

**City of Albany
Citizens' Police Review Board
GWU the Center
274 Washington Avenue- Teen Center Conference Room
October 26, 2010
6:00 p.m. – 8:00 p.m.**

Present: Jason Allen, Marilyn Hammond, Andrew Phelan, Jr., Reverend Edward Smart, and Akosua Yeboah.

Absent: Ronald Flagg and Anthony Potenza.

I. Call to Order and Roll Call

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

II. Approval of the Agenda

The agenda was reviewed. Marilyn Hammond moved to approve the agenda. Chairman Jason Allen seconded the motion. The motion carried unanimously.

III. Approval of the May 2, 2010, June 10, 2010, and June 24, 2010 Minutes

The May 2, 2010 meeting minutes were reviewed. Akosua Yeboah moved to approve the meeting minutes. Andrew Phelan Jr. seconded the motion. The motion carried unanimously.

The June 10, 2010 meeting minutes were reviewed. Andrew Phelan Jr. moved to approve the meeting minutes. Chairman Jason Allen seconded the motion. The motion carried unanimously.

The June 24, 2010 meeting minutes were reviewed. Andrew Phelan Jr. moved to approve the meeting minutes. Marilyn Hammond seconded the motion. The motion carried unanimously.

IV. Old Business

A. CPRB No. 47-10/CC2010-117 (Presented by Chairman Jason Allen)

Chairman Jason Allen stated that the complaint was considered old business because the complaint was filed outside the time period that was authorized for complaints to be filed. Chairman Allen explained that complaints have to be filed within six months after the incident occurred. Chairman Allen reported that the incident occurred on December 27, 2009 and the complaint was filed on September 19, 2010. He stated that he read the complaint and asked the other Board members if they would like to read the complaint to determine the allegations. Chairman Allen further stated that the Board would have to make a motion to determine whether it would review the complaint or not. Chairman

Allen asked Board Counsel William Kelly if that was the correct method to deal with the complaint. Mr. Kelly replied in the affirmative.

Chairman Jason Allen moved that the Board not review the case and asked if anyone would like to discuss the complaint. Reverend Edward Smart seconded the motion. Reverend Smart stated that the time period was stated in the legislation. Andrew Phelan Jr. also seconded the motion. The motion carried unanimously.

B. CPRB No. 45-08/OPS No. C08-409 (Presented by Chairman Jason Allen)

Chairman Jason Allen reported that this complaint was before the Board earlier in the year and had been sent back to OPS with many questions from the Board. Chairman Allen stated that he reviewed the case file, including a letter that the Board sent after its first review of the case. Chairman Allen told the Board members that the letter was enclosed in their meeting packets, as well as the response that the Board recently received from OPS to each of the questions that were asked. Chairman Allen stated that he also reviewed the follow-up confidential reports. He explained that the monitor for the case did not have any additional points to address other than the questions the Board asked. This explained why there was no monitor follow-up report. Chairman Allen reported that the OPS had re-established contact with the complainant and the complainant reaffirmed that she felt she had been racially profiled. The complainant also reaffirmed that she was in her car prior to the officer approaching her and "pulled her over when she was so parked." Chairman Allen further reported that the OPS contacted witnesses who stated that there were other vehicles at the scene which were illegally parked as well. The OPS investigated all of the parking tickets that were written, and there were no other parking tickets written at that time and place. The target officer had written similar tickets for processing earlier that day which included processing the complainant's other tickets. The complainant had been issued other tickets, including one for possessing more than one license at a time. The complainant had multiple licenses in her wallet. Chairman Allen reported that the target officer had written a ticket for the same violation in a different part of town, at the intersection of Washington Avenue Extension and Route 155, earlier that day. The other person in the back seat of the car, the person who got the pizza, stated that there were other African-Americans double-parked and unloading vehicles that were not ticketed. Chairman Allen stated that was one statement that the witness made that compounded what went on in the case earlier. He further stated that he reviewed in the confidential report all of the UTT reports, all of the traffic tickets that were issued and numerous extracts from the Uniform Traffic Law and the NYS Criminal Procedural law cited to support the OPS findings, as well as the answers to the Board's letter. Chairman Allen stated that he would not read aloud the five-page response, but did want to highlight a couple of things. He stated that in response to question number 5, highlighting the fact that the target officer had issued a ticket for the violation of holding more than one NY license to separate motorists and the complainant and a ticket was actually issued prior to his contact with this particular complainant and the fact that OPS is sustaining one aspect of the complaint; question number 6, upon looking further into the law, it is illegal to hold more than one license that are unexpired, but if you have multiple licenses in your wallet and they are all expired with the exception of one, then

that is okay. Chairman Allen stated that based on the OPS investigation, there is a training deficiency and that particular ticket should not have been written because the multiple licenses in the complainant's wallet were expired with the exception of the one which she was currently using. Chairman Allen asked the Board members if they had any questions for him or the OPS before they voted. Reverend Smart asked if Chairman Allen was suggesting they should agree with the OPS on three of the five and the two that are in terms of the ticket should not have been issued concerning the expired license and also the fact that for the fourth allegation the monitor disagreed that the officer, by the statement of the fellow officers and also by the complainant, that there were other cars that were parked on Pearl Street. Reverend Smart stated he needed clarification on those issues. Chairman Allen stated that the OPS' findings were made, the Board asked questions, and the OPS answered the questions. The case had been sufficiently and thoroughly investigated. There were other witnesses who stated that there were other African-Americans who were actually not in their cars, but actively loading and unloading their vehicles. Chairman Allen further stated that the complainant's car was given multiple tickets, and he cannot say that it was because the complainant was racially profiled because other witnesses stated that there were other African Americans there as well. Chairman Allen stated that earlier that day, the same officer wrote a ticket to somebody else in a different part of town for the same thing, the same error, so he was willing to recognize and accept the fact that the OPS was willing to recognize that there was a training deficiency for that one particular ticket. He stated that he cannot disagree with the fact that the OPS maintains that the complainant was not necessarily targeted because of her race. Reverend Smart asked if the recommendation should suggest training. Chairman Allen replied in the affirmative and stated that issue was addressed in response number six. Chairman Allen stated that towards the end of number six, OPS suggested that there was a training deficiency. Chairman Allen read from the OPS response that "The officer stated that he was somewhat familiar with that particular section of the NYS Vehicle and Traffic Law. The OPS noted that there exists the presence of a training deficiency on behalf of the officer in being able to interpret the proper sections of the law of NY State, and this is again a training deficiency and not an abuse of authority because the target officer believed at the time of the incident and throughout the course of the investigation that his actions were proper and were in accordance with the law, which would rule out any premeditated false application of the laws that govern law enforcement."

Chairman Allen stated that the OPS recognized that the ticket was written in error, and it was not a mistake unique to the complainant, but was actually propagated earlier in the day, before the incident actually occurred. Reverend Smart asked about the no seat belt ticket. Chairman Allen reported that the OPS made an interesting analogy, and it is something he has heard in the past. Chairman Allen reported that the OPS consulted with Corporation Counsel and it is analogous to DWI cases. If someone is drunk, and they are sitting in their driver's seat with the engine off, the keys on the passenger seat or in the ignition, they can get a DWI. Chairman Allen stated that the point OPS was making is that the law treats it the same, where if someone is double-parked, with the engine running, without wearing a seat belt, the person can be ticketed for not having a seat belt

on. Chairman Allen stated that was one of the questions he had asked when the case first came up.

Chairman Allen asked if there were any other questions. It was noted that there were no other questions.

Chairman Allen asked if there was a motion to close the case, concurring with the OPS' findings. Chairman Allen stated that he was unsure whether he had to reread all of the findings. Chairman Allen stated to Monitor Joel Pierre-Louis that he noted in the confidential report that they had reached out to him but Joel did not want to do a follow-up report because all of his concerns were captured in the Board's letter to OPS. Mr. Pierre-Louis stated that he did write a final report. Chairman Allen asked if he had seen the final report. Coordinator for the Board Sharmaine Moseley stated that the report was not sent to the Board because it was received after the meeting packets had been sent. Mr. Pierre-Louis apologized that the report was not received in time. Chairman Allen stated that he read something in the Confidential Report and he did not follow up on it. Chairman Allen asked if he could see the monitor's report. Chairman Allen read the monitor's report and asked Mr. Pierre-Louis if he could explain his view on the response to the Board's letter and any changes to his findings. Mr. Pierre-Louis stated that his findings were essentially the same. He noted that in the follow-up report by the OPS one of the findings was changed and the detective had changed the findings from the previous report. He was, however, unsure which issue had been changed. Mr. Pierre-Louis stated that he thought the changed finding was on call handling. Mr. Pierre-Louis further stated that the report had changed in relation to the issue of issuing the complainant a ticket for the excessive licenses. The recommendation of the detective reviewing the case is consistent with his view throughout, which was, in his view, questionable. Mr. Pierre-Louis stated that the one remaining issue was related to the issuance of the seat belt ticket. The detective had talked with someone from the DA's office in relation to DWI cases; however, from a legal standpoint, the issue as it relates to a seat belt ticket is a little bit different from a DWI ticket. Mr. Pierre-Louis stated that he noted his rationale, and reasoning as to why he disagreed with the officer's findings as it relates to the issue of someone being seated in the vehicle, with the ignition turned off and not having a seat belt. That seems to imply that anytime someone is seated in any vehicle, whether they are parked legally or illegally, without the car being on, that any officer who drives up can issue a ticket for not wearing a seat belt. Mr. Pierre-Louis further stated that he completely disagreed with that whole rationale and he did not think that the issue of the DWI was applicable to this specific case. A DWI case is basically a criminal felony or misdemeanor type of case, as opposed to an infraction. He further stated that he did not think the court had specifically addressed that issue, and he completely disagreed with the OPS' rationale. He stated that he believed it was inappropriate to issue the seat belt ticket if the person was seated in the vehicle with the ignition turned off. The complainant, as well as her witnesses, stated that she was wearing a seat belt and only took off the seat belt when the officer approached so she could obtain her wallet out of her purse. Mr. Pierre-Louis further stated that there was a different set of facts between the officer and the witnesses of the complainant. He also noted that there were certain instances throughout the report where the officer or detective reviewing the case file

basically relied on the testimony of some of the witnesses, specifically as it relates to whether or not one of the witnesses believed that the officer profiled the complainant. Mr. Pierre-Louis stated that in that instance the detective, in the report, relied on the witnesses' testimony, which says that "I don't believe this is the case." Mr. Pierre-Louis further stated that if you are going to rely on the witnesses' testimony as it relates to that issue and the veracity of the witnesses' testimony, then you have to give it equal weight as it relates to other issues throughout the investigation. You cannot pick and chose which of the statements of the witnesses you are going to necessarily rely upon. He stated that if the officer was relying on that specific statement, that they should also rely on statements as they relate to other instances or other issues in the complaint. Chairman Allen stated that he agreed with the monitor on that part. He asked Mr. Pierre-Louis whether it affected his opinion that the car was parked in a traffic lane. Mr. Pierre-Louis responded that it did not change his opinion. Chairman Allen stated that the car was not in a parking lot or on the curb. Mr. Pierre-Louis stated that one of the issues was whether or not the officer had probable cause or reasonable suspicion to stop the car. Chairman Allen stated the car was double parked, and that was probable cause to stop the car. Mr. Pierre-Louis stated that there was only one area of disagreement, whereas before there were two areas that he disagreed with; one was on the issuance of the ticket for having more than one license and the seat belt ticket. Mr. Pierre-Louis stated that on the issue of having more than one license, the new report issued by the detective basically stated that he disagreed with the original officer and found that it was inappropriate to issue that specific ticket to the complainant. Chairman Allen stated that he was trying to draw a line in his mind. The complainant was not harassed, and the Board is also not traffic court. Mr. Pierre-Louis stated that those issues were resolved. The matter was adjudicated in terms of the ticket issues, and dismissed. Chairman Allen asked if the tickets had been dismissed. Mr. Pierre-Louis replied in the affirmative. Reverend Smart asked if all of the tickets had been dismissed. Mr. Pierre-Louis stated that he believed that all of the tickets had been dismissed. Chairman Allen asked OPS Commander Ron Matos if he knew whether all of the tickets had been dismissed. Commander Matos stated that he did not think that all of the tickets had been dismissed, but he would have to check the report. Reverend Smart asked if the complainant had been following through on the complaint. Commander Matos stated that she had been following through. Reverend Smart stated that the only issues he had with the complaint were the two concerning the parking tickets and the licenses, and if there is an agreement that it was a training issue, then he was alright with that. Reverend Smart further stated that he did not know if someone is sitting in their car during winter, listening to the radio, waiting until the heat kicks in and the defroster starts working, that if he does not have his seatbelt on, the law states that he can be ticketed. Chairman Allen stated that it was the opinion of the City of Albany, if someone is double parked in a lane of traffic with the keys in the ignition. Chairman Allen stated that the car was on a public roadway in a lane of traffic. Reverend Smart added that the engine was running. Chairman Allen asked if the engine was actually running. Mr. Pierre-Louis stated that the facts were that the engine was not running, that was the issue and the opinion from the District Attorney related to DWIs. The District Attorney did not directly set forth an opinion as to whether or not someone could be ticketed for double parking, but she stretched the analogy to say that in DWI cases, if someone is in the vehicle and the vehicle is not running or engaged,

there is case law where people have still been found to be in violation of DWI statutes. Chairman Allen stated this was correct, that someone could stumble out of a bar, go to their car and fall asleep and still get a DWI.

Chairman Allen stated that he would like to go back to the original question as to whether this complainant racially profiled. Andrew Phelan asked if the complainant was present. It was noted that the complainant was not present. Chairman Allen stated that he would propose that the Board write a letter asking for further clarification about the City of Albany's policy of getting a ticket if you are waiting for your car to warm up, or the Board can allow those types of matters to be referred to traffic court. Reverend Smart stated that he would like to hear it. Board Counsel William Kelly stated that as an attorney and former prosecutor, and also from working on the defense side, if a person is double parked and in the car, it shows intent to operate the vehicle and that is enough to show that you are intending to drive. It can get you convicted of any type of motor vehicle infraction. Mr. Kelly further stated that at least the facts are leaning towards that analysis under those circumstances. The reason why they draw the analogy to DWI is because it is an all too common occurrence for there to be a factual dispute as to whether or not the person intended to operate the vehicle. Mr. Kelly stated that certain questions are considered, such as whether the keys were in the car, was the engine on, was the engine off, was the person sitting in the car, was the person outside of the car, and under those factual circumstances, if someone got ticketed for a seatbelt and they want to say that they were not operating the vehicle, he would be very confident going into court if the person double-parked their car, with the keys in the ignition or on the seat. Reverend Smart asked Mr. Kelly if he was sitting in his car, warming up his car and has the heater going and the defrost on and is parked against the curb, would an officer approach his car. Mr. Kelly stated that he did not know of a reason why officers would approach the car unless they can have an articulated reason to do so. Reverend Smart asked what would happen if the officers did approach the car without an articulated reason for doing so and would they be able to give him a ticket. Mr. Kelly stated that was different and Reverend Smart was changing the facts. Mr. Kelly stated that if Reverend Smart was in his car alongside the curb and was just sitting there warming it up then he would not be manifesting intent to operate it without pulling away from the curb. Mr. Kelly stated that if Reverend Smart wanted him to give him a blanket get out of jail free card for that particular circumstance, he was not going to get it from him. Reverend Smart stated he understood that. Reverend Smart stated that he did not think the Board needed to send it back to the OPS again. He further stated that perhaps justice had been served. Chairman Allen stated that he would like to thank the detective and the OPS for following up, and there were quite a bit of notes just on the follow-up that they did.

Chairman Jason Allen moved to concur with OPS' findings, as well as the responses that they wrote to the Board's letter. Marilyn Hammond seconded the motion. The motion carried unanimously.

A. *New Complaints*

1. New Complaints Received since June 24, 2010 Meeting

Chairman Jason Allen reported that twenty-one (21) new complaints were received by the Board since the June 24, 2010 meeting. Andrew Phelan Jr. moved to waive the reading of the new complaints due to the amount of cases received. Chairman Jason Allen seconded the motion. The motion carried unanimously.

2. New Complaints for Review

CPRB No. 28-05/OPS No. C05-478 (Presented by Chairman Jason Allen)

Chairman Jason Allen summarized the complaint. He stated that he reviewed the confidential report in the case file. The case was delayed from the spring due to a former Board member who had questions while preparing for the case. Chairman Allen stated that the case had never actually made it to the Board, but Jean Gannon had some questions, and the OPS did some follow-up based on the questions.

Chairman Allen reported that he reviewed an Intra-Departmental Correspondence (IDC) dated May 21, 2010 from a booking clerk; an IDC dated May 26, 2010 from a clerk assigned to South Station, Central Booking A-Line where both of the IDC's stated there was no recollection due to the passage of time; IDC dated October 7, 2005 from a witness who saw the complainant fleeing with a knife; IDC dated June 16, 2005 where the complainant had no recollection of being present; IDC dated June 16, 2005 from an officer who got there after the tackle and saw that the complainant was intoxicated, and does not recall any bleeding; two transcripts of interviews where the officers did not recall the incident from 2005; and two witness statements, not officers, who saw no signs of excessive force.

Chairman Allen reported that the incident occurred on August 31, 2005, on Lark Street. The complainant alleged that unknown officers tackled him to the ground and while he was on the ground, this unknown officer began grinding his face into the ground and stated, "This is for Kelly." The complainant alleged in his complaint that his handcuffs were too tight, and these unknown officers continued to beat him while he was on the ground. The complainant alleged that when the officers picked him up off the ground they injured his shoulder. It was further alleged that while in the booking room the complainant was not treated properly, told to shut up, and had a wet paper towel thrown at him. Chairman Allen summarized the OPS finding as to the use of force allegation. The OPS recommended that the allegation be closed as **unfounded**, where the review shows that the act or acts complained did not occur. The complaint alleged he was assaulted by officers. Based on the OPS investigation, a witness stated that the complainant received his injuries when the complainant attempted to hit the witness with a baseball bat. The witness also stated that his friend, who was acting in self-defense of the witness, punched the complainant pretty hard almost knocking him out. The complainant fell to the ground and was on the ground for sometime while the fight ensued prior to police arrival. The witness stated that he observed the police officers place a very belligerent complainant into custody, and he never saw any police officer hit the complainant in any way. The bar manager stated that she observed a fight outside the

bar and went outside to call 911 from her cell phone. She observed the complainant fighting with other people. A short time later when the police showed up, the manager observed the police arresting the complainant and stated that she did not see the police hit him. Chairman Allen further reported that as to the conduct standards allegation, the OPS recommended the complaint be closed as **not sustained**, where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that while in the booking room he was not treated properly, told to shut up, and had a wet paper towel thrown at him. Based on the OPS investigation, there was no video from the time of the incident, and the personnel assigned to booking on the night of the incident did not recall any specific events having occurred.

Chairman Allen asked if the monitor was present. It was noted that Monitor Theresa Balfe was present. Chairman Allen asked if Ms. Balfe had anything to add. Ms. Balfe stated she had nothing else to add and that she was in agreement with OPS.

Chairman Jason Allen moved to concur with the OPS finding of **unfounded** with regard to the use of force allegation. Akosua Yeboah seconded the motion. The motion carried unanimously.

Chairman Jason Allen moved to concur with the OPS finding **not sustained** with regard to the violation of conduct standards allegation. Andrew Phelan Jr. seconded the motion. The motion carried unanimously.

CPRB No. 12-09/OPS No. CC2009-024 (Presented by Reverend Edward Smart)

Reverend Edward Smart summarized the complaint. The complainant alleged that she was the target of an unauthorized search of her vehicle by an officer "because he just wanted a drug bust so bad." The complainant felt the officer was harassing her passenger. While conducting a search of the complainant's vehicle, the officer was allegedly rude and smacked her hands and told her to stop or he was going to arrest her. The complainant stated she attempted to walk away from her vehicle and go to a friend's house, at which time an officer ran up to her and grabbed her by her right upper arm with lots of force.

Reverend Smart stated that he reviewed the following documents: Citizen Complaint Report dated February 28, 2008; Confidential Report dated May 3, 2009; IDC report dated May 18, 2009; Citizens Complaint Form dated March 19, 2009; Certified mail receipt dated January 1, 2010; IDC dated January 6, 2010; IDC dated January 14, 2010; Field Investigation Report dated February 14, 2010; Mug Shots dated March 24, 2009; Call Log dated February 14, 2009; Remarks Time Log and Arrest Records dated February 19, 2009 and April 20, 2008; and three (3) IDC reports dated January 6, 2010. Reverend Smart asked if the complainant was present. It was noted that the complainant was not present.

Reverend Smart summarized the OPS finding on the allegation of call handling was **exonerated**, where the acts which provide the basis for the complaint occurred, but the

review shows that such acts were proper. The complainant alleged that she and her passenger were harassed by officers of the Albany Police Department. The record states, and officers agree, that the complainant was observed traveling at a high rate of speed at 1:15 a.m., and failed to signal left onto Partridge Street. The officer lost sight of the vehicle, but found the vehicle blocking the intersection of Benson St. and Partridge St., with the engine running and the headlights off. After exiting his car, the police officer approached the vehicle and discovered the passenger slumped down in the passenger seat of the vehicle. The officer asked the slumped down passenger to identify himself, and the person was evasive, and gave a false identification. The officer asked to search the car, and the passenger verbally consented. The officers discovered the real identity of the passenger, and a custodial arrest ensued. A white chalky substance was in plain sight, and later was discovered not to be an illegal drug. The officers believed that the search of the vehicle was justified and the evidence of a crime might have been presented. The actions of the officers were reasonable and lawful in observing the various traffic violations. The passenger gave false information which constituted a false impersonation. Reverend Smart reported that the OPS finding was *exonerated*.

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

Chairman Allen asked if there were any questions or comments regarding the case. It was noted that there were no questions. Chairman Allen asked if a monitor had been assigned to the case. Reverend Smart replied that a monitor had not been assigned. Reverend Smart summarized the OPS finding on the use of force allegation as *not sustained*, where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint. Reverend Smart reported that based on the OPS investigation, consent was given to search the vehicle, and the complainant was not present when consent was authorized, but placed herself in the manner of the search. The complainant was asked not to place herself in that manner. The officers stated that the complainant's hand was pushed away, and there appeared to be no bruises and no need for medical attention. The actions of the officers were reasonable, and the complainant placed herself in the encounter. The complainant was placed at a safe distance and returned to involve herself. Reverend Smart stated that he concurred with the OPS' finding of *not sustained*.

Reverend Smart summarized the OPS finding on the conduct standards allegation as *not sustained*, where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that the officers were questioning her passenger about his identity and told her to mind her damn business. Reverend Smart reported that based on the OPS investigation, the officer stated that none of them stated that she should mind her own business. Reverend Smart stated that the actions of the officers had been proven to be elevated to the conduct standards as stated by the complainant, and he agreed with the OPS' finding of *not sustained*.

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

Reverend Edward Smart moved to concur with the OPS finding of *not sustained* with regard to the use of force allegation. Andrew Phelan Jr. seconded the motion. The motion carried unanimously.

Reverend Edward Smart moved to concur with the OPS finding of *not sustained* with regard to the allegation of violation of conduct standards. Chairman Jason Allen seconded the motion. The motion carried unanimously.

CPRB No. 18-09/OPS No. CC2009-028 (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint. The complainant alleged that her son, who is a student at Albany High School, went to Hackett Middle School to pick up her younger son. The complainant stated that an officer and school officials asked the older son his name and the purpose for being at the school. He answered and attempted to walk away and was tackled in the mud. The officer attempted to pick her son up by his lower legs, and in order to maintain his balance, her son grabbed the officer's legs. The son was handcuffed and escorted into the school building, whereupon allegedly his head was repeatedly banged into the door frame, causing a large contusion. When the complainant arrived to pick up her son, the officer allegedly provided no explanation.

Marilyn Hammond stated that based on the OPS investigation, the complainant's son had his pants down around his legs and he tripped backwards and fell when the officer went to grab him. She reported that she reviewed the following documents: Confidential Report from the witness on April 8, 2009; correspondence regarding the meeting scheduled for April 21, 2009, in which there was a no show; Subject Resistance Report dated April 27, 2009; correspondence regarding the meeting scheduled for May 5, 2009 which was also canceled; certified letter sent to the complainant to call OPS dated May 3, 2009 and there was no call back; the detective met with the first monitor from the school who was a witness on May 11, 2009; and the detective met with the second monitor who was the one who told the young man that he did not belong on school property on May 22, 2009.

Marilyn Hammond reported that the young man is about 5 feet, 1 inch tall and weighs about 120 pounds. Based on the OPS investigation, the officer stated that the school security contacted the officer about juveniles on the ground refusing to leave. The officer approached the young group of juveniles, and one of them stated "I don't know you" and began to back up. As the juvenile was backing up he fell to the ground and hit the back of his head. As the officer went to help the juvenile off the ground, he grabbed the officer's legs in an attempt to flip him over. The officer grabbed the juvenile around his waist and flipped him over to his stomach. The officer gave several commands for him to put his hands behind his back but he did not comply. Pressure was applied to the juvenile's right arm, and he was again commanded to place his hands behind his back, at

which time he did and the pressure was released. The officer handcuffed him, and while attempting to enter the school, he continued to struggle and resist. The officer placed the young man in the corner and supported him with his arm while he opened the outside door, and the same process was used for the inside door. Once inside, the officer notified the young man's mother, and she responded to the school. When the mother arrived, the young man stated that he had a bump on the back of his head. The young man took off his head rag to show her and there appeared to be a small bump. The young man's mother was asked if she wanted EMS to respond, but she refused and stated she would take her son to the hospital herself. The young man was then released to his mother.

Marilyn Hammond stated she had just read a portion of the monitor's report. She further stated that she also read that one of the officers reported to the OPS for an interview with the school resource officer, they said there were close to 300 kids outside and when the officer approached the subject and the subject asked "Who the f**k are you?" and started moving backwards, the subject fell because his pants were around his legs.

Marilyn Hammond reported that the OPS's findings for use of force were *exonerated*, where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper. The complainant alleged that force was used upon her son. The New York State Penal Law Article 35.30 Justification states that the use of physical force in making an arrest or preventing an escape allows an officer in the course of effecting or attempting to effect an arrest, or preventing or attempting to prevent the escape from custody, of a person whom he reasonably believes to have committed an offense, may use physical force when and to the extent he reasonably believes such to be necessary to effect the arrest, or to prevent the escape from custody, or to defend himself or a third person from what he reasonably believed to be the use or imminent use of physical force. Ms. Hammond reported that the complainant's son was trespassing on school property. Police officers are assigned to city schools to assist school personnel with matters involving issues such as trespass. School personnel notified the officer of the matter, and when he went to address the matter with the complainant's son, the son became verbally abusive towards the officer, attempted to flee when the officer was conducting an investigation into the purpose for being at the school, and further grabbed the officer by the legs in an attempt to take the officer off balance. This information was provided not only by statements made by the complainant's son to the initial Sergeant taking the complaint, but substantiated by school personnel who witnessed the incident, as well as documented immediately following the incident as required per Standard Operating Procedure (SOP) by the officer involved for his use of force upon a subject. As indicated in the Subject Resistance Report (SRR), the complainant's son had a bump on the back of his head, which would have been consistent with him striking his head on the ground when he fell. There is no information to substantiate his head was banged into the door frame as indicated by the complainant. The school personnel were on the scene and assisted the officer in bringing the complainant's son into the school so his parents could be notified of the matter. They did not indicate that such action occurred. Marilyn Hammond asked if the complainant was present. It was noted that the complainant was not present. Ms. Hammond asked if the monitor was present. It was noted that monitor George Kleinmeier was present. Marilyn Hammond asked if the

monitor had anything to add. Mr. Kleinmeier responded that he did not have anything to add.

Marilyn Hammond stated that she agreed with the OPS finding of *exonerated*. She further stated she has seen situations like this at Hackett Middle School, and it can get out of hand very quickly. Ms. Hammond further stated that when the officer stated that 300 kids had surrounded them, it actually does happen. She has experienced it with her own son. It is a mob-like situation.

Marilyn Hammond asked if anyone had any questions. It was noted there were no questions. Chairman Allen thanked Ms. Hammond for her review and also thanked the monitor.

Marilyn Hammond moved to concur with the OPS finding of *exonerated* with regard to the allegation of use of force. Chairman Jason Allen seconded the motion. The motion carried unanimously.

CPRB No. 37-09/OPS No. CC2009-087 (Presented by Andrew Phelan Jr.)

Andrew Phelan Jr. summarized the complaint. Mr. Phelan reported that he reviewed the complaint at the OPS. The complainant is alleging call handling, and the incident occurred on August 20, 2009. The complainant alleged that officers responded to a large fight where she and her children were assaulted. She further alleged that an officer asked if she wanted to press charges, to which she replied yes. The officer allegedly shook hands with the suspect and allowed him to go upstairs telling the complainant that there were no charges to be filed. Mr. Phelan summarized the OPS finding for the call handling allegation as *no finding*, where the complainant failed to produce information to further the investigation and is unavailable to clarify the complaint. Mr. Phelan reported that based on the OPS investigation, the officers stated that they conducted interviews with several of the subjects involved as well as witnesses and determined that the fight consisted of mutual combatants and that the fight between the combatants resulted in only very minor injury to the original aggressor, the complainant's son. The Albany Fire Department (AFD) Patient Care Report also shows that the complainant refused any further medical attention for herself or her children. An officer attempted to break up a fight between the complainant's son and another teenager, at which time the son struck the middle aged man with a chair.

Andrew Phelan asked if the complainant was present. It was noted the complainant was not present.

Andrew Phelan asked if anyone had any questions. Akosua Yeboah asked if a monitor had been assigned. Mr. Phelan responded that a monitor had not been assigned.

Andrew Phelan Jr. moved to concur with the OPS finding of *no finding* with regard to the allegation of call handling. Reverend Edward Smart seconded the motion. The motion carried unanimously.

Reverend Edward Smart summarized the complaint. The complainant alleged that he was assaulted at a pizza shop, and the police responded. He further alleged that an officer said "F**k off, and don't get any blood on my car." The complainant claimed that the police did not arrest the persons responsible for the assault, and when he informed the officer that he wished to press charges the officer responded the only person who would be charged would be the complainant.

Reverend Smart reported that he reviewed the following documents: IDC's dated January 5-6, 2010; IDC's dated December 21, 24, 21, 24, 21, 22 and 21, 2009; Incident Report dated November 1, 2009; Call log dated October 31, 2009; and a Confidential Report dated June 11, 2010.

Reverend Smart reported that this was a fight at a pizza shop to which the police responded. He stated that the first allegation was call handling. Reverend Smart reported that the complainant alleged that the officers should have made an arrest and should not have let the suspect leave the scene. The incident was investigated properly, the incident was documented, and both parties refused to prosecute. Based on the OPS investigation, the officers on the scene were never informed of a second assault by a bouncer outside the pizzeria, or that the complainant was struck by a weapon inside the pizzeria. A follow-up report was taken in reference to the incident, and the complainant declined prosecution. Reverend Smart reported the OPS finding was that the actions of the officers were proper, and the complainant refused to prosecute the alleged assailant. Reverend Smart stated that he concurred with the OPS finding of *exonerated*.

Reverend Smart asked if the Board had any questions. It was noted the Board did not have any questions.

Reverend Smart asked if the complainant was present. It was noted the complainant was not present.

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

Reverend Smart reported that the second allegation was for a violation of conduct standards. The complainant alleged that an officer told him to "F**k off, and don't get any blood on my car." Reverend Smart stated that based on the OPS investigation, the complainant's and the officer's recollection of what was said differed from each other, and there was no evidence to prove or disprove the allegation. The OPS found that there was not sufficient proof to prove or disprove the allegation. Reverend Smart stated that, after receiving various documents of the incident, the allegation cannot be sustained and he agrees with the finding of OPS as *not sustained*.

Reverend Edward Smart moved to concur with the OPS finding of *exonerated* with regard to the second allegation of a violation of conduct standards. Marilyn Hammond seconded the motion. The motion carried unanimously.

Reverend Smart reported that the third allegation was for a violation of conduct standards. The complainant alleged that when he tried to tell an officer that he wanted to press charges, an officer told him "If anyone is getting charges pressed against them, it's going to be you." Reverend Smart stated that based on the OPS investigation, the supervisor on the scene made the proper determination that enough probable cause existed to make a lawful arrest of the complainant. However, based on the fact that prosecution was denied by all parties, an arrest was not made. The OPS finding show that the acts of the officers were proper. Reverend Smart stated that he agreed with the OPS finding as *exonerated*. The complainant refused to prosecute the alleged assailant.

Reverend Edward Smart moved to concur with the OPS finding of *exonerated* for the third allegation of a violation of conduct standards. Marilyn Hammond seconded the motion. The motion carried unanimously.

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

The following Board members were appointed to the Committee on Complaint Review for November 2010: Chairman Jason Allen, Marilyn Hammond, Andrew Phelan Jr., Reverend Edward Smart, and Akosua Yeboah.

C. *Approval of the 2009 Second Quarterly Report, 2009 Third Quarterly Report, 2009 Fourth Quarterly Report, 2010 First Quarterly Report, 2010 Second Quarterly Report and the 9th Annual Report.*

The 2009 Second Quarterly Report was reviewed. Andrew Phelan Jr. moved to approve the 2009 Second Quarterly Report. Chairman Jason Allen seconded the motion. The motion carried unanimously.

The 2009 Third Quarterly Report was reviewed. Chairman Jason Allen moved to approve the 2009 Third Quarterly Report. Andrew Phelan Jr. seconded the motion. The motion carried unanimously.

The 2009 Fourth Quarterly Report was reviewed. Chairman Jason Allen moved to approve the 2009 Fourth Quarterly Report. Marilyn Hammond seconded the motion. The motion carried unanimously.

Chairman Jason Allen moved to table approval of the 2010 First Quarterly Report, 2010 Second Quarterly Report, and the 9th Annual Report until the next meeting. Akosua Yeboah seconded the motion. The motion carried unanimously.

D. *Committee/Task Force Reports*

Chairman Jason Allen stated that since the Board was meeting in two days he would like to table the committee/task force reports until that meeting. Reverend Edward Smart moved to table the committee/task force reports until the next Board meeting. Akosua Yeboah seconded the motion. The motion carried unanimously.

E. *Report from the Government Law Center*

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

Complaint Inventory as of Date of Meeting

It was reported that as of today, there are currently eighty-six (86) active complaints before the Board for review. Of those eighty-six (86) active complaints, six (6) were reviewed at tonight's meeting, which leaves the Board with eighty (80) active complaints. Out of those eighty (80) active complaints, twenty-nine (29) cases are ready to go on the next meeting agenda for review.

It was further reported that ten (10) of the complaints ready for review were on the next meeting's agenda. Ms. Moseley stated that on the database scorecard she divided up the complaints for November and December. Accordingly, in the month of November there should be another ten (10) cases on that agenda, and in December there would be nine (9) cases for review. Chairman Jason Allen asked how to tell which complaints were ready for review from the database scorecard. Ms. Moseley replied that the list goes by the date listed and the date reviewed. Chairman Allen asked if the database scorecard stated December 9, 2010, is that when it has been rescheduled. Ms. Moseley replied that it is rescheduled for that date. Chairman Allen asked if there were ten (10) cases for review for the December 9, 2010 meeting. Ms. Moseley replied that was correct and that the number may increase if OPS sends more reports.

It was further reported that three hundred and eighty-six (386) complaints have been closed. The total number of complaints suspended from review is eleven (11). The total number of complaints filed to date is four hundred and seventy-seven (477).

It was reported that since the Board's last meeting, the GLC received thirty-two (32) grievance forms. The total number of forms received to date is two hundred eight (208). In response to the GLC's outreach to all individuals, the GLC received sixty (60) CPRB complaint forms.

CPRB Monitors

Ms. Moseley told the Board members that in their meeting packets was an email from one of the new monitors. Ms. Moseley stated that she thought the monitor thinks that there might be a potential conflict. Chairman Allen explained that Ms. Moseley had sent

the email to him a while back, and he asked her to present it at the meeting. He further stated that the new monitor, who was at a family reunion, met a distant relative, and the relative was related to a member of OPS. Chairman Allen clarified that one of the OPS detectives is the brother of someone who is married to someone who is one of the monitor's wife's brothers. Chairman Allen read the email, in which the monitor stated that he had no previous recollection of meeting the person, although it is possible but not memorable. Chairman Allen further read that the monitor did not envision a conflict arising with such a faint relationship, but he did want to advise the Board of its existence. Chairman Allen stated that he wanted to make sure the email was visible to the Board and get opinions regarding whether there is a conflict of interest or not. Andrew Phelan stated that he did not have a problem with it. Chairman Allen clarified that it was one of the wife's brothers, who is married to a woman, and an OPS detective is the brother of the brother. Reverend Smart asked if the officer was with the Albany Police Department. Chairman Allen replied that the person was an OPS detective. Chairman Allen stated that the monitor had made an explicit statement that he had never met the guy, cannot remember meeting him, and he is his wife's brother's brother. Chairman Allen asked whether the Board should vote on whether there is a conflict of interest or not. Board Counsel William Kelly asked who decided on the appointments of monitors. Chairman Allen stated that this person has already been appointed by the Common Council. Mr. Kelly stated that the Board should probably bring it to the Common Council's attention. Mr. Kelly further stated that the Board could vote on it because it is not foreseeable down the line, but it should be disclosed up the line. Chairman Allen stated that that was good advice. Reverend Smart stated that the monitor should not participate in any kind of action involving his in-law. Mr. Kelly stated that was something that the Board would have to take into consideration. Mr. Kelly further stated that they may want to reveal it or appoint someone else or they may decide that there is such a degree of separation that the person can say that they can be fair and reasonable. Mr. Kelly stated that the monitor should know who the OPS detective assigned to the case is anyway. Reverend Smart stated that was correct. Chairman Allen stated that he thought that was fair. Reverend Smart stated that there was no problem that he could see. Reverend Smart moved to forward the Board's recommendation. Chairman Allen stated that it was the Board's recommendation that the monitor not follow cases that the particular detective is assigned to. Reverend Smart stated that the OPS should be able to make sure of it.

Chairman Allen moved to recommend to the Common Council that the monitor not follow cases to which the related OPS detective is assigned. Marilyn Hammond seconded the motion. The motion carried unanimously.

Chairman Allen asked Ms. Moseley if there was anything else on the agenda related to the monitors. Ms. Moseley responded that several months ago the monitors requested a copy of the SOP. Mr. Kelly stated that he had the copies and they were in the redaction phase. He further stated there was a new SOP and there was a lot of redaction needed before copies could be given to the monitors. Marilyn Hammond asked if there was a new one. Chairman Allen stated that these were SOPs for the monitors. Mr. Kelly stated that he had the new one, and the SOP copies for the Board members as well, so there has to be a comparison of any previously redacted material, plus additional new material may

need to be redacted. Mr. Kelly stated that the Board members would receive new copies. Chairman Allen asked what was redacted. Commander Matos stated that there was some material that would not be revealed to anyone. Chairman Allen stated that nothing was redacted in the SOP copies that the Board currently has. Commander Matos stated that he understood that some material had been redacted. Chairman Allen stated that if material had been redacted, it was not visible to him, and there were no black marks. Mr. Kelly stated that the public copy was redacted. Chairman Allen stated the public copy had been redacted, but the Board members do not have public copies. Mr. Kelly stated that was correct and the Board members had received clean copies. Commander Matos stated that his understanding was that the copies for the monitors were going to be redacted. Chairman Allen stated that he would propose that the monitors see the same confidential files and that they are accessible. Mr. Kelly stated that he understood the monitors were going to be receiving a redacted copy of the SOP, and the department had a new SOP that they were going through. Chairman Allen stated that since the monitors had been appointed by the Common Council, they should see the same material as the Board, and as long as they turn in the copy when they stop being monitors, he did not see an issue. Mr. Kelly stated that they were just going over the differences between what he knows and what the Board knows. Chairman Allen stated it had never been done before and everyone was just trying to figure it out. Chairman Allen asked if the SOPs were coming out soon unless Mr. Kelly gets a different opinion on redacting.

NACOLE Conference

It was reported that in September, Marilyn Hammond, Akosua Yeboah, OPS Detective Montalvo and Ms. Moseley attended the NACOLE Conference in Seattle, Washington. There was a lot of information at the conference, which include a daily onsite "shoot/don't shoot simulator". Chairman Allen asked how they made out. Marilyn Hammond and Akosua Yeboah both stated that they shot the guy. Ms. Moseley stated that she sat in on a community outreach session where one of the presenters mentioned that they post posters on city buses, as well as trains, in Miami. She further stated that a copy of the poster was included in the member packets. Ms. Moseley stated that if the Board would like to do something similar in Albany to let her know. Chairman Allen stated that it was a good idea, and whenever he rode the buses, there were a lot of empty spaces on the boards. Ms. Moseley stated that she did not know if that was something the outreach committee wanted to look at. Akosua Yeboah asked about costs, but stated that there might not be any costs since the buses were city owned. Chairman Allen and Reverend Smart both stated that the buses were not city owned. Ms. Moseley stated the Board would have to design the poster. Akosua Yeboah stated that the Board would have to look at the costs and make a decision. Reverend Smart stated that it does not mean the Board cannot post them at various places in the community and city. Chairman Allen stated that he would like to look into the bus option because it is an advertisement and something permanent. Reverend Smart asked why they just could not make their own poster, color print it, and get started on it. Reverend Smart stated that the Board could reach out to the various places where they have the plain forms. Akosua Yeboah asked if the Board would have to consider the input from the Common Council. Reverend Smart stated he did not see why. Chairman Allen stated that the Board can tell the Common

Council of their intentions the next time they see them and he believes the only issue that would arise is if the posters consumed resources. Reverend Smart stated that the Common Council might be concerned about cost. Chairman Allen asked how the Board received brochures. Reverend Smart stated that he would like to make a motion to move the issue to the Community Outreach Committee. Chairman Allen agreed. Reverend Smart further stated the Community Outreach Committee could have more in depth discussions about the posters and report back to the Board at their meeting in January.

Board Vacancies

It was reported that the Board has three (3) current vacancies which need to be filled as soon as possible. There is still a vacancy left by Daniel Fitzgerald last year. In addition, Board member Jean Gannon resigned over the summer, and Ronald Flagg's term is coming to an end and he is relocating to Georgia. As a result, the GLC sent letters out to the Mayor and the Common Council in July, with a follow up letter earlier this month requesting that the vacancies be filled as soon as possible.

Marilyn Hammond stated that she emailed Bob Van Amburgh because someone had approached her and wanted to be on the Board. This person had given them her resume last year and it was lost, but this person still has an interest. She further stated that she did not understand why it was taking so long, so she had to send an email to Bob Van Amburgh to follow through on the paperwork that was sent to him, so hopefully the Board will get one more person.

Akosua Yeboah stated that at virtually all of the neighborhood associations where the Board has been doing the community outreach, questions have come up as to how one would join the Board. She further stated that she would suggest sending a letter to the Board leaders to present that to the neighborhood associations that come to the outreach meetings.

Upcoming Meetings

It was reported that the next Board meeting is scheduled for October 28, 2010 at the GWU the Center. It was also reported that the mediation meeting was canceled. Reverend Smart asked why they could not proceed in negotiations with the Police Department with whatever representatives they bring to the table. Why can't they continue to discuss these issues so they might move forward on the mediation process? He further asked that there might be a time before a decision is made as to who will represent the police department. This might cost a policeman a mark on his record, may mean the difference between a glorious career for a police officer, and he believes the mindset of the Board is that this is a process that helps the police officer. We have basically agreed that if the two parties cannot come together, everyone walks away unscathed, there is no problem, there is no other recourse and nothing is done. Chairman Allen stated that when the Union canceled the meeting, he wants to follow through with the Chief and get his view on getting the right people, rather than waiting for the current issue to play itself out. Reverend Smart thanked Chairman Allen.

It was further reported that at the last meeting, it was mentioned that the GLC has been trying to schedule a meeting with the Deputy Mayor, but he has been out of reach. Reverend Smart stated that he thought that the Deputy Mayor's father had been sick. Chairman Allen asked Mr. Kelly if he would be able to reach the Deputy Mayor. Mr. Kelly asked if the Board was just looking to get a meeting with the Deputy Mayor. Chairman Allen stated that the Board tries to meet with the Mayor twice a year and usually they meet with the Mayor briefly and the Deputy Chief continues the meeting. Ms. Moseley stated that two meetings were necessary, one with the Board, and one including Dean Salkin to discuss the Board's 10th year anniversary.

Chairman Allen stated that there was also a letter from the Center for Law and Justice. Chairman Allen stated that the Center for Law and Justice, as a result of budget cuts, is terminating its client based services on August 31, 2010, after 25 years and will be adjusting their focus to other areas. The letter stated that the Center for Law and Justice values and appreciates the Board's work. Chairman Allen stated the letter was in the meeting packets.

G. *Report from the Office of Professional Standards*

OPS Commander Ron Matos stated that shortly after Chief Krokoff was confirmed he released a plan about creating a Neighborhood Engagement Unit (NEU), which he would like to briefly discuss. They are in the early planning stages and have picked some supervisors who are going to work within the framework of the NEU. He further stated that he spoke with them earlier in the day about changes in philosophies and how they deploy their resources and what they are looking to do in the near future, which will hopefully impact how the community interacts with police officers. Commander Matos stated that he hoped it would also impact the type of grievances being seen at the OPS. He further stated that they plan on setting geographical areas within the city and deploying officers based on population statistics and crime statistics. Commander Matos stated they also have a crime analyst assigned to the unit, Marie Riley, who will be working with them and helping deploy their resources in a proper manner. He further stated that he spoke with them regarding the training that they are looking to offer their officers down the line. Commander Matos stated the training modules would include team building, community and problem oriented policing, culture awareness, bicycle operations, juvenile interactions, PAL concepts, trespass affidavit program, teaching on the general city ordinances, and tactical communications that have been used in the past, probably a refresher course on the more intensive communications module to help them interact in a more professional manner than officers may interact with the population. Commander Matos stated they are getting to a point where they are getting ready to look for staffing to fill those spots, create the beats, and get the officers out there. Commander Matos stated that he just wanted to make everyone aware of the departmental philosophies as they move forward and what the Chief is going to do will hopefully impact the way the community perceives the police department.

H. *Report from the Chair*

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

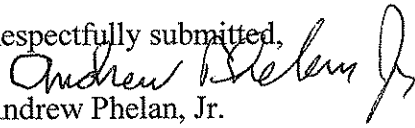
V. **Public Comment**

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

VI. **Adjournment**

Chairman Jason Allen moved to adjourn the meeting. Reverend Edward Smart seconded the motion. The motion carried unanimously. The meeting adjourned at 7:25 p.m.

Respectfully submitted,


Andrew Phelan, Jr.

Secretary