

**City of Albany
Citizens' Police Review Board
GWU the Center
274 Washington Avenue-Teen Center Conference Room
February 4, 2011
6:00 p.m. – 8:00 p.m.**

Present: James Frezzell, Marilyn Hammond, Lilian Kelly, Andrew Phelan Jr., Anthony Potenza, Reverend Edward Smart, and Akosua Yeboah.

Absent: Jason Allen.

I. Call to Order and Roll Call

Acting Chairman Reverend Edward Smart called the meeting to order at 6:03 p.m.

II. Approval of the Agenda

The agenda was reviewed. Acting Chairman Smart stated that the Board would delay the approval of the October 26, 2010 meeting minutes, which was listed as the third item on the agenda. Andrew Phelan Jr. moved to approve the agenda. Marilyn Hammond seconded the motion. The motion carried unanimously.

III. Approval of the October 26, 2010 Meeting Minutes

The Board moved to suspend the approval of the October 26, 2010 meeting minutes during the approval of the agenda until Ms. Yeboah arrived. The Board reviewed the October 26, 2010 meeting minutes. Anthony Potenza moved to approve the October 26, 2010 meeting minutes. Marilyn Hammond seconded the motion. The motion carried unanimously.

IV. New Business

A. *New Complaints*

1. New Complaints Received since the December 16, 2010 Meeting

Acting Chairman Reverend Edward Smart reported that six (6) new complaints were received by the Board since the December 16, 2010 meeting. Anthony Potenza moved to waive the reading of the new complaints due to the number of complaints before the Board. Marilyn Hammond seconded the motion. The motion carried unanimously.

2. New Complaints for Review

CPRB No. 32-09/OPS No. CC2009-057 (Presented by Anthony Potenza)

Anthony Potenza summarized the complaint. Mr. Potenza stated that the complaint contained one (1) allegation of call handling, two (2) allegations of conduct standards, and two (2) allegations of improper use of force. Mr. Potenza reported that the incident took place on July 3, 2009, and a monitor was assigned to the case. The complainant alleged that she parked in front of a fire hydrant and as she looked out of the store, she realized the police officer was issuing her a ticket. She made an attempt to apologize and tried to move her vehicle, but allegedly the officer ignored her and continued to write the ticket. The complainant continued to request that the officer not issue the ticket, and allegedly the officer started screaming at her and told her not to tell him what to do. She further alleged that the officer stated he is the one who runs the city, and he could do whatever he wants because he makes the rules. The complainant got back into her vehicle, parked it two (2) spaces up, as the officer drove away looking upset and frustrated. The officer allegedly came back, got out of his car and asked her to open her car window. The complainant ignored him and stayed in her car. The complainant stated that she did not see a reason to talk to him anymore because she parked in front of the fire hydrant. The officer gave her the ticket for that, and they were all set for that transaction of the ticket being issued. The complainant kept ignoring the officer; so the officer allegedly punched the complainant's car window. The complainant stated that she was scared at this point, and there was no way she was going to open her window. The officer started asking for her license and registration, but the complainant kept her windows closed and her doors locked. The complainant alleged that the officer went back to his vehicle, and came back with something to break the car window. The complainant stated that she opened her car window a little in an effort to calm the officer down. She alleged that when she was talking to him, he put his hands through the "little space" and took off the door lock. The complainant alleged that the officer opened her car door, took her seatbelt off, and pulled her out of the car. The complainant alleged that the officer "pushed her around," and his partner, who arrived later, with the officer, handcuffed her. The complainant stated that she asked the officer why he was doing this. The officer allegedly responded it was because she refused to give him her license. The complainant alleged that the officer went inside the vehicle, and took her driver's license out of her bag. She also stated that the officer gave her another ticket for not putting on her signal when she pulled the vehicle two (2) spaces up to park.

Anthony Potenza stated that he reviewed the following documents: Citizen Complaint Form; Complainant's Statement; the Civilian Complaint Report; the OPS Confidential Report; the Albany Police Department Correspondence to the complainant; Citations from Criminal Law, Penal Law, and Vehicle and Traffic Law; use of force reporting requirements; the SOP regarding the issuance of Uniform Traffic Tickets; the SOP regarding Motor Vehicle Stops; Registration Information; License Plate Information Report; and a License Inquiry.

Mr. Potenza stated that this was a very difficult case of a situation where both parties got out of hand. He further stated there were witnesses who said that both the officer and the complainant had elevated tempers.

Anthony Potenza summarized the finding of the OPS on the first allegation of conduct standards as ***not sustained***, where the review failed to disclose sufficient facts to prove or disprove the allegation that was made in the complaint. The complainant parked in front of a fire hydrant, attempted to ask for forgiveness, and the officer allegedly responded that he did not care and started screaming. Based on the OPS investigation, the officer stated that he did not scream at the complainant, and the only conversation he had with her, other than explaining the violation of parking on a fire hydrant, was the potential charge of disorderly conduct for the way she was acting toward him in a public place. Mr. Potenza reported this was confirmed by some statements by witnesses. The officer stated that he did not say he is the one who runs the city and can do what he wants. A witness stated there were no problems between the officer and the complainant during this part of the interaction with each other. One witness stated everything was fine, there was no argument during this part of the interaction, and the officer did not say anything about the ticket he was going to issue the complainant. Another witness stated that the complainant was giving the officer a really hard time by cursing at him, and he did not argue with her. The complainant continued to curse at the officer as he was leaving, and the witness saw the complainant give the officer the middle finger as the officer began to drive away. A third witness account of what had occurred during this incident is inconsistent to what the other two witnesses and the officer stated. This witness recalled the officer and the complainant arguing during the issuing of the parking ticket.

Mr. Potenza stated that he had no problem with the thoroughness of the investigation, but the monitors' report should be given a lot of consideration in this matter. Mr. Potenza asked the monitor if he would like to comment or wait until the complete summary of the complaint and allegations had been read. Monitor George Kleinmeier replied that he would wait to make a comment until the summary was completed.

Anthony Potenza summarized the finding of the OPS on the second allegation of conduct standards as ***not sustained***, where the review failed to disclose sufficient facts to prove or disprove the allegation that was made in the complaint. The complainant moved her vehicle. The officer came back and allegedly screamed at the complainant, punched her window, and came back with something to break her window. Based on the OPS investigation, the officer stated that he did not punch the complainant's window, only knocked on it. Witnesses stated that the officer repeatedly asked for the complainant's information and was knocking on her car window. Both witnesses stated they did not see the officer go back to his car and return with something to break her window. The officer stated he told the complainant that if she continued to ignore him and his lawful command to open her window, he would have to break her window using his ASP. An

ASP is an alternative baton that officers are allowed to carry provided they are certified. The officer stated he did retract it from his holder on his belt. There appear to be inconsistencies with regard to the witness statements about what actually occurred. The third witness recalled the officer banging on the complainant's window and yelling at her. This witness did not directly see the incident, as he was operating his business at the time, and he happened to be the store owner. The officer stated that he witnessed the complainant turn out from the curb without signaling, turn out into the traffic lane, turn around another vehicle, and park her vehicle. The officer initiated a traffic stop of the complainant's vehicle for failure to signal. One witness recalled that the complainant, after receiving her ticket, gave the officer the middle finger. The complainant moved her vehicle up two (2) spots to park, and that was when the officer came back and initiated the traffic stop. Mr. Potenza again noted that a thorough investigation was conducted by the OPS in the matter, and their conclusion was *not sustained*.

Anthony Potenza summarized the finding of the OPS on the allegation of use of force as *exonerated*, where the acts which proved the basis for the complaint occurred, but the review showed that such acts were proper. The officer allegedly put his hands through the open space, took off the door lock, opened the door, removed the seatbelt, pulled the complainant out of the car, and pushed her around. Based on the OPS investigation, the officer admitted to putting his hands through the small space in the window to unlock the door. He unlocked the door and gave the complainant further commands to exit the vehicle. Both witnesses stated that the officer continuously told the complainant to exit her vehicle, and the officer opened the vehicle door. The officer admitted to finally releasing the complainant's seatbelt and then escorting her out of the vehicle by taking her by her left arm and then removing her from the vehicle. The officer also admitted to placing the complainant in handcuffs and asking her if she had a license, to which she stated it was in her bag in the car. The officer stated that he retrieved the license in order to complete a traffic ticket for a moving violation. The officer indicated that he conducted the traffic stop for failure to signal from the curb, which is a violation of New York State Vehicle and Traffic Law. As such, when the officer witnesses an infraction, he or she can conduct a traffic stop for the violation. The officer was well within his legal right and duty to not only conduct a traffic stop for an offense he witnesses, but then require the complainant to produce the necessary information to carry out his official function as a police officer. Once the complainant continued to ignore the officer, as she admitted to doing so in her complaint, the officer was well within his right to conduct a custodial arrest for a charge under Article 195 of the NYS Penal Law, specifically, Obstructing Governmental Administration in the Second Degree. The definition of Article 195.05 states that a person interfering with a public servant from performing an official function can be guilty of such charge. Since the complainant kept her window up and continually ignored the officer, in addition to the statements made by witnesses, and the officer himself, the officer had probable cause to arrest the complainant for the

aforementioned Penal Law charge. In having such probable cause, and in her failure to comply with his commands, the officer was justified in using physical force to remove the complainant from her vehicle under Article 35 of the NY Penal Law. Even though the officer did not follow through with an arrest of the complainant, it is his discretionary right not to charge her with such offense. The point made is to note that up until the point where the officer placed the complainant in custody, he was justified in his action. However, it should be noted that a thorough review of the investigation revealed that the officer failed to submit a use of force report as required by SOP Article 21.1.

Anthony Potenza summarized the finding of the OPS on the allegation of call handling as **sustained**, where the review disclosed sufficient facts to prove the allegations made in the complaint. The officer failed to submit a subject resistance report as required by department policy, to which the officer admitted his deficiency.

Acting Chairman Smart told Mr. Potenza that he would like to note the arrival of Board Member Akosua Yeboah. Ms. Yeboah apologized for being late. Acting Chairman Smart asked Mr. Potenza to continue.

Anthony Potenza summarized the finding of the OPS on the second allegation of conduct standards as **not sustained**, where the review failed to disclose sufficient facts to prove or disprove the allegation that was made in the complaint. The complainant alleged that she was issued a false ticket. Based on the OPS investigation, an officer has to witness an offense to conduct an arrest, to which the officer admitted he witnessed. In issuing a ticket, an officer has to be prepared to testify under oath if the matter is taken to trial. If the officer knowingly provides false testimony it can be considered perjury. The complainant was offered and accepted a plea deal admitting guilt in full satisfaction of the ticket. The complainant had the option to take the matter to trial where the officer would have had to provide testimony and if the judge felt the charge was false could have dismissed the ticket.

Ms. Kelly asked if the last count, the call handling allegation that was **sustained**, was about the last false ticket, or if the false ticket was a fifth charge. Mr. Potenza apologized and stated the one (1) call handling count was **sustained**, and that was where the officer failed to submit a subject resistance report. He further stated the conduct standards count was **not sustained**, where the complainant alleged that she was issued a false ticket. Ms. Kelly thanked Mr. Potenza for the clarification.

Mr. Potenza asked the monitor for his report because there were some matters in his report that needed to be considered by the Board as it moved the case forward. Monitor George Kleinmeier asked which matters the Board would like him to discuss. Acting Chairman Smart replied that Mr. Kleinmeier should start with the first allegation for conduct standards. Mr. Kleinmeier stated that his conclusion was that the officer was

not credible and not telling the truth, and the complainant was not telling the truth. He stated that he believed some of the officer's own statements contradicted the entire OPS report, and he did not understand how the OPS came up with the conclusion, when the officer told his supervisor that he went back and issued her a ticket because she gave him the middle finger, but he wrote in his IDC that it was because she failed to signal from the curb. Mr. Kleinmeier stated he did not know how the OPS could come up with that conclusion when the officer admitted what he did to his own supervisor. Ms. Kelly stated that perhaps the Board should go through it in some detail.

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

Mr. Kleinmeier stated that he was unable to contact the complainant. Mr. Potenza stated that he noticed that was in the monitor's report.

Acting Chairman Smart asked Mr. Kleinmeier if it was correct that he was suggesting the complaint be sent back to the OPS for further investigation. Acting Chairman Smart stated that it was Mr. Kleinmeier's conclusion, in his report, that there were so many discrepancies in what the complainant stated and also what the officer had stated that there should be a further investigation into all of the allegations, with the exception of the sustained allegation. Acting Chairman Smart asked Mr. Kleinmeier to clarify that his basis for the recommendation of further investigation was because the officer made some statements and was not consistent. Mr. Kleinmeier stated that it was very clear in the officer's IDC what the officer pulled her over for, as he wrote her a ticket for failure to signal from the curb. Mr. Kleinmeier further stated that there were so many inconsistencies in the report that all the allegations need to be looked at again. Acting Chairman Smart stated that one of the particular items that he had read stated that the officer had issued many tickets of this particular kind for signaling, and he had actually never written a ticket before for this violation. Mr. Kleinmeier stated that was correct. Acting Chairman Smart stated that he also understood that one of the witnesses had stated that the officer reached into the complainant's car, unlocked the door and forcefully pulled her out of the car. He further stated that the most of the witnesses agreed that was somewhat abusive. Acting Chairman Smart stated there was someone in the store and watched the incident from afar.

Mr. Potenza stated that he felt that the investigation conducted by the OPS was thorough based on the paperwork that he read at the OPS and the monitor's report. Commander Matos stated that as far as the investigation and the thoroughness of the investigation, the officers involved were interviewed, and witnesses on the street were interviewed. He stated that the witness who is the store owner was interviewed a second time to clarify exactly what he saw from his store and what portions of the event he saw outside of the store. Commander Matos further stated that he could let the OPS Detective further

expand on that a little bit so that the Board could understand the thoroughness and the stone wall that would be present if the OPS were to go back and try to reinvestigate. He stated that was why the Board can see some of the findings were not sustained, because there was not enough evidence or facts to come to a conclusion of a sustained or exonerated finding. He further stated that with regard to the traffic stop itself, and as far as what the officer articulated in his interview, although he may have been agitated, there was an offense that he witnessed, and he described it verbatim.

OPS Detective Anthony Battuelo stated the target officer did have an interview with the OPS and stated on the record that he did witness a violation. He further stated that whether the officer recants that statement was irrelevant because he did state he witnessed the infraction. Detective Battuelo stated that a diligent effort was made by the OPS to contact the complainant to clarify certain issues that were brought up in the investigation, and they were unsuccessful in locating her.

Commander Matos stated that it was important to note that there were two events. He stated the first event was the vehicle parked in front of the fire hydrant, and as a result of that, the complainant was issued a parking ticket. The witnesses that the OPS was able to locate, who were on the street during that time, differ as to what happened during the encounter. The officer himself stated the encounter did not escalate; only the complainant escalated her interaction with him. One witness's account of events differed from the officer's statement. That witness stated that the incident escalated. Commander Matos stated that was why the conduct standards allegation was not sustained, because the witnesses, the target officer, and the complainant all disagreed about what they had experienced during that initial issuing of the ticket. Commander Matos stated the second allegation was not sustained, where the complainant moved her vehicle, the officer came back and allegedly looked upset and started screaming and punching her window. One witness recalled the complainant, after receiving her ticket, giving the officer the middle finger, and the complainant moved her vehicle up two spots. The officer stated the complainant moved out into traffic, without signaling, which was in violation of the Vehicle and Traffic Law. If you are driving down the street it is extremely dangerous if someone pulls away from the curb into traffic. Commander Matos further stated that to look at an officer's ticket history to define whether or not he was being truthful about something like that is inappropriate due to an officer's ability to exercise discretion when issuing a traffic summons. Commander Matos stated that during his interview, when the officer spoke to the OPS under oath, the officer stated that he has pulled people over for this offense in the past.

Detective Battuelo asked Acting Chairman Smart if he could add a few more things to the discussion. He stated that as Commander Matos had discussed, the officer had stated that he had pulled people over for that traffic infraction in the past. He further stated that upon the monitor's request being assigned to him, a certain time period going back

maybe a year, all the tickets written by the target officer were pulled and reviewed. He did not think that infraction had been issued before, prior to this particular incident. Detective Battuelo stated the target officer did state during his interview with OPS that he had witnessed infractions like that and had pulled people over, but not necessarily written tickets, which is not uncommon for police officers to do. He stated that as everyone knows, to pull people over for certain infractions and not write them tickets, but give them a warning instead was a common practice by officers.

Commander Matos stated that a person failing to comply with the lawful order of a police officer is obstruction of governmental administration, and it does not warrant an arrest, but if that person resists, custodial arrest force may be used, and that is what the officer articulated. He further stated that the officer's failure in utilizing the force was that he did not document the force used and submit that document to the police department as required by the Standard Operating Procedure (SOP). That was the action the department found deficient, and that was where the sustained call handling determination came from. Commander Matos further stated that the final conduct standards allegation was not sustained, where the complainant alleged she was issued a false ticket. He stated the reason that was not sustained was because the matter was never brought to trial or brought about in any way they could get testimony from the officer, as well as the complainant. The complainant never availed herself to the OPS so they do not have her recollection of the events to either prove or disprove what happened, so that last allegation was not sustained.

Acting Chairman Smart asked whether the complainant paid the ticket. Commander Matos responded the complainant had paid the ticket. Ms. Kelly asked which ticket and whether the complainant had been issued two (2) tickets. Detective Battuelo stated there was the original parking ticket for the original incident where she was blocking a fire hydrant and the subsequent ticket for failure to signal. Ms. Kelly asked if she had paid both tickets. Detective Battuelo replied the complainant had pled guilty to both tickets and paid both tickets.

Mr. Kleinmeier stated his main concern was that the officer made contact with the complainant once, he was talking to her when writing the parking ticket, and the statement he gave his supervisor indicated he pulled her over again for giving him the middle finger. Mr. Kleinmeier stated that if the officer already pulled her over once, if he pulled her over a second time, it was fine if he witnessed an infraction, but questioned how many officers are allowed to pull the window down, unlock the door, and pull a citizen out for an infraction. Mr. Kleinmeier stated that if this was the norm at the police department, there was a serious issue, and he could not see why an officer would pull a woman out of the car, handcuff her, and yell at her. He stated the complainant was probably very frightened. Acting Chairman Smart asked Commander Matos to share his thoughts on that particular issue with regard to policy or training. Commander Matos

stated that the officer's point of view differs from that of the complainant and from one of the witnesses as far as how forceful the encounter was when force was deployed. He further stated that was one of the reasons why the allegation was not sustained. One witness stated it was not overly forceful, and another witness stated he thought it could have been downplayed or it could have been deescalated. Commander Matos stated to force someone into remedial training or to suggest training when it was not factually certain that the officer has a problem with use of force is evaluated with the officer. He further stated that the officer works in a busy part of the city. The OPS did not see a pattern of a type of behavior that would warrant the OPS to refer him to remedial training or refer all the officers to remedial training. Commander Matos stated the whole issue of traffic stops with respect to officer safety needs to come into play, as officers cannot see the entirety of the vehicle and they cannot see underneath the seat of the car. He further stated fourteen (14) police officers have been shot this year alone in encounters with persons who were dangerous inside their homes, others during traffic stops. The complainant's reluctance to follow the lawful directions of a police officer became a custodial situation until the officer could finish the encounter. Commander Matos stated that as to the point of whether or not the department needs to refer the officer to training, the department is always open to training and offering it to employees, but as far as the employee in this incident and his scope of encounters leading up to this incident, there was nothing to indicate that the officer is in need of that type of training.

Acting Chairman Smart asked Commander Matos if he was suggesting that it was unusual for an officer to arrest a person while writing a ticket. Commander Matos stated that usually a person hands over his or her license and registration and complies with the officer's orders, and that did not happen in the present case. Acting Chairman Smart asked that after writing the first ticket, why didn't the officer just call it a day. Acting Chairman Smart stated that he understood the danger of not signaling, but he thinks that everyone has at some point may have forgotten to use the signal. Detective Battuelo stated the officer's statements in his IDC to the Chief, when he made reference to the complainant flipping him off after the issuance of the first ticket, his emotions and state of mind were taken into consideration during the investigation. He admitted and testified under oath to the OPS that he witnessed a violation. If the officer came in to the interview and stated he was angry at the complainant and that was why he pulled her over the second time for failure to signal, that would have been an admission of guilt. Because the officer stated he admitted to witnessing the violation and did not allude to the fact that he pulled her over after she flipped him off, which was taken into consideration by the OPS, that was why the allegation was not sustained. Detective Battuelo stated that with regard to the complainant, the witnesses agreed that she was not handing her information over to the officer, and she admitted in her complaint that she was on her cell phone at the time, and she refused to get off the phone, which was another reason the OPS tried to contact the complainant for further review. The person she was talking to would have

been considered a witness as well. The complainant failed to contact the OPS and failed to respond to the OPS. Monitor George Kleinmeier stated that in reference to that, he goes back to the IDC to the supervisor, who stated that the officer stopped the complainant because she flipped him off. Mr. Kleinmeier asked how they could not sustain the allegation when they had that evidence and that even though the officer stated he had witnessed a traffic violation, his own supervisor wrote that the officer told him he stopped the complainant for flipping him off. Acting Chairman Smart asked if the officer's supervisor disagreed with him. Mr. Kleinmeier stated that in the officer's IDC, the officer stated to the supervisor that he pulled the complainant over for flipping him off. Mr. Kleinmeier further stated that was why he had a problem with the OPS findings. Commander Matos stated the ticket was not for flipping the officer off, the ticket was for failure to signal, and it was not in dispute that the middle finger was displayed to him, as there were witnesses who saw that. Commander Matos further stated that the officer stated to his supervisor that the complainant gave him the middle finger, but he also stated that there was a Vehicle and Traffic violation, and he chose to enforce it at that time.

Mr. Frezzell asked Commander Matos to clarify that the officer was supposed to write a report and did not do so. Commander Matos stated that was correct. He further stated that beyond confirming the question, he could not state where the department was going with the failure to fill out the report. Acting Chairman Smart asked if it was the subject resistance report that the officer failed to fill out. Commander Matos replied in the affirmative. Acting Chairman Smart explained that the subject resistance report was a report that must be filled out when a person is resisting arrest and state the kind of resistance encountered, and the officer did not file that report. Acting Chairman Smart asked Mr. Potenza if it was correct that there was no subject resistance report in the case file. Mr. Potenza stated that was correct. Ms. Kelly asked if that was a separate report or if it was included as part of the report on a call. Detective Battuelo stated that to clarify, any use of force deployed by an officer of the police department has to be reported by the officer for the incident, regardless if an arrest ensued or not. If an officer has any kind of contact, even physical contact with a civilian, they have to report it to the department.

Acting Chairman Smart asked Mr. Potenza what he suggested the Board do with the complaint. Mr. Potenza asked what good would be served if the Board sent the complaint back for further investigation, because from what he saw, a very thorough investigation took place by the OPS. Mr. Potenza stated that a part of him says to make a motion to send it back for further investigation by the OPS, but another part feels, with all due respect to Mr. Kleinmeier and his findings, to move forward on each of the counts. Acting Chairman Smart stated that he felt it would be a good idea to send it back and see if the OPS could contact the complainant. He further stated that he knew the OPS reported they have tried and attempted to contact the complainant to shed some light on

particular items and if the OPS would try again, that would satisfy the Board. Ms. Hammond stated that the OPS should make another attempt and then if the complainant does not respond, there is not much more the Board can do. Mr. Potenza stated that he believed the Board was a little confused. He stated it has been over a year and the OPS conducted its investigation. Mr. Potenza stated that secondly, the complainant is not present. While the complainant has her rights, the Board is going back and forth and the person is not present. Acting Chairman Smart stated that was a valid point. Mr. Potenza stated that in light of the Board's questions and discussion, he would respectfully concur with the OPS on the first count of conduct standards as *not sustained*.

Anthony Potenza moved to concur with the OPS finding for the first conduct standards allegation as *not sustained*. Andrew Phelan Jr. seconded the motion. Marilyn Hammond, Anthony Potenza and Andrew Phelan Jr. voted in favor of the motion. Acting Chairman Edward Smart and Akosua Yeboah voted against the motion. James Frezzell and Lilian Kelly abstained from the vote. The vote failed to carry 3-2.

Mr. Potenza asked what it meant that the vote failed to carry. Acting Chairman Smart stated it meant that the portion which was voted on and failed to carry is sent back to the OPS for further investigation. Ms. Akosua stated she would like to point out that while it is evident that the complainant is not present, the Board does not know the reason why the complainant is not present. She further stated that she believed the Board was implying that because the complainant was not present means that she does not care or does not have anything to say about the incident. She stated that she did not think the Board could make that conclusion, and she would feel more comfortable if the OPS tried to make another attempt to contact the complainant. Ms. Kelly asked if there was documentation of OPS's attempt to contact the complainant. Commander Matos stated there was documentation. Detective Battuelo stated he attempted to contact the complainant several times in person. The complainant switched addresses before the complaint was filed, and he went to both locations, one in the City of Albany and one in the Town of Guilderland. In both locations the complainant was not there. At the Town of Guilderland address, he spoke with a neighbor who told him the complainant had moved, and he had not had any contact with her. He further stated that the complainant's phone number was tried several times with no answer. At one point the phone was turned off because there was no answer and it went straight to voicemail. He also stated a certified mailing was sent out several weeks ago, and the post office sent it back undelivered. Mr. Frezzell asked if the OPS checked the complainant's driver's license to see if it had been changed. Detective Battuelo stated he had checked the driver's license, and he put that in the report as well.

Board Counsel William Kelly stated that what the Board should be determining is whether or not the conduct of the investigation was proper and whether or not the OPS performed its job correctly. He further stated that if the Board was going to send the

complaint back to the OPS for further investigation there should be some kind of recommendation of what the Board believed should have occurred or taken place. He stated that if it is further determined some fact that may or may not have occurred that is not the same thing as to whether the OPS had done its job correctly. He stated that if that was what the Board was struggling over, focus should be kept as to whether in the conduct of the investigation OPS conducted, they did what they were supposed to do and did they review the materials they were supposed to look over. If the Board's conclusion is there is something else the OPS could have possibly done, that would fall into any recommendation that goes back to the department. Mr. Potenza thanked Mr. Kelly. Mr. Potenza stated that he is reminded from time to time by his colleague on the Board that one of the first things that should be ascertained is whether OPS conducted its investigation thoroughly, and the Board is satisfied with the matter in which the investigation took place or was conducted, before getting into what recommendations the Board might make. Mr. Potenza stated that in light of that reminder, he would move and conclude that the OPS conducted a fair and thorough investigation of the complaint.

Anthony Potenza moved to find that the OPS conducted a fair and thorough investigation of the complaint. Acting Chairman Edward Smart seconded the motion. The motion carried unanimously.

Acting Chairman Smart stated that he believed that there were some Board members who would like the OPS to take one last attempt to find and contact the complainant. Mr. Potenza stated that if that were the case, he would like to move to send back the complaint to the OPS for further investigation.

Anthony Potenza moved to send the complaint back to the OPS for further investigation. Akosua Yeboah seconded the motion. The motion carried 6-1. Andrew Phelan Jr. voted against the motion.

Ms. Kelly stated that the issue to be sent back to the OPS is to make another attempt to contact the complainant, not to question the investigation. Mr. Potenza stated that maybe making a further investigation is not the correct terminology. Ms. Kelly stated that was correct. Mr. Potenza asked the Board how the motion should be characterized. Acting Chairman Smart stated the motion could be that the Board asked the OPS to make one last try to contact the complainant. Acting Chairman Smart asked Mr. Potenza if that stated his motion. Mr. Potenza responded that it clearly stated his motion.

Acting Chairman Smart stated that he was reminded that Mr. Phelan had to explain why he originally voted against the first motion. Mr. Phelan stated he voted against the motion because the investigation into the incident happened over a year ago, the investigation was thorough, and the OPS made every attempt possible to contact people.

Mr. Phelan further stated the incident occurred on July 3, 2009 and it is now February 2011 and he believes the OPS did everything they could to try to contact the complainant.

CPRB No. 25-10/OPS No. CC2010-042 (Presented by Reverend Edward Smart)

Acting Chairman Edward Smart summarized the complaint. The complainant alleged that he was standing outside the Playdium bowling alley smoking a cigarette when an older man, who was also present, told the complainant to pull his pants up because there was a lady present. The complainant stated he responded by saying he meant no disrespect, however, the man continued to make derogatory statements toward him. The complainant alleged that as he began to walk away three males continued to chase him, whom he identified as off-duty police officers. Allegedly one male shoved the complainant from behind, causing him to fall forward and causing lacerations and bruising. He alleged the males jumped on his back, smacked his head into the ground, causing him to lose a tooth, and also causing lacerations to his eye.

Acting Chairman Smart reported that a monitor was assigned to the case. Acting Chairman Smart reported that he reviewed the following documents: OPS Confidential Report; Article 35 of NYS Penal Law; notary signed documents; emails from the attorney for the complainant; five (5) statements from witnesses; Albany Sheriff documents; Albany Medical documents; patient information; nineteen (19) IDCs; dispatch priority; personal notes; a dispatch history report; an Incident Report; and a Property Report.

Acting Chairman Smart noted Monitor Albert Lawrence was present. Acting Chairman Smart asked Mr. Lawrence to share his conclusion and thoughts on the case. Monitor Lawrence stated this was another complicated case. He stated that in his discussion he tried to go through each action, explain what the issues were and what the conclusions were. He further stated the first issue was whether the target officer, who was off-duty, had an articulated suspicion to pursue the complainant across the parking lot. Mr. Lawrence stated that he did conclude that the officer had an articulated suspicion based on what the officer was told and said he had been told. He further stated there was a factual question of whether the officer used unnecessary force in bringing the complainant to the ground. He further stated the officer and his father, who were present at the interview, insisted the complainant fell, but the complainant stated otherwise. Mr. Lawrence stated that the other witnesses had conflicting views, or inconclusive views, as to how the complainant came to fall to the ground. Mr. Lawrence stated his conclusion was that the evidence was too inconclusive to make a determination on that fact. He further stated that once the complainant was on the ground, there is a question of whether the officer was justified in restraining the complainant once he was down and whether unnecessary force was used to do that. Mr. Lawrence stated that the complainant alleged that his head was knocked into the pavement on the ground, and there is no other evidence from any other witnesses to substantiate that and the officer insisted that was

not the case. He further stated another issue was whether the officer had the authority, in essence, to arrest the complainant once he was on the ground by holding him there until the uniform officers arrived. Mr. Lawrence stated that he concluded that because the officer's father had indicated that the complainant had shoved him, and there was evidence that the target officer believed the complainant was armed, there was probable cause for an arrest at that point to charge him with harassment. He further stated that his conclusion was that there were no allegations by the complainant that could be sustained, and he believed the investigation was thorough and complete.

Acting Chairman Smart asked the Board if they had any other questions for Mr. Lawrence. It was noted that the Board did not have any questions for Mr. Lawrence.

Acting Chairman Smart asked if the complainant was present. It was noted the complainant was present.

Acting Chairman Smart asked the complainant if he would like to make a statement. The complainant stated he would like to address the Board. The complainant stated that as to the incident and what took place a lot of things are self-explanatory as to how things came about. He further stated that with regard to witnesses he did not think it mattered or what the hospital records showed. The complainant stated there was definitely excessive force. The complainant's attorney interrupted and stated she was his Counsel in the underlying matter. The complainant's attorney asked the Board if she had the authority to speak. Andrew Phelan stated that she did not have the authority to speak to the Board on behalf of the complainant. He asked the Board's Counsel for clarification. Board Counsel William Kelly stated that he was concerned that the attorney would introduce information that had not been considered in any other documents to the Board. The complainant's attorney stated that she just wanted to raise an issue that when the documents were read for consideration there were no photographs mentioned, and in the report it shows the Forensic Unit had been sent out, and the Lieutenant had been sent out when the incident occurred. She further stated that when the complainant was taken to the hospital for his severe injuries, photographs were taken, and that was what the complainant was trying to articulate to the Board. The complainant's attorney stated that when the complainant was trying to discuss the excessive force, the complainant was drinking, the officer was home from Iraq for the weekend and everyone at the incident was drinking and having a good time. The complainant's attorney stated that the complainant was told to pull up his pants, and he had stated he meant no disrespect. She further stated that it was a casual atmosphere at the bowling alley. The complainant's attorney stated that once the complainant realized the guy was coming at him he started running because there were three (3) big guys. She stated that it was actually five (5) guys altogether because, as they learned subsequently from the police tape, all were chasing after him. The complainant's attorney further stated that it was a gang of people after the complainant when they pushed him to the ground, and the monitor had stated

that there was no evidence to substantiate that his head was slammed into the ground. She stated that the evidence was the pictures taken by the Albany Police Department the evening of the incident, and if that was not a part of the record, than that was a significant part of the record. Acting Chairman Smart asked the complainant's attorney if she was saying that the photographs would change the Board's understanding of the complaint. The complainant's attorney replied that was correct. Mr. Kelly stated that anything that is brought to the attention of the Board must go through the OPS first. It would have to be a part of the OPS investigation, and they would have to look at it first. Mr. Kelly told the complainant's attorney that if she had anything to share, he recommended that she share it with the OPS first. The complainant's attorney stated that she did not have access to the photographs because the police took them, but it was in the documentation.

Detective Battuelo asked Acting Chairman Smart for permission to speak. Acting Chairman Smart told Detective Battuelo he could address the Board. Detective Battuelo stated the pictures were located in the case file that was in the Confidential Report. He further stated the Forensic Unit did submit photographs that were taken of the complainant on the night of the incident. Acting Chairman Smart asked if the photos were in the file he reviewed. Detective Battuelo stated they were not in the file Chairman Smart reviewed; they were on a disk. There was a note in the case file, and they were reviewed by Mr. Lawrence. Mr. Lawrence stated that he did review the photos, and he noted it in his report on page eleven. The complainant's attorney stated she did not know how extensive the investigation was with the timeline involved, since the police call came in shortly after midnight, and the store next to the bowling alley was where the complainant was hanging out, and he closed the store up with the owner and then went to the bowling alley. She further stated that when the complainant closed the store with the storeowner, he was perfectly fine. He had no lacerations on his hands or legs, or a gnash on his eye, and was not missing his tooth. She stated that when the police responded twenty minutes or so later, they asserted that the complainant was combative, and he had already been in a fight, and it was someone else who roughed him up. The complainant's attorney stated she was not sure if these facts were part of the record because it was not clear if the statements were from those five (5) witnesses. She further stated that the complainant was arrested after the incident for a parole violation because of the harassment charge stemming from that evening. She stated that after the complainant was arrested, she went to the Albany Police Department at Center Station to talk to an officer to ask him what had happened because the complainant was so severely injured, and the officer told her she would have to speak to the Lieutenant. The complainant's attorney further stated when she came back to speak to the Lieutenant to press charges, the Lieutenant told her she had to go to Henry Johnson Boulevard. She further stated that she and the complainant's mother went to Henry Johnson Boulevard where she spoke to two (2) officers and at no point, as she was there to file assault charges based on what had happened to the complainant, did she understand until a later conversation with

another officer that what they were doing was not filing a complaint, but a filing with the Office of Professional Standards. The complainant's attorney stated that she felt she had gotten the run around, and she had been put on a bench at Center Station for at least an hour before the Lieutenant told her to go down to Henry Johnson Boulevard. She stated the Lieutenant did not want to speak with her because all she had was a business card and she did not have an actual bar card, which is not necessary to be an attorney.

Mr. Kelly stated that the discussion had gone beyond the scope of the Board's review. He stated that he was going to recommend the matter be suspended pending approval by the Mayor's office. He further stated that he was going to talk to the Mayor's office since an attorney had entered the picture and there may be a notice of claim filed. He stated that because of that concern he was going to suggest the complaint be suspended. Once permission is given from the Mayor's office it can be brought before the Board at a future date.

Acting Chairman Smart asked if the Board need to make a motion. Mr. Kelly stated that he recommended that the complaint be tabled. Ms. Kelly asked if the Board needed to act on the complaint. Mr. Kelly replied that the Board was not going to act on the complaint at tonight's meeting. Ms. Kelly stated the Board still needed to make a motion to suspend the complaint. Mr. Kelly stated that as Corporation Counsel he is suspending the complaint, and the Board does not have to get involved. He further stated that if anyone had any questions they could come and talk to him.

Another complainant who was present at the meeting for a different complaint commented. He stated that the Board's counsel should have investigated the claim before it was brought to the Board and before everyone was called to the Board meeting. He further stated that Mr. Kelly should have looked at the complaint to see if a notice of claim was going to be filed beforehand. Mr. Kelly told the complainant not to tell him how to do his job. The complainant stated he was not telling Mr. Kelly how to do his job, but he was saying that something should have been done before the complainant and his attorney came to the meeting.

Acting Chairman Smart stated the complaint was going to be further reviewed. Mr. Kelly stated that the complaint was going to be suspended and reinvestigated. Acting Chairman Smart stated that the complaint would be tabled by the Board until further notice is received from the Mayor's office.

CPRB No. 26-10/OPS No. CC2010-045 (Presented by Andrew Phelan, Jr.)

Andrew Phelan, Jr. summarized the complaint. Mr. Phelan reported that on January 14, 2011 and January 27, 2011 he went to the OPS to review the case. He reported the complaint contained conduct standards and call handling allegations. He further reported the incident occurred on April 26, 2010.

The complainant alleged that he attempted to notify an officer of some individuals that were in possession of a weapon and the officer allegedly stated, "get the f**k away from me." The complainant stated that he spoke with a supervisor who advised she would speak with the officer involved and contact the complainant afterwards. The supervisor contacted the complainant and advised him she determined the complainant was arguing with other individuals, and the officer asked the complainant to step away from his vehicle and that the officer did not recall the exact words he used when speaking with the complainant.

Andrew Phelan summarized the finding of the OPS on the allegation of conduct standards as *sustained*, where the review disclosed sufficient facts to prove the allegations made in the complaint. The complainant alleged that he approached an officer with information about people with weapons, and the officer responded by stating, "get the f**k away from me." Based on the OPS investigation, the officer stated the complainant approached the patrol car in an "agitated" and "intoxicated" state, with his hands in his pockets, and only said, "You have to tell those people to go." The officer felt the complainant posed a potential threat to his safety and instructed the complainant several times to remove his hands from his pockets and step away from his vehicle. After the complainant refused to comply with the officer's repeated commands to step away, the officer admitted that he told the complainant to "get the f**k away from my car," at which time he finally complied and stepped away.

Andrew Phelan summarized the finding of the OPS on the allegation of call handling as *not sustained*, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. Based on the OPS investigation, the complainant stated that his reason for contacting the police was because he was concerned that there were people in the area of the VFW who were in possession of weapons, and he wanted the officer to investigate. The officer stated that at no time during his interaction with the complainant did he mention anything about people with weapons. The officer stated that the complainant only said to him, "You have to tell those people to go." The complainant also stated that a short time after his contact with the officer, two police officers on bicycles approached him and asked if everything was all right. He told the officers that everything was fine, and they rode away. If his main concern was a group of people in the area with weapons, he could have communicated this to the officers on the bicycles, but he never mentioned it to them.

Andrew Phelan summarized the finding of the OPS on the second allegation of call handling as *sustained*, where the review disclosed sufficient facts to prove the allegation made in the complaint. The complainant stated after his contact with the officer, he went to the Center Station to speak to a sergeant about filing a complaint. Based on the OPS investigation, the sergeant stated that she spoke with the complainant, gave him a complaint form, and told him she would speak to the officer involved. After receiving

the complaint, she intended to complete an IDC about the incident and due to the unusually busy shift that evening forgot to complete the paperwork as per Standard Operating Procedure. The sergeant's efforts fell short of fulfilling the department's complaint procedure.

Mr. Phelan asked if the complainant was present. It was noted that the complainant was present. Mr. Phelan stated that he appreciated the complainant coming to the meeting and telling his story.

The complainant told the Board his name and stated that he did not know when he filed the complaint. Mr. Phelan stated the complaint was filed on April 28, 2010. The complainant stated that he did not remember the detective who investigated the complaint, but pointed him out at the meeting. Detective Andrew Montalvo told the complainant his name. The complainant stated that there was a party at the VFW post, and a fight began to break out at the side of the VFW post. He stated the person throwing the party was his sister, for her fifteenth birthday. He further stated a couple of young kids came in that should not have been there, so they asked them to leave. The kids refused to leave the party. The complainant stated that when they did leave the party they went out into the street and brawled with some other kids who had come down the street. The complainant stated that a lady from the VFW asked the party to leave. Since it was after one, he thought that was a good idea because they did them a favor by allowing the party to be held at the VFW post. He stated that at the time when the fighting began a police officer came, with his horn and lights flashing, and the complainant walked over to the car and told the officer to help because the three (3) kids had guns. The complainant stated that he was told the kids were on parole and had guns. He further stated that before he could explain the situation, the officer told him to "get the f**k out of here." He explained to the officer and the officer turned his car around with the lights flashing onto Quail Street. The complainant stated that he, his sister, and three (3) other guys went across the street to the McDonalds at the corner and watched the guys. He stated that the kids had left the VFW and as a group walked down Central. The complainant stated two (2) officers came by on bicycles while they were standing around talking about the situation and an officer asked if everything was fine. He further stated the officers believed his group was fighting, so they told the officers that everything was fine with them and not with the party. The complainant stated the officers did not ask about the party, and they got back on their bikes and rode down towards Manning and they stopped a group of kids. He stated that when he spoke to Detective Montalvo, who was investigating the case, the officer claimed he saw the complainant in the parking lot at Price Chopper arguing with someone. Detective Montalvo stated there was some sort of discrepancy concerning the cameras, and he believed the Sergeant had a similar incident confused with this incident and it was not relevant to the case. The complainant stated that he went to see the sergeant and he made a phone call to the station. Nobody

called him back, so he got in his car and rode over to the station and asked to speak to the Sergeant or the Lieutenant. The desk clerk told the complainant that the Sergeant was present and would just be a minute so he waited on the bench. The complainant stated the Sergeant asked him for the car number, and he gave it to her. He stated the Sergeant told him she would check it out for him. The complainant asked the Sergeant if he should wait, and the Sergeant told him he could go home, and she would call him. The Sergeant also informed the complainant about the Citizens' Police Review Board, and he filled out a form. The complainant stated the Sergeant called him back early in the morning and left a voicemail on his phone. He stated that from what he understood, the Sergeant was telling him not to do anything about it. When he went to meet with Detective Montalvo a week later, he had already deleted the phone messages. The complainant stated that the officer was not nice and he did not get out of the car and try to investigate anything. He further stated the officer did not tell him to get his hands out of his pockets or anything, because he did not have anything in his pockets. He further stated he just approached the officer for help and stated he needed help.

Mr. Phelan told the complainant that the OPS agreed with him. The complainant stated he understood, he was just telling his story. Acting Chairman Smart told the complainant that the only part that the OPS was unable to agree with him was his allegation that when he approached the officer in the car, it was not clear to him whether the complainant explained why help was needed. Acting Chairman Smart stated that was probably something the Board would be unable to deal with because it was the complainant's word against the officer's. Acting Chairman Smart stated that with regard to the other two allegations, however, the complainant would be hearing from the OPS and he believed the complainant would be pleased with the outcome. Mr. Phelan again thanked the complainant for coming to the Board meeting and explaining his story because it makes it a lot easier to understand.

Mr. Phelan asked if there were any questions from the Board. It was noted there were no questions.

Andrew Phelan, Jr. moved to concur with the OPS finding for the conduct standards allegation as **sustained**. Acting Chairman Reverend Edward Smart seconded the motion. The motion carried unanimously.

Acting Chairman Smart explained to the complainant that a finding of **sustained** meant that the OPS agreed with his complaint. The complainant stated that he was aware of the findings.

Andrew Phelan, Jr. moved to concur with the OPS finding for the first call handling allegation as **not sustained**. Marilyn Hammond seconded the motion. The motion carried unanimously.

Andrew Phelan, Jr. moved to concur with the OPS finding for the second call handling allegation as ***sustained***. Anthony Potenza seconded the motion. The motion carried unanimously.

CPRB No. 28-10/OPS No. CC2010-057 (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint. Ms. Hammond reported that the complainant alleged that he was involved in an incident which occurred in the City of Cohoes, and also involved members of the Cohoes Police Department.

Ms. Hammond reported that she reviewed the following documents: the OPS Confidential Report; a fax that was sent to the Cohoes Police Department; and a letter sent to the complainant informing him that his complaint was forwarded to the Cohoes Police Department dated May 19, 2010.

Marilyn Hammond summarized the finding of the OPS on the allegation of use of force as ***no finding***, where the investigation revealed that another agency was responsible and the complaint and the complainant has been referred to that agency. Based on the OPS investigation, the events surrounding the complaint took place in the City of Cohoes. Assistant Chief Ward of the Cohoes Police Department did verify that he was familiar with the incident described in the complaint, and that the officers named in the complaint are in fact employed by the Cohoes Police Department.

Akosua Yeboah asked if the complainant was present. It was noted that the complainant was not present.

Marilyn Hammond moved to concur with the OPS finding for the use of force allegation as ***not finding***. Akosua Yeboah seconded the motion. The motion carried unanimously.

James Frezzell asked Acting Chairman Smart whether the Cohoes Police Department was under the Board's jurisdiction. Acting Chairman Smart stated under the legislation, the Board only reviews complaints against members of the Albany Police Department. If an incident involved a State trooper, or a Cohoes officer, as in this case, then the Board did not have jurisdiction to review the complaint. He further stated that a letter is sent to the complainant informing them that the complaint is not under the Board's jurisdiction and notification is given to the appropriate police agency.

Marilyn Hammond summarized the finding of the OPS on the allegation of the conduct standards as ***no finding***, where the investigation revealed that another agency was responsible and the complaint and the complainant has been referred to that agency. Based on the OPS investigation, the events in the complaint took place in the City of Cohoes. Assistant Chief Ward of the Cohoes Police Department verified that he was

familiar with the incident described in the complaint, and that the officers named in the complaint are in fact employed by the Cohoes Police Department.

Marilyn Hammond moved to concur with the OPS finding for the conduct standards allegation as *no finding*. Acting Chairman Edward Smart seconded the motion. The motion carried unanimously.

CPRB No. 31-10/OPS No. CC2010-067 (Presented by Anthony Potenza)

Anthony Potenza summarized the complaint. Mr. Potenza reported the complaint was received on June 14, 2010 and contained conduct standards, call handling and use of force allegations. He noted that a monitor had been assigned to the complaint.

Mr. Potenza stated the complainant alleged that she was driving her vehicle and was stopped by an officer, who was rude, and when she went to enter his name and badge number into her cell phone, grabbed her by the arm, knocked the phone out of her hand, and pulled on her seatbelt yelling for her to get out of the car. When she stepped from the car, the officer forcefully pushed her against the car, pulled her hands behind her back and handcuffed her. The complainant's uncle came to the scene and tried to get out of his truck, at which time the officer pulled out his gun and pushed the door closed so her uncle could not get out of the truck.

Mr. Potenza reported that he reviewed the following documents: Citizen Complaint Form; Albany Police Department Civilian Complaint Report; Monitor's Report; Albany Police Report; IDCs from officers dated 6/17/10, 6/18/10, and 7/27/10; a signed statement from the witness, the complainant's uncle; typewritten account of the incident by the complainant; the original handwritten account of the incident; the investigating officer's handwritten notes on the investigation; copy of the traffic ticket, which was not legible in copy form, but was presumably parking on the highway/parking on the pavement; city court correspondence to the complainant regarding an appearance ticket; and a call ticket, with detail.

Anthony Potenza summarized the finding of the OPS on the allegation of call handling as *exonerated*, where the acts which provided the basis for the complaint occurred, but the review shows that such acts were proper. The complainant had stopped her vehicle in the roadway in order to observe a traffic stop that was being conducted by an officer. A review of the in-car video recorded at the time of the incident showed that the complainant stopped her car in the east bound driving lane, which caused a taxi cab to stop abruptly and drive around her. At that time another officer pulls along side of the complainant and says, "Keep it moving." She does not immediately comply with the officer's lawful command and instead keeps her car stopped in the roadway and asks the officer, "Am I doing anything wrong? Am I committing a crime or breaking the law?" At that time the officer is legally authorized to initiate a traffic stop based on the

complainant's obstructing traffic. The officer is also authorized to issue a NYS Uniform Traffic Ticket for Stopping on Pavement, in violation of NYS Vehicle and Traffic Law 1201-a.

Anthony Potenza summarized the finding of the OPS on the first allegation of conduct standards as *sustained*, where the review discloses sufficient facts to prove the allegations made in the complaint. The complainant alleged that after the officer pulled her over, he approached her driver side window and asked to see her license and registration. Based on the OPS investigation, she did not produce her license and registration at that time, but asked the officer for his name and badge number, to which he replied with his name and shield number. The complainant then says, "What would they say about this if I called the County Executive's Office?" She then picks up her phone to enter his name and badge number, at which time she stated the officer knocked her phone out of her hand and started pulling on her coat, seatbelt and scarf, while yelling "Get out of the car." The officer stated during his interview that the complainant refused to produce her license and registration to him when asked to do so and instead started to use her cell phone. The officer stated that he knocked the cell phone out of her hand because he felt that it could be used to summon other people to the location of the traffic stop and create an officer safety issue, so he prohibits anyone who is the subject of a traffic stop to use their cell phone during a traffic stop. The officer did not, however, verbally request that the complainant abstain from using her cell phone until the completion of his traffic stop before physically knocking it out of her hand.

Anthony Potenza summarized the finding of the OPS on the first allegation of use of force as *sustained*, where the review disclosed sufficient facts to prove the allegations made in the complaint. After the officer knocked the cell phone out of the complainant's hand, she alleged that, the officer began pulling on her seatbelt, coat and scarf, while yelling "Get out of the car." When she opened the door and stepped out of her car, she states the officer "pushed me forcefully against my car, grabbed my wrists, put them behind my back, and handcuffed me." She asked why she was being arrested and got no response. She felt that she was handcuffed for no reason. Based on the OPS investigation, the in-car video shows the officer reaching into the complainant's car in what appears to be an attempt to grab an unknown object. The officer can then be seen grabbing at the complainant's shoulder area. He then opens the car door and can be heard (on the in-car audio), saying, "Come on out," at which point the officer is authorized to order the complainant to exit the vehicle for investigative purposes and to separate her from the other occupants. He then leaned her against the car, using minimal force, and handcuffs her behind her back. The officer said that the complainant was handcuffed for his and her safety and because she was "totally uncooperative" and "belligerent and she could turn violent. I was not going to chance wrestling with her in the street." But at no time did the complainant make any verbal threats to the officer, nor

was she combative or actively resisting before or after he places her in handcuffs. The officer was also unable to articulate a reason to believe that the complainant was in possession of a weapon or had any intent to cause him or anyone else harm before or after she was removed from her vehicle. She remained in handcuffs, for approximately one half hour, until the completion of the traffic stop.

Anthony Potenza summarized the finding of the OPS on the second allegation of use of force as *exonerated*, where the acts which provided the basis for the complaint occurred, but the review showed that such acts were proper. The complainant stated that her uncle arrived at the scene and when he pulled up in a truck and tried to get out, the officer allegedly “pulled out his gun” and he “pushed the door closed on my uncle as he was attempting to get out of the truck.” Based on the OPS investigation, the in-car video shows the uncle’s vehicle arrived, and pulled up in very close proximity to the officer’s vehicle. The vehicle stopped in the roadway next to the driver side of the officer’s patrol car, at which time the officer approached the vehicle and said “Move along.” The officer pulled his gun out of the holster, at about the same time the passenger side door began to open and the uncle told the officer, “That’s my niece.” The officer told him not to get out of the vehicle, but the uncle ignored him and attempted to get out. The officer pushed the door closed and continued telling the driver to move along. The vehicle pulled over to the north side of Morton Avenue. The officer had no knowledge of who the occupants of the vehicle were or how many occupants were in the vehicle. He could not be sure of their intent and due to the dark environment, could not see inside the vehicle. Any reasonable person would understand the potential threat and compromise to the officer’s safety that the vehicle represented at the time. The officer was justified in drawing his duty weapon from its holster in the event that a sudden threat had emerged from the vehicle at that time.

Anthony Potenza summarized the finding of the OPS on the second allegation of conduct standards as *unfounded*, where the review showed that the acts or acts complained of did not occur. The complainant alleged that at some time during her interaction with the officer, the officer “pulled out his flashlight, as he was going to hit me with it. He was very aggressive.” A review of the in-car video, which recorded the entire interaction, showed the officer using his flashlight to illuminate the driver’s side vehicle compartment as he approached the car at the beginning of the traffic stop. At no time during the officer’s contact with the complainant does he brandish his flashlight in a threatening manner or in any way that could be construed as menacing towards the complainant. Later in the video, he is seen putting his flashlight in its duty belt holster while standing in front of his patrol car near the complainant.

Mr. Potenza asked if Monitor Theresa Balfe was present. It was noted that Ms. Balfe was present.

Mr. Potenza asked if the complainant was present. It was noted the complainant was present. Mr. Potenza thanked the complainant for coming and asked if she would like to make a comment.

The complainant asked Mr. Potenza what he had just read. Mr. Potenza told the complainant he had read the results, or findings, of the OPS investigation. The complainant asked if what were read were the allegations against the officer. Acting Chairman Smart replied that what was just read was from the OPS, their conclusions on the matter, and the Board has the option of agreeing or disagreeing with those conclusions. He stated the Board had not yet made any determinations on the OPS' findings and before making those determinations the Board wanted to hear from her and the monitor.

The complainant stated that she would like to read her complaint and she would like to ask for the definition of a traffic stop. She asked if an officer directing traffic at an intersection would be considered conducting a traffic stop because when she was driving by, the officer was in a Stewart's parking lot and there was no traffic stop being conducted as far as she was concerned or to her knowledge.

The complainant stated she would read her complaint. She stated she was driving down Morton Avenue on March 28, 2010, around 1:30 am. She saw the police parked with their lights on and they were looking inside of a parked car. She slowed down and looked on, because she thought it was someone she knew. When she stopped an officer swerved aside of her car in a rage, as if he was going to hit her car. She did not move. He yelled out "Keep it moving." The complainant asked "Am I doing anything wrong? Am I committing a crime or breaking a law?" He stated "Yes you are, pullover." She said "Sure, no problem." She pulled over on Morton Avenue, just past Stewart's parking lot. An officer went back in the parking lot to speak with the female officer, and then he came out of the parking lot and pulled up behind her. He got out of the car and came over to her driver's side, and asked her for her license and registration. She asked, "Why did you ask me to pull over?" He did not respond and again asked "License and registration please." She asked him for his name and badge number and he told her. She then said "What would they say about this if I called the County Executive's office?" He replied "They would laugh." She picked up her phone to enter his name and badge number and he went into a rage, grabbing her arm, knocking her phone out of her hand, and began pulling on her seatbelt, coat, and scarf, while yelling "Get out of the car." She opened the door, stepped out of the car and he pushed her forcefully against her car, grabbed her wrists, put them behind her back and handcuffed her. She asked him why he was arresting her, and she received no response to the question. The officer pulled her over to his car and leaned her against the hood of his car. She yelled to her cousin for her to call her mom and the officer got back in his car and the female officer stood next to her. Her mother came and the officer told her to get back in her car, and she did. Her

mother then pulled over in the Stewart's parking lot and watched and waited. Her uncle came and the officer pulled out his gun when her uncle tried to get out of his truck, and the other officer pushed the door closed on her uncle as he was attempting to get out of the truck. Her uncle and his friend pulled over in the Stewart's parking lot with her mom. As they waited, more officers arrived. There were at least four (4) police cars total. Two (2) male officers told her two female cousins who were in the car to get out of the car. One (1) officer made her cousin stand in front of her car, while another officer made her other cousin sit on the steps of a beauty salon. They were standing in the cold for almost an hour. Another one of her uncles arrived, and an officer made him get back in his car. Sometime after the officer put her against his car and others arrived, the sergeant arrived and he did not tell the officer to take the handcuffs off. He walked past her and went to question her cousin, but she refused to talk to him. In addition, an officer pulled out his flash light like he was going to hit her with it. He was very aggressive and she thought he was going to hit her but she remained calm.

The complainant stated that she had just read the statement she had submitted to the OPS.

Acting Chairman Smart asked Ms. Balfe for her comments. Ms. Balfe stated it was a very complicated case. She met with the complainant and Detective Montalvo at the OPS. She stated that during the meeting, the complainant had reiterated her complaint, re-read her complaint and then presented a handwritten statement, which was very difficult to read, from a witness at the scene. She further stated Detective Montalvo had reached out to that witness prior, and she told him she had already submitted a statement and wished for no further involvement. Ms. Balfe asked the complainant if that statement was present at the Board meeting. The complainant stated the witness was not present, and it was her cousin. Ms. Balfe stated that there was another witness who Detective Montalvo tried to reach. The witness did not provide a statement and did not want to come into the OPS. She further stated that she thought it would be very important to see these witnesses and interview them because you can get a good feel for someone when you interview them. Ms. Balfe further stated that tonight was the first time that she had seen the complainant's mother, and she has not read any statements from the mother. Ms. Balfe stated that she included a list of the documents she reviewed in her report, and she believed Detective Montalvo did a thorough job. She stated that she reviewed all of the audio and videotape, and she was certainly glad she did because in her report she noted all of the discrepancies as to what the complainant stated and what transpired based on the tapes. She further stated that she did not know how the Board would like to go through her report, or whether the complainant would like to hear it, but she would like to state there was a thorough investigation on both parts. Mr. Potenza asked the complainant what parts of the OPS investigation she disagreed with. The complainant replied it was not that she disagreed with the investigation, she just wanted to read her statement and she wanted a better understanding of the findings. Mr. Potenza told the

complainant that two of her allegations were *sustained*, which meant that the OPS agreed with her. The complainant asked which allegations had not been sustained. Mr. Potenza told the complainant that one call handling, one use of force and one conduct standards allegation were exonerated or unfounded. The complainant asked what call handling meant. Mr. Potenza replied that exonerated meant that the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper. Acting Chairman Smart told the complainant that when the officer asked her to move and she did not move, he was within his legal right to pull her over. He further stated that rather than the complainant asking the officer why, when she stopped and saw the lights, by her own testimony, when she stopped and he then asked her to move, and she did not move, it meant that the officer did not do anything wrong. He further told the complainant that her actions, as a citizen, that when a police officer says to move, whether she agrees or not, she has to move. Acting Chairman Smart stated that when the complainant's uncle pulled up in the truck, what happened was the police officer had someone pull up next to them and did not know who that person was. The officers have a right to protect themselves. Acting Chairman Smart stated that the best way to approach the officer is not to approach him by stopping the car or truck, but by moving to the side and basically asking the officer permission to approach. He further stated that the OPS reported that the officer had a right to protect himself. Acting Chairman Smart told the complainant that the next issue was the allegation that the officer used his flashlight in an inappropriate manner. Acting Chairman Smart explained to the complainant that the Board knew she felt threatened, but it could not be proven that the officer intended to hit her with the flashlight. He further told the complainant that there were two counts which the OPS agreed with her, when the officer knocked her phone out of her hand and the language the officer used when speaking to her. Mr. Potenza added that the officer grabbed the complainant's shoulder. Acting Chairman Smart told the complainant that he thought the OPS had been fair in investigating her complaint. He further stated that when police officers tell someone to stop or to move, that person must stop or move.

The complainant's mother asked Acting Chairman Smart if she could address the Board. Acting Chairman Smart allowed the complainant's mother to speak. The complainant's mother stated that Ms. Balfe had stated that she had no knowledge of any of her statements, but she had been questioned, and she was called by the Detective. She further stated that the Detective asked her how she felt about the incident and how she felt when she pulled up. Ms. Balfe asked Detective Montalvo if he had spoken with the complainant's mother. Detective Montalvo stated he had spoken with the complainant's mother. The complainant's mother stated she had told Detective Montalvo that she understood the officer was doing his job, but he had a very nasty attitude. She further stated that the police are there to protect citizens and she understood that things got out of hand, but the officer was very nasty. Acting Chairman Smart stated that he thought that the OPS agreed with the complainant on the two counts that were sustained.

Ms. Balfe stated that she would like to add to the discussion so that the complainant really understood the process. She told the complainant that the complainant makes the complaint, and then the OPS begins its investigation, and then the monitor conducts his or her portion. Ms. Balfe stated she likes to meet with the complainant, witnesses, and so forth, so her findings are sometimes different than OPS's. The OPS issues a report and the monitor issues a separate report. Ms. Balfe told the complainant that she was in complete agreement with the OPS findings.

The complainant asked if she would be able to get a written copy of the results or the outcome of the investigation. Acting Chairman Smart told the complainant that she would be receiving a letter from the Government Law Center on the findings.

Mr. Potenza stated that upon his review of the documents, the OPS did a very thorough investigation of the complaint.

Board Counsel William Kelly stated that as legal advisor to the Board he was going to suggest that since a name was used when discussing the complaint, if anyone on the Board feels there is a conflict of interest, they should excuse themselves from the vote.

Anthony Potenza moved to concur with the OPS finding for the first call handling allegation as *exonerated*. Lilian Kelly seconded the motion. The motion carried unanimously.

Anthony Potenza moved to concur with the OPS finding for the first conduct standard allegation as *sustained*. Acting Chairman Edward Smart seconded the motion. The motion carried unanimously.

Anthony Potenza moved to concur with the OPS finding for the use of force allegation as *sustained*. Andrew Phelan, Jr. seconded the motion. The motion carried unanimously.

Anthony Potenza moved to concur with the OPS finding for the second use of force allegation as *exonerated*. Marilyn Hammond seconded the motion. The motion carried unanimously.

Anthony Potenza moved to concur with the OPS finding for the second conduct standards allegation as *unfounded*. Marilyn Hammond seconded the motion. The motion carried unanimously.

CPRB No. 33-10/OPS No.CC2010-072 (Presented by Reverend Edward Smart)

Acting Chairman Reverend Edward Smart summarized the complaint. The complainant alleged that she called the Albany Police at 1 p.m. to report damage to her vehicle. She stated that she waited until 3 p.m., and no officer arrived. The complainant alleged that she called back and spoke with a female who told her to "Do what you have to do." The

complainant alleged that she saw officers in the area and wondered why they did not come to the address.

Acting Chairman Smart noted a monitor was not assigned to the complaint.

Acting Chairman Smart reported that he reviewed the following documents: Confidential Report; 27 Patrol Units; the Citizens' Complaint; the Dispatch History and Dispatch Call; responding call log; grievance notification; dispatch call; and incident report and notes.

Acting Chairman Smart asked if the complainant was present. It was noted that the complainant was not present.

Acting Chairman Smart summarized the finding of the OPS on the first allegation of call handling as *unfounded*, where the review showed that the act or acts complained of did not occur. The complainant alleged that the Albany Police did not respond to her call for assistance in a timely fashion and a female employee stated "Do what you have to do." The OPS concluded that the call was a lower priority and a heavy volume of higher priority calls at the time were called. The recorded call indicated that the employee did not say "Do what you have to do." The dispatcher stated that units were busy and a unit would be dispatched to her address as soon as one became available. There was no evidence that the complainant's call for help was shown less regard than any other citizen request for assistance.

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

B. *Appointment of New Members to the Committee on Complaint Review for March 2011.*

The following Board members were appointed to the Committee on Complaint Review for March 2011: James Frezzell, Marilyn Hammond, Lilian Kelly, Andrew Phelan Jr., Anthony Potenza, and Reverend Edward Smart.

C. *Committee/Task Force Reports*

Acting Chairman Edward Smart reported that the committee/task force elections would be taking place at the Board's next meeting on February 9, 2011. Acting Chairman Smart stated that the Board was excited to have some new members and hoped that every member would be able to serve on a committee.

D. *Election for Board Officer Positions*

Acting Chairman Edward Smart reported that the Board was going to finalize the elections of the new Board Officer Positions for the new year. Nominations were made at the Board's last meeting. He stated that at the last meeting, Anthony Potenza was

nominated for Vice-Chair, Andrew Phelan, Jr. was nominated for Secretary and Reverend Edward Smart was nominated as Chair. Acting Chairman Smart asked for a motion to elect the persons nominated. Marilyn Hammond moved to elect the persons nominated for their respective positions. Akosua Yeboah seconded the motion. The motion carried unanimously. Chairman Smart stated that he appreciated the opportunity to serve the Board, and former Chairman Jason Allen, who was absent, was the only Chairperson he knew during his tenure on the Board and his leadership has been outstanding. Chairman Smart further stated that when the Board thinks about where they were a few years ago to where they are today, and the great strides it has made in conjunction with the OPS, such as the cameras that are installed in the police cars, has been due to the hard work of Mr. Allen and the Board. He stated the Board commended Mr. Allen for his tremendous leadership and the Board as a whole appreciates him and thanked him for his leadership.

Chairman Smart asked if any other Board members would like to make a comment. Ms. Hammond stated that she served with Mr. Allen for many years and he has always been an exemplary person, an all around great person, and he has done a wonderful job as Chair of the Board. She further stated that the position was not easy, and he has a job that takes him away a lot but he has done a great job and the Board will continue to move forward on the things that he started.

Chairman Smart stated he would like to hear from the new members on the Board. Chairman Smart introduced new member Lilian Kelly. Ms. Kelly stated that she was very honored to serve on the Board. It was important to her because she has had the honor of living in Albany for five (5) years and as a person who walks everywhere, feeling safe is key to the success of Albany as a city. She further stated that whether it was neighborhood businesses, the desire to live downtown, or kids walking to and from school, she became interested in public safety and the community. Ms. Kelly stated that was the reason she was on the Board and she hoped to serve in that capacity from the public safety point of view. Chairman Smart thanked Ms. Kelly.

Chairman Smart introduced James Frezzell as a new appointee from the Common Council. Mr. Frezzell stated that he was pleased to be appointed to the Board and be involved with a lot of community organizations. He stated that he believes it is up to the citizens who get involved, not just complainants, because if they are part of the city, it affects them. He stated that he was looking forward to helping all parties involved and seeing what develops.

Coordinator of the Board Sharmaine Moseley stated she would like to add that there is one more new Board member who was not present at this meeting. She stated the new member's name was Eugene Sarfoh and he would be completing his orientation next week and would hopefully be at the March 2011 Board meeting.

E. Committee/Task Force Chair Elections

Chairman Edward Smart reported the Board would hold committee/task force chair elections at the next Board meeting.

F. *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 (70) active complaints before the Board for review. Of those seventy (70) active complaints, four (4) were reviewed at tonight's meeting, which leaves the Board with sixty-six (66) active complaints. Out of those sixty-six (66) active complaints thirty (30) cases are ready to go on the next meeting agenda for review.

It was further reported that four hundred and twelve (412) complaints have been closed. The total number of complaints suspended from review is eleven (11) and one (1) complaint was referred to mediation. The total number of complaints filed to date is four hundred and eighty-eight (488).

It was reported that since the Board's last meeting, the GLC received ten (10) grievance forms. The total number of grievance forms received to date is two-hundred and twenty nine (229). In response to the GLC's outreach to all individuals, we have received sixty-four (64) CPRB complaint forms.

New GLC Legal Intern

It was reported that the GLC has a new legal intern, Matthew Klimasauskas. It was acknowledged that Mr. Klimasauskas was present at this meeting. He reported that he was looking at the legislation from other review boards around the country and looking at the Board's legislation, amendments, and by-laws to get some background information. He further reported that he and Dean Patricia Salkin have discussed doing some research on confidentiality, which came up at tonight's meeting. He stated that he was open to any questions, comments, or suggestions that the Board might have for the research.

Upcoming Meetings

It was reported that the next Board meeting is scheduled for February 9, 2011 at the GWU the Center.

G. *Report from the Office of Professional Standards*

OPS Commander Ronald Matos reported that the new Neighborhood Engagement Unit (NEU), completed their week long training. Commander Matos thanked Chairman Smart for participating in the training, noting that it was very well received by all involved. He stated that the Board might notice more officers walking through neighborhoods. There are twenty-seven (27) officers that have been deployed, four (4) Sergeants and one (1) Lieutenant for the Neighborhood Engagement Unit. He further reported the first evolution of in service training delivered department wide was completed today. Officers learned CPR and were certified, and also reviewed infectious disease exposure and policies. Commander Matos reported the second evolution of in service training would focus on community policing concepts and scheduled to start on February 9, 2011 and end on March 4, 2011. He stated that some of the same training was supplied to the twenty-seven (27) NEU officers would be delivered department wide, which is in line with the Police Chief's new philosophy to deliver community policing. Commander Matos reported the Citizens' Police Academy is scheduled to start March 3, 2011. They have received ten (10) applications so far and are aware of the three (3) Board members who have to attend and spaces have been reserved.

G. *Report from the Chair*

Chairman Edward Smart told Commander Matos that he believed that as the Commander of OPS he has done an amazing job and cases are being turned out in an efficient manner. He further stated the OPS Detectives were also doing a great job, which the Board can see from the reports. Chairman Smart stated he believed the Detectives were doing an outstanding job because their leadership is superb. He thanked Commander Matos for his excellent work and staff. Ms. Hammond agreed with Chairman Smart.

Chairman Smart asked if any other Board members would like to make a comment before the meeting adjourned. Andrew Phelan, Jr. ~~stated~~ he would like to congratulate Chairman Smart and was looking forward to working with him for the remainder of his term.

V. **Public Comment**

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

VI. **Adjournment**

Andrew Phelan Jr. moved to adjourn the meeting. Andrew Phelan seconded the motion. The motion carried unanimously. The meeting adjourned at 8:05 p.m.

Respectfully submitted,

Andrew Phelan, Jr.
Secretary

A handwritten signature in cursive script that reads "Andrew Phelan Jr." The signature is written in dark ink and is positioned below the printed name and title.