't there, then common sense should tell you that it was towed, right?" He asked her if she could look it up, because he wanted to make sure that his car was not stolen because he could not afford to go down there for no reason. He was pressed for time because of the situation with my mother. She responded that she did not have the time to look it up. She then said that there was a snow emergency in effect, and that his

car was definitely towed. The complainant asked her when the snow emergency was issued and how much everything would cost and she responded, "I don't have time to go over these things with you - you need to come down here to 526 Central Avenue and pick up your car - and that's it." The complainant alleges that he asked her if he could speak to someone else because he had a dire family emergency and she muttered out an explicative into the phone, and then hurriedly put someone who identified himself on the phone. The complainant alleges that he was about to explain the situation to the officer but was not given the opportunity. The officer rudely got on the phone and asked the complainant "do you know where to pick up your car?" and the complainant replied "yes, but I have..." and he said "great-have a nice day," and hung up the phone on the complainant.

The complainant finds this behavior startlingly rude and on the verge of harassment. He would very much appreciate it if this situation was addressed. The complainant does not want to disclose his identity as of right now, but will be consulting with his attorneys in the next week and have full intention of bringing a lawsuit against the department.

Mr. Fitzgerald reported that the OPS investigated the allegations and discovered a couple of things. When the OPS tried to review the tapes, there were portions of the tape missing and have since found that there was a problem with their recording system where it would only record the first part of the incoming call. Since then that problem has been corrected. They do not have any further information from when the caller first phoned in. The IDC request went out to the supervisor who was named in the complaint. The supervisor did not recall the incident. The OPS checked both the uniformed and civilian officers and did not come up with any female officer with either of the names that the complainant gave that would have been anywhere near the phones or on duty at that time. Mr. Fitzgerald noted that this complaint was received anonymously, so the OPS had no way of questioning the complainant. The OPS recommended a finding of *no finding* because they were unable to contact the complainant for further information.

Mr. Fitzgerald moved to accept the OPS finding of *no finding* and refer it to the policy committee for potential comment to the Traffic Division. The motion was seconded by Mr. Malatras. The motion carried unanimously.

B. *Appointment of New Members to the Committee on Complaint Review for July 2007*

The following Board members were appointed to the Committee on Complaint Review for July 2007: Daniel Fitzgerald, Mauri Davis Lewis, Andrew Phelan, Jr., and Anthony Potenza.

C. *Approval of 2006 Fourth Quarterly Report*

Chairman Allen moved to approve the 2006 Fourth Quarterly Report. James Malatras seconded the motion. The motion carried unanimously.

D. *Committee/Task Force Reports*

By-Laws Committee

Chairman Jason Allen reported that a lot of work was done to make the standing document more a reflection of the complaint process. He noted that the new name for the document is the complaint process document because it codifies what the Board has been doing with its past practices. Chairman Allen commented that public input was received. He further noted that the Board would be doing the community just service by recalling the document that was submitted to the Common Council and reviewing it. The Board's action will be communicated to the Common Council. The Board will also continue to work with the stakeholders so it will be ready to be voted on in September. Chairman Allen moved to recall the draft from the Common Council with the understanding that a policy is needed based on the Board's experiences and practices. James Malatras seconded the motion. The motion carried unanimously.

Mediation

Committee Chairman Allen reported that an update on mediation was given earlier in the meeting.

Police Department Liaison and Policy Review/Recommendations

Committee Chairman Daniel Fitzgerald reported that Ms. Moseley, Chairman Allen and he attended a meeting with the OPS to review the first round of the APD's early warning system prototype. He reported that the OPS is working on a policy that they hope to have in effect by the end of the summer.

Public Official Liaison

Chairman Allen noted that Public Official Liaison Ronald Flagg was not present to report. Chairman Allen reported that the committee has a meeting scheduled with the Common Council on June 19th. He invited the members to attend the meeting.

Chairman Allen stated that last year the Board did not meet during the summer because of difficulty in getting a quorum. They found that the backlog was not so large that they were not able to catch up. He asked Ms. Moseley if she had any concerns with taking two months off. Ms. Moseley replied no. Mr. Fitzgerald asked will the Board continue to review cases even though they will not be meeting. Chairman replied that cases will be assigned for review before the next meeting. Chairman Allen added that as soon as cases are ready they should be assigned. Chairman Allen moved to not meet in July and August with the understanding that a meeting may be called in August to discuss the complaint process. Anthony Potenza seconded the motion. The motion carried unanimously.

Monitors Task Force

Committee Chairman Allen reported that he would like to replenish the task force on monitors. He reported that there was a meeting regarding the monitor's protocol. It is working fine. The monitors had very good suggestions such that updates to it may be needed. Chairman Allen noted that an email will be sent to the Board asking who would like to be on the task force.

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

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

Complaint Status as of Date of Meeting

It was reported that as of tonight's meeting, there are currently twenty-four (24) active complaints before the Board for review. It was also reported that 224 complaints have been closed and seven (7) complaints were suspended from review. The total number of complaints filed since 2000 is 263.

Training

It was reported that the new members have completed the Citizen Police Academy. It was noted that the members are excused from attending the last class scheduled for June 19th, because it conflicts with the Public Safety Committee meeting. The APD will mail out completion certificates to the members.

Mediation Program

It was reported that Jean MacAffer, a second year student at Albany Law School, will be working for the GLC this summer and hopefully during the fall semester. She will be focusing her research on looking at training programs for mediators in other cities/states so that the GLC will be able to get ideas on best practices for the mediation program. It was noted that a list of questions that Jean will be focusing her research on is included in the Board's packets. If the Board has any suggestions or ideas for further questions, please forward them to Ms. Moseley.

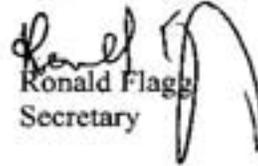
NACOLE

It was reported that two members have signed up to attend the NACOLE conference in September. If there is still an interest in attending the conference, please let Ms. Moseley know so travel arrangements can be made. Chairman Allen asked Ms. Moseley to send the Board an email reminder with a deadline.

VI. Adjournment

Chairman Jason Allen moved to adjourn the meeting. Daniel Fitzgerald seconded the motion. The meeting was adjourned at 8:50 p.m.

Respectfully submitted,


Ronald Flagg
Secretary