

**City of Albany  
Citizens' Police Review Board  
GWU the Center  
274 Washington Avenue- Teen Center Conference Room  
November 19, 2010  
6:00 p.m. – 8:00 p.m.**

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

**Absent:** Ronald Flagg and Akosua Yeboah.

**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. Reverend Edward Smart moved to approve the agenda. Marilyn Hammond seconded the motion. The motion carried unanimously.

**III. New Business**

**A. *New Complaints***

**1. New Complaints Received since the October 28, 2010 Meeting**

Chairman Jason Allen reported that three (3) new complaints were received by the Board since its October 28, 2010 meeting. Reverend Edward Smart moved to waive the reading of the new complaints. Chairman Jason Allen seconded the motion. The motion carried unanimously.

**2. New Complaints for Review**

**CPRB No. 14-09/OPS No. CC2009-022 (Presented by Andrew Phelan Jr.)**

Andrew Phelan Jr. summarized the complaint. Mr. Phelan reported that on November 10, 15, and 16, 2010 he went to the OPS to review the case. Mr. Phelan stated that the incident occurred on March 23, 2009 at 1:57 p.m. He reported that the complaint included one (1) count of use of force, five (5) counts of conduct standards and one (1) count of call handling. Mr. Phelan further reported that two (2) calls were taken at the 911 call center which came in to the Albany Police on March 23, 2009, indicating there were several black females and a black male arguing with each other in the area of Clinton Avenue and North Lake Avenue. A second call indicated that two females just

jumped another female and the callers were waiting for police. One (1) call indicated that the fight involved a pregnant female with a possible head injury and several units responded to the location on the Call Ticket. Officers requested EMS for the pregnant female with the possible head injury, and requested additional units. Mr. Phelan reported that the complainant alleged that officers approached her sister and told her to place her hands behind her back. The sister had been involved in an altercation with a female earlier in the day. Officers told the sister to place her hands behind her back. The complainant stated that she put her left arm in front of her sister and asked the police why she had to place her hands behind her back. Allegedly an officer grabbed the complainant's arm, and she pulled her arm away from the officer. The complainant continued to ask why her sister had to place her hands behind her back and the officers did not answer. Allegedly an officer stated "you can place your f\*\*king hands behind your f\*\*king back too." The complainant further alleged that when she asked what the reason was for telling her to place her hands behind her back, she was told to just "turn the f\*\*k around" and place her hands behind her back." Mr. Phelan reported that a monitor was assigned to the case and he had read the monitor's report.

Mr. Phelan asked if the complainant was present. It was noted that the complainant was not present.

Mr. Phelan reported that the OPS recommended that the first use of force allegation be closed as *unfounded*, where the review showed that the act or acts complained of did not occur. The complainant alleged that she was pepper sprayed while she was already handcuffed. Mr. Phelan reported that based on the OPS investigation, correspondence and interviews of several responding officers, as well as department paperwork, the complainant had only one (1) handcuff secured when the pepper spray was deployed. She was still actively resisting arrest when the pepper spray was deployed and did not have both handcuffs secured.

Mr. Phelan reported that the OPS recommended that the first conduct standards allegation be closed as *sustained*, where the review disclosed sufficient facts to prove the allegation made in the complaint. The complainant alleged that an officer told her to place her "f\*\*king hands behind her back." Based on the OPS investigation, the officer admitted to telling the complainant to put her "f\*\*king hands behind her back," and said language used by the officer violates the Albany Police Department's Standard Operating Procedure (SOP).

Mr. Phelan reported that the OPS recommended that the second conduct standards allegation be closed as *not sustained*, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that an officer told her that he would "punch her in the f\*\*king face" if she spit on him one more time. Based on the OPS investigation, the officer admitted to telling the

complainant that if she spit in his face he would push her face towards the ground to avoid bodily fluid contact. None of the officers on the scene, including several supervisors, heard the alleged comment.

Mr. Phelan reported that the OPS recommended that the third conduct standards allegation be closed as ***not sustained***, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that an officer called her a “fat black bitch.” Based on the OPS investigation, none of the officers on the scene, including several supervisors, heard the alleged comment. None of the witnesses who supplied statements made mention of such comment being said. Evidence was obtained that there was yelling back and forth between the complainant and a group in the area that did not get along with the complainant.

Mr. Phelan reported that the OPS recommended that the fourth conduct standards allegation be closed as ***not sustained***, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that an officer told someone that the complainant could sit there and suffer. Based on the OPS investigation, none of the officers on the scene, including several supervisors, heard the alleged comment. None of the witnesses who supplied statements made mention of such comment being said. The complaint was decontaminated on the scene by family members by having her eyes flushed with water and wiped with a cloth.

Mr. Phelan reported that the OPS recommended that the fifth conduct standards allegation be closed as ***exonerated***, where the acts which provide the basis for the complaint occurred, but the review showed that such acts were proper. The complainant alleged that she was never read her rights or was offered a chance to tell her side of the story. Based on the OPS investigation, responding officers had the necessary probable cause to arrest the complainant. This was based on the victim’s verbal statements, willingness to press charges, as well as the victim’s visible physical injuries. The incident was also corroborated by witnesses. Officers did not read the complainant her rights due to the fact that officers did not conduct a custodial interview, nor did officers use or plan to use her statements against her.

Mr. Phelan reported that the OPS recommended that the call handling allegation be closed as ***unfounded***, where the review shows that the act or acts complained of did not occur. The complainant alleged that she was made to sit on the curb for over a half an hour. Based on the OPS investigation, radio recordings show that an officer arrived on the scene at 2:18 p.m. According to the officer, the complainant was still fighting with officers and not fully handcuffed. Officers were able to handcuff the complainant and escorted her to the curb. Radio recordings indicated that the complainant was transported to the South Station for processing at 2:36 p.m. by the patrol wagon. According to a supervisor on the scene, the complainant was transported from the scene in a patrol unit

to an area down the street, where she was then transferred to the patrol wagon. This was at the direction of the supervisor because it seemed to the supervisor that the complainant seemed to be agitating the situation. This practice is a matter of routine to de-escalate the situation. The evidence suggested that the complainant sat on the curb less than 18 minutes.

Mr. Phelan noted that one of the conduct standard allegations had been *sustained* by OPS.

Mr. Phelan asked if there were any questions from the Board. It was noted that the Board did not have any questions.

Mr. Phelan reported that he agreed with the OPS finding of *unfounded* for the use of force allegation that the officer pepper sprayed the complainant while she was in handcuffs.

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

Andrew Phelan Jr. moved to concur with the OPS finding of *sustained* with regard to the first allegation of conduct standards. Anthony Potenza seconded the motion. The motion carried unanimously.

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

Andrew Phelan Jr. moved to concur with the OPS finding of *not sustained* with regard to the third allegation of conduct standards. Marilyn Hammond seconded the motion. The motion carried unanimously.

Andrew Phelan Jr. moved to concur with the OPS finding of *not sustained* with regard to the fourth allegation of conduct standards. Marilyn Hammond seconded the motion. The motion carried unanimously.

Andrew Phelan Jr. moved to concur with the OPS finding of *exonerated* with regard to the fifth allegation of conduct standards. Chairman Jason Allen seconded the motion. The motion carried unanimously.

Andrew Phelan Jr. moved to concur with the OPS finding of *unfounded* with regard to the allegation of call handling. Marilyn Hammond seconded the motion. The motion carried unanimously.

**CPRB No. 56-09/OPS No. CC2009-115** (Presented by Andrew Phelan Jr.)

Andrew Phelan Jr. summarized the complaint. Mr. Phelan stated that on November 10, 15 and 16, 2010, he went to the OPS to review the case file. Mr. Phelan further stated that the incident occurred on November 15, 2009. Mr. Phelan reported that he reviewed an inter-departmental Correspondence (IDC) and a call ticket. Mr. Phelan noted that a monitor had been assigned to the complaint. He reported that the complainant alleged one (1) count of use of force and one (1) count of conduct standards. Mr. Phelan reported that the complainant alleged her son was stopped by police as he and two (2) friends were walking down the street. During the police encounter, an officer allegedly slapped the son in the face.

Mr. Phelan reported that the OPS recommended the use of force allegation be closed as ***not sustained***, where the review failed to disclose sufficient facts to prove or disprove the allegations made in the complaint. The complainant alleged that an officer smacked her son in the face. Based on the OPS investigation, the officers stated that the target officer grabbed the side of the son's face in order to check his mouth. The officer had reasonable cause to believe the son had some type of narcotic in his mouth based on the son's behavior and the officer's training and experience. The officer felt the need to retrieve what he believed to be some type of narcotic for the safety of the son, as well as the need to retrieve evidence. There was no video or audio available at the time of the stop. One witness was unable to be located, and the other had no recollection of the event, or even who the complainant's son was. The investigation did reveal the officer was in violation of SOP Article 21-1 for failing to submit a Subject Resistance Report.

Mr. Phelan reported that the OPS recommended that the conduct allegation be closed as ***not sustained***, where the review failed to disclose sufficient facts to prove or disprove the allegations made in the complaint. The complainant alleged that an officer called her son a "f\*\*king comedian." Based on the OPS investigation, the officer denied the allegation. There was no video or audio available at the time of the stop. One witness was unable to be located. The other witness had no recollection of the event or even who the complainant's son was.

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

Mr. Phelan noted that a monitor had been appointed to the complaint, and he had read the monitor's report. He stated the monitor's report had been thorough and told the monitor he did a good job.

Mr. Phelan asked if the Board had any questions. It was noted that the Board did not have any questions.

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

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

Reverend Edward Smart stated that before the Board moved on, he had a question about the cameras in police vehicles. Reverend Smart asked if the cameras were in all the police cars. Commander Matos stated the cameras were not in all cars. Chairman Allen asked which vehicles did not have cameras. Commander Matos stated that the reserve units, any vehicle that might have trouble with the mobile data terminals or those with computer problems do not have cameras. Reverend Smart asked if most of the cars presently had cameras. Commander Matos responded that the patrol units that turn out of the Center Station, South Station, and Traffic Safety are equipped with cameras. Reverend Smart asked what was left equipped without cameras. Commander Matos responded that when a car goes down it is replaced by a reserve unit and the reserve units do not have cameras. Reverend Smart asked if the vehicle used during this complaint incident was a reserve unit. Commander Matos responded that he did not have the answer to that. Anthony Potenza asked if it was still the plan to outfit all the vehicles with cameras eventually. Commander Matos stated that was correct. Reverend Smart stated that it would make it easier if there was a camera there and there was a recording. Commander Matos stated he could not dispute that.

**CPRB No. 57-09/OPS No. CC2009-093** (Presented by Anthony Potenza)

Anthony Potenza summarized the complaint. Mr. Potenza noted that a monitor had been appointed to the complaint. Mr. Potenza reported that the complainant alleged that he was at Jillian's with family members when officers pulled up and arrested his son. The complainant stated that he walked over to ask why his son was being arrested and allegedly the officer did not answer. The complainant alleged that three (3) officers grabbed him, pushed him down to be seated, and cuffed him with his hands behind his back. The complainant alleged that the cuffs were tight on his wrists, and that when he stood up to tell the officers it was hurting, the officers pushed him back down to be seated. The complainant alleged that he was punched in the nose and in the left side of his ribs. Allegedly an officer smacked away the son's cell phone when he was trying to take pictures as well as that of another witness.

Mr. Potenza stated that he reviewed the following documents: Citizen Complaint Form filed by the complainant; Civilian Complaint Reports of OPS; Monitor's Report; OPS Confidential Report; Subject Resistance Report, where the officer stated that the

complainant was aggressive and swinging arms at the police officer and refusing to comply with the police officer when directed; another Subject Resistance Report, regarding another subject, where there was a refusal to walk to an area where the complainant and others were being detained, the officer employed an arm bar technique to walk the subject to the area in question; copies of Article 195.05 of NYS Penal Code: Obstructing Government Administration; copy of Article 35.05 of NYS Penal Code: Justifiable Physical Force; copy of Article 35.3 of NYS Penal Code: Use of Physical Force to Effect an Arrest; copy of Article 35.27 of NYS Penal Code: Prohibiting Physical Force for Resisting Arrest; copy of Article 205.30 of NYS Penal Code: Definition of Resisting Arrest that Intentionally Prevents an Officer from Effecting an Arrest; copy of Article of NYS Penal Code:140.10 setting forth when and where an arrest without a warrant is authorized; copies of the pertinent sections of the SOP, regarding the use of force necessary to effect an arrest; a copy of the SOP regarding proper handcuff procedures; booking photos of the complainant; letters to the complainant and witnesses requesting interviews with the OPS; a copy of the sworn statement of a Jillian's employee regarding the conduct of the complainant and others; sworn statement from a second Jillian's employee regarding the conduct of the complainant and others, and the conduct of the police officers; a sworn statement from Jillian's head of security regarding the conduct of the complainant and others; a statement from a witness who refused to share the video and pictures of the incident and stated that the officers acted unprofessionally, excessively and unprovoked, but nevertheless, the investigating officer saw pictures to help aid in the investigation; email from Jillian's employee listing security personnel who were working on the night of the incident; IDC's from the officer describing the incident and actions; copy of the Call History Report; an Arrest Report; an Incident Report; copy of the statement by Jillian's employee who saw cocaine use by the subject; screening sheets; Property Reports; and reports of positive tests for cocaine.

Mr. Potenza reported that the OPS recommended the first use of force allegation be closed as ***not sustained***, where the review failed to disclose sufficient facts to prove or disprove the allegations made in the complaint. The complainant alleged that force was used upon him after being handcuffed. Based on the OPS investigation, all of the officers indicated that the complainant was not handcuffed until after use of force had to be utilized and deployed upon the complainant to affect his arrest. The witnesses do not refute or support the complainant's allegations. The complainant's son stated that he believed officers were trying to get the cuffs on his father during the use of force by the officers; however, he changed his statement indicating, "I don't know if they got the cuffs on, oh yeah, they must have." Witness statements make a reference to the complainant being intoxicated during this incident. The complainant stated that he was not intoxicated during this incident, which raised more concerns for inconsistency regarding the recollection of the incident by witnesses and the complainant, and further proves the failure to disclose sufficient facts regarding the allegation.

Mr. Potenza reported that the OPS recommended that the second use of force allegation be closed as *exonerated*, where the acts which proved the basis for the complaint occurred, but the review showed that such acts were proper. The complainant alleged that unnecessary use of force was used by the officers, which included being punched in the nose and ribs. Based on the OPS investigation, the officers followed proper procedures and documented the incident within Department guidelines. The supervisor made several commands for the complainant to return to a seated position while a preliminary investigation was being conducted into the narcotics allegations made by the staff members of Jillian's. The supervisor deployed force against the complainant due to his failing to comply with orders, displaying an aggressive manner, and interfering with the investigation. Once struck with the knee, the complainant became more aggressive and began to struggle. He attempted to raise his arm at the supervisor, at which time the officer struck the complainant in the face. The officer felt his actions were necessary to act quickly due to what he perceived to be the use of imminent physical force against the supervisor by the complainant.

Mr. Potenza reported that the OPS recommended that the third use of force allegation be closed as *unfounded*, where the review showed that the act or acts complained of were misconstrued. The complainant alleged that he was struck in the side by an officer while being held by another. Based on the OPS investigation, an officer admitted to striking the complainant in the side twice during the incident, which was further documented in departmental reports.

Mr. Potenza reported that the OPS recommended that the call handling allegation be closed as *not sustained*, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that his son was handcuffed in front. Based on the OPS investigation, the officer indicated that all parties arrested were placed in handcuffs behind their backs, pursuant to the SOP.

Mr. Potenza reported that the OPS recommended that the first conduct standards allegation be closed as *exonerated*, where the acts which provided the basis for the complaint occurred, but the review showed that such acts were proper. The complainant alleged that his son's cell phone was slapped from his hand while taking pictures of the incident. Based on the OPS investigation, the officer stated that he recalled the son retrieving an item from his pocket and the officer took possession of said item by grabbing it. The officer then placed the son into custody, and later identified the object as a cell phone. Mr. Potenza reported that there are firearms that are designed to look like a cell phone or other dangerous weapon. Mr. Potenza stated that also provided in the file was information regarding cell phones that are used as weapons or are actually guns. At the time, the officer was unaware of what the object was, however, due to the nature of the scene and the level of aggression of the complainant, and the officer acted to control the complainant's son.



Mr. Potenza reported that the OPS recommended that the second conduct standards allegation be closed as *exonerated*, where the acts which provided the basis for the complaint occurred, but the review showed that such acts were proper. The complainant alleged that a witness was attempting to take photographs and was swung at by an officer. Based on the OPS investigation, an officer stated that he encountered an individual at the scene who was presenting an officer safety concern, as he was attempting to get into the inner perimeter to where the arrested subjects were detained. The officer gave several commands for the individual to back up, at which point he swung his baton in an effort to back the person up to a safe and tactical position. A witness stated that he saw another person getting close to the officer, and the officers were telling that person to get back.

Mr. Potenza stated that the monitor was present, and he had read the monitor's report, which was detailed and, in his opinion, very thorough. Mr. Potenza reported that the monitor had concluded that the investigation was thorough, competent and professional.

Mr. Potenza asked if monitor Al Lawrence had any comments for the Board. Chairman Allen asked Mr. Lawrence if there had been any video evidence. Mr. Lawrence responded that there had not been any video evidence. Chairman Allen asked if there had been any videos made by the family members, friends, or bar employees. Mr. Lawrence responded that there had not been any video from the bar, but there was a bystander who was a member of the party, who said he had a cell phone recording. It was the second person who supposedly was swatted at with the baton, who said he had his cell phone, but decided in the end that he did not want to give a statement, and he did not want to give his cell phone, concluding that it would not help the complainant's case. Chairman Allen asked Mr. Lawrence if he could explain the photos of the injuries of the complainant or the complainant's son and how it correlated to the complaint. Mr. Lawrence responded that the father is the complainant. He further stated the complainant had photos taken and sought treatment after the fact, but did not produce any records or sign a release. Chairman Allen asked if there were no records for that as well. Mr. Lawrence responded in the affirmative. Reverend Smart asked who called the police. Mr. Lawrence responded that he believed that one of the bouncers at the bar flagged down an officer on the street as they were being removed from the bar. Reverend Smart asked who was removing them from the bar. Mr. Lawrence replied that one or two of the bouncers removed them. Reverend Smart asked if Mr. Lawrence could take the Board through what happened at that point, when the police came in and they were arresting both of the gentlemen. Mr. Lawrence stated that they were arresting three of the gentlemen, or at least trying to question three of the gentlemen. Reverend Smart asked if it was on the word of the bouncer. Mr. Lawrence replied that was correct. Reverend Smart asked what the bouncers claimed when they stopped the police. Mr. Lawrence stated that the bouncers believed they were using drugs in the restroom at the bar. Chairman Allen asked Mr. Lawrence if it was correct that one of the bouncers found a bag. Mr. Lawrence

replied that was correct. One of the party members had dropped a bag of evidence that a bouncer had picked up and delivered to the police. Reverend Smart asked if, at the time the bouncer saw the bag, he immediately went outside and flagged a police car. Mr. Lawrence stated that the bouncers were removing them first from the restroom when the bag was dropped, then they were removing them from the bar, and flagged down an officer outside in a patrol car. Reverend Smart asked if the drugs had been validated. Mr. Lawrence stated he believed they had been. Chairman Allen asked Commander Matos if he knew. Commander Matos stated that Mr. Potenza had stated in his report that the drugs had been validated. Mr. Potenza stated that he read the report, and that the contents of the bag was cocaine, and they had done a test of the drugs. Reverend Smart asked if the drugs were linked to them. Mr. Potenza replied that there was a property report. Mr. Lawrence stated that was an allegation, but he did not know. Chairman Allen asked if the only thing they pled guilty to was disorderly conduct. Chairman Allen asked if they had been charged with drug possession. Mr. Lawrence replied that one of the men had pleaded guilty to disorderly conduct, but he did not know about the complainant or his son.

Mr. Potenza asked if the complainant was present. It was noted that the complainant was present. Mr. Potenza asked the complainant if he would like to comment.

The complainant stated that he, his friend, and his son were at Jillian's that night for a bachelor's party. They do not even live around the area. He stated that they were done for the night, getting ready to leave and went to the bathroom. The bouncers came in and for some crazy reason threw them out, amongst other people. The complainant stated that the one bouncer pushed him, called him an "f\*\*king retard," and as they were going down the stairs, he asked the bouncer why he was calling him names. He further stated that when they went outside, all of a sudden the officers grabbed his son. He went over to approach the officer to ask him why he was arresting his son. The officer told him to back off, and the complainant asked again nicely, but the officer threw him down, handcuffed him behind his back, and punched him in the nose.

The complainant stated that his friend had seen the incident. The complainant's friend stated that the complainant had been handcuffed behind his back before he was punched in the ribs and twice in the face, and there was a witness standing right there. The complainant's friend further stated that he started yelling at the officer who had punched the complainant in the face and that was why he got arrested. The complainant stated that as far as the officers claiming that his son or whoever they accused of having drugs, his understanding was that they found that inside the bar room in a bag or something. He further stated that there were hundreds and hundreds of people in Jillian's, and it could have been anybody's bag, and the officers did not find any on his son at all. The complainant stated that it could have been anybody's property, and as far as he knew, the bouncers could have placed it there because they were upset with the party, or for some

crazy reason. The complainant stated that they had done nothing that night. He further stated that he went to the hospital that night because he sought medical attention for his ribs being bruised. The complainant asked if the Board stated that they did not want to release the pictures of his injury. Mr. Potenza stated that when he examined the file he did not see the pictures of his injury, but he did see the booking photo. The complainant stated that his attorney should have those pictures. The complainant further stated that the witness, who decided he did not want to give the video of the officer swinging at him as he was trying to take a picture with his cell phone of what they were doing, had an email regarding the issue. The complainant stated that he might still have the email and be able to pull it up. The complainant stated that it was very brief, and the only problem is that it was so quick and brief that he did not think it was going to be much evidence for the Board, but it does show the incident. The complainant stated that the video shows that an officer was yelling at the witness and trying to knock a cell phone out of his hand.

Chairman Allen explained that when the complaint was filed with the OPS, the complaint was read to the members of the Board, and the Board opted to put a monitor on the case to follow the investigation. Chairman Allen stated that the monitor works on the Board's behalf to follow the case. The Board has a report from the OPS, a report from the monitor, and what was not in that report, from what he understands, was the video. Chairman Allen stated it would have to be entered into the investigation. He further stated the complainant could show the Board the video if he wanted to, but the complaint would have to be re-investigated. Reverend Smart stated he would like to see the video. Chairman Allen stated that he was not sure why it was not entered in the investigation. Mr. Potenza stated that he did not understand why the witness refused to provide any type of photographic evidence or the video. The complainant stated that the witness had no problem when he talked to him about it, but evidently when conversations were going on between the OPS and the witness, the witness was more concerned about it being a problem with his position at work. Chairman Allen stated the witness' name and statements were in the case, and asked why he did not provide the video as well. The complainant replied that he was unable to get the video from his email for the Board members. He further stated that he had the visual at home, and he would be more than happy to send it to the Board. Mr. Potenza stated that if the video is sent, it would go back to the OPS and further investigation will take place regarding the case. The complainant reiterated that the video was very brief. The complainant stated that in the video, the witness can be heard saying to the officer "Now you're going to hit me?" Reverend Smart asked if that was the complainant's son. The complainant replied that it was a witness. Reverend Smart asked the complainant why he did not send the video to OPS. The complainant replied that he was under the assumption that the witness was going to send the video, but he spoke with someone later and found out he had not. He further stated that he figured it was not enough evidence. Mr. Potenza stated the complainant was filing a complaint against the APD for the way they handled the case,

they way they physically encountered him, but throughout the entire report that the Board has, it stated how the complainant, his son, and the other individual were very aggressive during the entire time. The complainant stated that was a total lie, and they were not aggressive one bit. Mr. Potenza stated that if he were not being aggressive, there would be no reason for the officer to elevate physical force. The complainant stated that he would have no reason to file a complaint if he were in any kind of wrong. Chairman Allen asked the complainant what he thought precipitated the officers actions. The complainant stated that when he walked over to see why his son was being arrested, he asked the officer what was going on. The complainant further stated this was all he asked the officer, "What is going on, why is my son being arrested?" The officer told the complainant to get away, and the complainant asked him again, and that was when the officers grabbed him, threw him down, cuffed him and punched him. The complainant stated that it was as simple as that, and that is the way it went down. The witness stated that the officers punched the complainant after he was cuffed. The complainant stated he was cuffed behind his back, and that was when they punched him. He further stated that it can be seen in the photos taken at the station that he had blood coming down his nose. Chairman Allen asked Mr. Potenza if those pictures were in the file. Mr. Potenza replied those pictures were in the file, and they show a bruise on his nose and some blood on his face. The complainant stated the officers conducted themselves very wrongly. Reverend Smart stated he wanted to ask the complainant a question. Reverend Smart stated that the incident happened in September, and the complainant filed a complaint later on, and the complainant had a video all along. The complainant stated he did not have the video all along. Reverend Smart asked who had the video. The complainant stated that the witness who had the video had given it to the complainant's attorney. The complainant stated that after he found out his attorney had it, it was sent to him, so he did not have it all along. Reverend Smart asked the complainant how long he has had the video. The complainant stated he has had the video for a while. Reverend Smart told the complainant that he asked him because if you have important information that will change the course of the monitor's investigation and the OPS' finding, it seems to him, that he would personally want to share that information. The complainant stated that he thought the witness was going to follow through with it. Anthony Potenza stated that he agreed with Reverend Smart, and to the extent that he agreed with Reverend Smart, he moved to keep the investigation open, until such time as OPS can procure the video. Chairman Allen asked the Board if they had any further thoughts or comments. Reverend Smart asked if he could add something. Reverend Smart stated that there should be a stipulation of time that the video is turned over to the OPS and no more than two (2) weeks should be more than enough time. Reverend Smart asked if that was enough time. The complainant stated that was enough time. The complainant asked who he should send the video to. Reverend Smart stated that they would give him the address. Commander Matos stated that he could give an address. Reverend Smart told the

complainant he had two weeks to forward the video to the OPS. The complainant stated that the downfall of it was that the video was very brief, did not show the entire incident, and it was not very clear. Marilyn Hammond stated it did not matter.

Anthony Potenza moved to send the complaint back to the OPS for *further investigation*, on the condition that the complainant forwards the video to the OPS within two (2) weeks. If the video is not received within that time period, the Board will vote on the allegations. Reverend Edward Smart seconded the motion. The motion carried unanimously.

Chairman Allen told the complainant that the case was going back to the OPS for re-investigation, upon receipt of the video evidence. The complainant asked when the information as to where to send the video would be given to him. Reverend Smart replied that the complainant would get the information now.

**CPRB No. 58-09/OPS No. CC2010-092** (Presented by Reverend Edward Smart)

Reverend Edward Smart summarized the complaint. Reverend Smart reported that the complainant alleged he called the “non-emergency” number for the APD in order to file a complaint about a driver who had failed to yield to the complainant in a crosswalk in downtown Albany. He alleged that when he called the APD, he received belittlement, evasiveness, dishonesty, rudeness, ridicule, and disrespect. His initial contact listened impatiently as he quickly explained what happened, and the call taker asked where the complainant lived. He indicated where he lived, and the call taker suggested the complainant file a complaint there. Then the call was transferred without any explanation. The officer advised the complainant that it was a violation, not a crime, and that APD does not handle violations. The officer did not take the complainant’s information and said there was nothing else to be done.

Reverend Smart stated that he reviewed the following documents: Citizen’s Complaint Form; Civilian Complaint Form; Confidential Report dated August 4, 2010; and SOP Article 14.1.25: Request for Assistance.

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

Reverend Smart reported that the OPS recommended that the call handling allegation be closed as *sustained*, where the review disclosed sufficient facts to prove the allegations made in the complaint. The dispatcher and officer both violated SOP Article 14.1.25: Request for Assistance. Reverend Smart stated that the actions of the officer violated SOP and he agreed with the finding of OPS.

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

**CPRB No. 03-10/OPS No. CC2010-003** (Presented by Anthony Potenza)

Anthony Potenza summarized the complaint. Mr. Potenza reported that the complainant alleged he was being stopped for no reason by an officer and arrested for possession of drugs. After being searched, the complainant was found to be in possession of crack cocaine. He was arrested and taken to Division Two. While the officer was processing the complainant for arrest, his property was taken from him. A duffel bag containing a shirt, razor, and eyeglasses was taken. He felt that this was a violation of his rights and an abuse of authority.

Anthony Potenza reported that he reviewed the following documents: Citizen's Complaint Form; letters to the CPRB from the complainant; the OPS Confidential Report; the Booking Record; Arrest Report; Call Detail; and a Subject Resistance Report, due to the complainant's refusal to obey a police officer's directive.

Mr. Potenza stated that the complainant is only really complaining that his stuff was not given back to him.

Mr. Potenza reported that the OPS recommended that the arrest authority and procedures allegation be closed as *no finding*, where the complainant failed to produce information to further the investigation. The complainant alleged that while being processed for an arrest, his personal property was taken by an officer and not returned. On 2/18/10, the complainant submitted an amendment to his original civilian complaint indicating the officer, date and time in his original complaint were incorrect. He then indicated another officer with a different arrest date. Mr. Potenza stated that the complainant is not complaining that he was arrested, but he is complaining about not getting his stuff back. Mr. Potenza stated that he examined a property report where they trace where the property was turned over to Albany County Jail.

Anthony Potenza moved to concur with the OPS finding of *no finding* with regard to the arrest authority and procedures allegation. Marilyn Hammond seconded the motion. The motion carried unanimously.

**CPRB No. 8-10/OPS No. CC2010-009** (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint. Ms. Hammond reported that the complainant alleged that he was called to Albany City Court. When he arrived there, he was escorted upstairs to an office by a detective. The complainant alleged that the detective harassed, coerced, and threatened him about guns, drugs and murder. Allegedly

the officer told the complainant that he would never see the streets again or his family. The complainant further alleges that the detective grabbed the complainant by his collar and shook him demanding information. The complainant was told that he would be paid for any information and help as long as "he is on his team." The detective asked the complainant that if he knew about any drugs or guns, he could make the 2 ½ years go down to one (1) year. The detective allegedly stated that if the complainant knew about any murders, he could get him out as soon as possible. The complainant was also asked about his parole status and other people, which he had no knowledge about.

The complainant claimed that he was then brought back downstairs where he was fingerprinted, photographed on an indictment, and arraigned on January 12, 2010. The complainant believed that the detective acted unethical and unprofessional.

Marilyn Hammond reported that she reviewed the following documents: Confidential Report dated August 26, 2010; Arrest and Prisoner Transport Report dated October 2, 2010; Department of Corrections statement dated August 6, 2010; and the Booking and Arrest Report dated February 5, 2010.

Ms. Hammond reported that based on the OPS investigation, the detective stated that he had asked the complainant if he knew what he was being arrested for and what the indictment was for. The complainant told the officer it was for the sale of narcotics. The detective stated he then asked the complainant if he had any information on crimes or would otherwise help him out on his court case. The complainant responded that he did not. The detective stated that the complainant's demeanor was uncooperative, and at that point in their interaction, the detective stated that was the end of their conversation with regards to debriefing and the detective finished the arrest process. The detective had no physical contact with the complainant with the exception of securing his fingerprints and photos during the arrest process. The detective did ask the complainant about crimes related to guns, drugs and murder. The complainant told the detective he did not have any information at all. Ms. Hammond stated that any questions made to the complainant are accepted practice to inquire about such information from a suspect connected to the investigation.

Ms. Hammond stated that monitor George Kleinmeier did an excellent report on the complaint. Ms. Hammond asked Mr. Kleinmeier if he had anything to add. Mr. Kleinmeier replied that he had nothing to add.

Ms. Hammond reported that the OPS recommended that the first conduct standards allegation be closed as *not sustained*, where the review failed to disclose sufficient facts to prove the allegation made in the complaint. The complainant alleged the target officer harassed, coerced and threatened him regarding obtaining information about guns, drugs

and murder. The complainant further alleged that the target officer told him he would never see the streets or his family again.

Ms. Hammond reported that the OPS recommended that the second conduct standards allegation be closed as *exonerated*, where the acts which proved the basis for the complaint occurred, but the review showed that such acts were proper. The complainant alleged that the detective asked the complainant if he had any information related to crimes.

Ms. Hammond reported that the OPS recommended that the use of force allegation be closed as *not sustained*, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that the detective grabbed him up by his collar and shook him, while demanding the complainant give him information. Ms. Hammond stated she agreed with the findings of the OPS.

Ms. Hammond stated she did have a question about the complainant. She stated that the complainant decided that none of it happened when he was in prison. When the detective wanted to go down to the Department of Corrections where the complainant was imprisoned, the complainant did not remember sending a complaint or anything. Ms. Hammond stated she agreed with the OPS.

Marilyn Hammond moved to concur with the OPS findings on all three (3) allegations in the complaint. Chairman Jason Allen seconded the motion. The motion carried unanimously.

**CPRB No. 10-10/OPS No. CC2010-013** (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint. Ms. Hammond reported that the complainant alleged that officers filed a false arrest report and had him arraigned on charges he never committed. The complainant stated that on October 6, 2009, he let a friend borrow a vehicle that was registered to another party. The complainant further states that from 8 p.m. on October 6, 2009 to approximately 10:30 a.m. on October 7, 2009, he did not know what took place. On October 7, 2009 at 10:30 a.m., officers and the complainant's parole officer took him into custody. The complainant stated that he was then placed in Albany County Jail for a parole violation. The complainant stated that when he received his second papers from parole, there was an arrest report attached describing two criminal charges and three traffic violations. The complainant stated that the arrest report reflected that he was arrested on October 7, 2009 at 3:03 a.m. when he was never arrested, placed in custody, pointed out by any citizens or placed in any line up. The complainant alleged that he was never at the scene of the incident. The complainant alleged that both police officers named in his complaint maliciously plotted with his parole officer to charge him with criminal charges to keep him incarcerated.



Ms. Hammond reported that this was the same complainant as in the complaint she had previously read.

Ms. Hammond reported that she reviewed the following documents: Arrest Report dated March 25, 2010; APD Incident Report dated October 7, 2009; Parole Hearing dated October 22, 2009; Incident Reports dated October 7, 2009; Property report dated October 7, 2009; Investigation Report dated October 7, 2009; Arrest reports dated October 7, 2009; and Confidential Report dated September 21, 2010.

Ms. Hammond reported that based on the OPS investigation, on October 7, 2009, an officer attempted to conduct a traffic stop on the complainant under the violation law of NYS Section 375-03, failure to dim lights, failure to stop at several red lights, and speeds of 50 mph in a 30 mph zone. The complainant pulled into the rear of a building and was exiting his vehicle, and the officer then began to secure the complainant. The complainant was not compliant and refused to show his hands, which were inside his jacket and waistband area. Ms. Hammond stated that this is consistent with a suspect attempting to present a weapon or dispose of evidence. The complainant was not compliant and became combative with officers. The complainant fled on foot, and officers lost sight of him. The complainant had lots of personal papers and photos in the car that identified him. He was picked up the next day by his parole officer and the APD.

Ms. Hammond reported that the OPS recommended that the call handling allegation be closed as ***unfounded***, where the review showed that the act or acts complained of did not occur. The complainant alleged that an officer filed a false report.

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

Ms. Hammond reported that the OPS recommended that the second call handling allegation be closed as ***no finding***, where the officer is no longer employed with the city.

Marilyn Hammond moved to concur with the OPS finding of ***no finding*** with regard to the second call handling allegation. Reverend Edward Smart seconded the motion. The motion carried unanimously.

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

The following Board members were appointed to the Committee on Complaint Review for December 2010: Chairman Jason Allen, Andrew Phelan, Jr., Anthony Potenza and Reverend Edward Smart.

Marilyn Hammond stated that she would not be available from December 8-12.

C. *Committee/Task Force Reports*

Chairman Jason Allen stated that the Board was going to be meeting again on December 9, 2010, so he would like to hold off on Committee/Task Force Reports until then. Chairman Allen asked the Board if there were any objections. It was noted the Board did not object to this change.

D. *Report from the Government Law Center*

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

Complaint Inventory as of Date of Meeting

It was reported that as of today, there are currently seventy-five (75) active complaints before the Board for review. Of those seventy-five (75) active complaints, six (6) were reviewed at tonight's meeting, which leaves the Board with sixty-nine (69) active complaints. Out of those sixty-nine (69) active complaints, twenty-five (25) cases are ready to go on the next meeting agenda for review.

It was further reported that three hundred and ninety-eight (398) complaints have been closed. The total number of complaints that remain suspended from review is eleven (11). One (1) complaint has been forwarded to mediation. The total number of complaints filed to date is four hundred and seventy-nine (479).

It was reported that since the Board's last meeting, the GLC received four (4) grievance forms. The total number of grievance forms received to date is two hundred and twelve (212). In response to the GLC's outreach to all individuals, the GLC has received sixty (60) CPRB complaint forms.

Upcoming Meetings

It was reported that on December 2, 2010, there is a Public Official Liaison meeting scheduled with the Deputy Mayor at 3 p.m.

Anthony Potenza asked if an email could be sent out reminding members of the Public Official Liaison meeting. Ms. Moseley replied in the affirmative.

It was further reported that the GLC was working on scheduling a meeting with the Common Council's Public Safety Committee for January 2011.

It was noted that only four (4) Board members would be assigned cases for the December 9, 2010 meeting. Chairman Allen noted that it was close to Christmas, but the Board wanted to squeeze in another meeting. Chairman Allen asked how many cases would be

before the Board at the December 9, 2010 meeting. Ms. Moseley replied there would be twelve (12) complaints before the Board for review. Marilyn Hammond stated that from December 8-12, 2010, she would not be available. Chairman Allen asked if the Board would have a quorum for the meeting. Chairman Allen asked what day of the week December 9, 2010 fell on. Ms. Moseley replied that it was a Thursday. Chairman Allen stated he might be traveling for work during that week. Chairman Allen asked Ms. Moseley to find a date in December that would work for everybody. Chairman Allen stated earlier in the month, before Ms. Hammond leaves, would probably be best.

#### 2010 Third Quarter Report

It was reported that the Board members would have a copy of the 2010 Third Quarter Report in their meeting packets to vote on at the next meeting.

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

Commander Ronald Matos stated that last month they had discussed the pending neighborhood engagement unit. He stated that since that time, twenty-seven (27) beat positions have been posted. Postings for the beats will close on Monday, November 22, 2010. The beats are going to be staffed seven days a week, and will operate between the hours of 10 a.m. and 12 a.m. There will be some scheduling flexibility for supervisors and the flexibility will depend on crime trends that are observed in the community.

Chairman Allen asked what it meant that they are “posting” the beats. He asked if this meant that the beats are posted and officers can apply. Commander Matos replied that they were offered for selection, so that was correct. He further stated that once the APD gets an idea about who is bidding for those, they will go through the vetting process and the positions will be filled sometime in January to get the officers back out on the streets.

Commander Matos stated that he had spoken to Lieutenant Trembly about it and there will be eighteen (18) different zones divided throughout the city. He further stated that some of those zones will have two (2) officers assigned to them during different hours. This would depend again on crime trends and what they see during their crime analysis meetings. Commander Matos stated that each officer will receive a forty (40) hour block of training prior to hitting the streets. Most of the training will be community oriented, as well as some crime trend analysis training. As the philosophy bridges forward, Chief Steven Krokoff would like to deliver that to the entire department. Chairman Allen asked if beat officers were typically dismounted. Commander Matos stated they would be on foot and bicycle only, and the supervisors will have vehicles to deploy the officers or pick them up in cases of inclement weather. Reverend Smart volunteered to help training in matters of sensitivity. Commander Matos stated that was one (1) of the blocks they would be focusing on, so he would get Reverend Smart in touch with Sergeant Dermot Whelan, who is organizing the training, or Lieutenant Trembly.

F. *Report from the Chair*

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

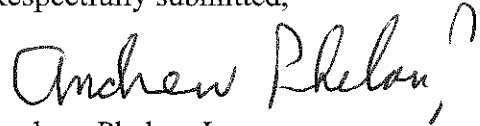
IV. **Public Comment**

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

V. **Adjournment**

Chairman Jason Allen moved to adjourn the meeting. Reverend Edward Smart seconded the motion. The motion carried unanimously. The meeting adjourned at 7:05 p.m.

Respectfully submitted,

A handwritten signature in black ink that reads "Andrew Phelan, Jr." with a stylized flourish at the end.

Andrew Phelan, Jr.  
Secretary