

**City of Albany
Citizens' Police Review Board
GWU the Center
274 Washington Avenue- Teen Center Conference Room
February 9, 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

Chairman Edward Smart called the meeting to order at 6:04 p.m.

II. Approval of the Agenda

The agenda was reviewed. Chairman Smart noted that CPRB complaint No. 44-09/OPS No. CC2009-086 was tabled. Akosua Yeboah moved to approve the revised agenda. Lilian Kelly seconded the motion. The motion carried unanimously.

III. Old Business

A. CPRB No. 25-10/OPS No. CC2010-042 (Chairman Reverend Edward Smart)

Chairman Edward Smart asked Board Counsel William Kelly if the Board should move on the complaint, or if the Board should wait to make motions for that complaint until the next meeting. Mr. Kelly asked if the complaint was from the February 4, 2011 Board meeting. Chairman Smart responded it was the complaint from the February 4, 2011 meeting. Mr. Kelly stated they were going to contact the complainant and the complaint should be held over to the next meeting. Chairman Smart asked Coordinator of the Board Sharmaine Moseley if any action on the part of the Board was required. Ms. Moseley replied that the Board had to make a motion to table the complaint. Mr. Kelly requested that the Board table the complaint.

Anthony Potenza moved to table the complaint. Andrew Phelan Jr. seconded the motion. The motion carried unanimously.

B. CPRB No. 23-09/OPS No. CC2009-041 (Anthony Potenza)

Anthony Potenza summarized the complaint. Mr. Potenza reported that the complaint was received on May 19, 2009 and contained two (2) conduct standards allegations. He further reported that no monitor had been assigned to the complaint. The incident occurred on March 17, 2009. The complainant alleged that he called 911 to report two

teenagers fighting on the corner of Lark Street and Clinton Avenue. According to the complainant, one girl pulled out a knife and started stabbing the other girl. The complainant further alleged that he was still on the phone with 911 when two officers approached the car and demanded to see his license and registration. He alleged that he tried to explain the situation but the officers were not interested. The complainant claimed that both girls got away and the officers detained him. He further claimed that the girl who did the stabbing was still in sight of the officers and because the officers demanded to see his license and registration the girl got away. The complainant thought he was doing the right thing by reporting the fight, but instead he was allegedly victimized by the police and was never questioned about the fight or stabbing.

Mr. Potenza reported that he reviewed the following documents: the Civilian Complaint Form; the APD Civilian Complaint Report; the OPS Confidential Report, which included a response to a request by former Board Chairman Jason Allen for further clarification; the initial OPS Confidential Report; the Standard Incident Report, which detailed the police investigation of the stabbing incident; Call Tickets regarding the traffic stop of the complainant and the stabbing incident; Patient Care Reports detailing the EMS response and actions taken in tending to the stabbing victim; Intra-Departmental Correspondences (IDC) from officers dated September 19 and 29, 2009, October 1, 7, and 13, 2009; and the response to the letter former Chairman Allen sent requesting further clarification.

Anthony Potenza summarized the finding of the OPS on the first conduct standards allegation as *unfounded*, where the review showed that the act or acts complained of were misconstrued. The complainant alleged that he called 911 to report two teenagers fighting and he was still on the phone with 911 when the officers approached his car, and demanded his license and registration. The complainant alleged that while he tried to explain the situation, the officers were not interested. The officers stated that they observed the complainant operating his vehicle while talking on his cell phone. Based on the OPS investigation, the contact that transpired between the complainant and the officers was a direct result of the complainant's violation of 12250C-Use of Mobile Telephones, of Vehicle and Traffic Law, and the initial reason why a traffic stop was conducted. Upon approaching the complainant's vehicle and requesting his license and registration, the officers reported that the complainant refused to hang up his phone, despite repeated requests to do so. By his own admission, the complainant admitted he was on the phone with 911 when the officers approached his vehicle. Whatever the reasons why he deemed it necessary to call 911, he subsequently had contact with two uniformed officers operating a marked police unit. However, the complainant felt it necessary to refuse to hang up and continue talking to 911. What the complainant was conveying to 911 would have been obtained by dispatch and dispatch would have subsequently dispatched the officers on patrol. The complainant could have just directly informed the officers face-to-face at the time of the contact. The officers were addressing the complainant's cell phone violation and had no knowledge of a stabbing occurring in the immediate area. The complainant, a witness to the incident, was in fact, doing the right thing by reporting the incident but should have exercised better judgment by informing the dispatcher that two officers had just pulled up and he would tell them of the stabbing. Any reasonable person would have told the officers what had just

transpired, but instead the complainant refused to comply with what the officers believed to be a routine traffic stop and finally provided his driving information. During the incidents of repeated requests for information, critical time was elapsing, and although the particular stabbing incident was not life threatening to the victim, enough critical time had passed for the victim and the suspects to leave the area. The complainant could have simultaneously presented his license and registration to the officers while informing them of what he had just witnessed, which may have resulted in an immediate arrest of the suspects.

Mr. Potenza reported that the IDCs reflected that the complainant was somewhat uncooperative when asked to stop using his cell phone, and report what he was trying to report over the phone to the officers present.

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

Anthony Potenza moved to concur with the OPS finding for the first conduct standards allegation as **unfounded**. Andrew Phelan Jr. seconded the motion. The motion carried unanimously.

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 allegations made in the complaint. The complainant alleged that both girls got away because the officers were demanding to see his license and registration. The girls got away and the officers detained the complainant. Based on the OPS investigation, the complainant was asked about the incident, where it occurred and where the victim and suspects were. The accounts of the officer revealed that at no time were the suspects, or the victim, in view. This is substantiated by another officer's account that the victim was located in the basement of a Lark Street address with puncture wounds. The Lark Street address was located a very short distance from Clinton and Lark. It appeared the victim fled inside the residence for her safety during the course of the interaction between the complainant and the officers. The complainant admitted that he was still on the phone with 911 when the two police officers approached his car. At that point he had ample opportunity to relay that information to officers who were basically on the scene for immediate assistance; however, the complainant chose to remain on the phone despite repeated requests for him to hang up.

Chairman Smart asked if the complainant had been issued any tickets. Mr. Potenza replied that no tickets had been issued to the complainant. Mr. Potenza stated that the documentation showed that the complainant was not, as he had stated, in a legal parking spot and he was in the traffic lane. He further stated that the documentation showed that as much as the complainant alleged the officers did not respond to his urgent pleas to handle the stabbing, there was ample documentation stating the officers did tend to the victim of the stabbing and locate the perpetrator of the stabbing. The EMS had been called and the victim was eventually treated for the wounds. Contrary to the

complainant's allegation that the police ignored the stabbing, the police did respond to the incident.

Chairman Smart asked if there was anything else going on in that vicinity during that time. Mr. Potenza responded there was something going on that required police attention. Kids were walking up and down Lark Street. According to the documentation, the police were just keeping an eye on the area. The police were not intervening or interfering with what was going on. Mr. Potenza stated that subsequently a couple of officers were called away to attend to the incident with the complainant and his cell phone.

Akosua Yeboah asked if a monitor had been assigned. Mr. Potenza stated no monitor had been assigned to the complaint.

Akosua Yeboah asked who the assigned Detective was on the complainant. She explained that she would like to know if, for the second presentation of the complaint to the Board, if the complainant had been interviewed. Detective Andrew Montalvo replied that Detective Alisa Murray had been assigned to the complaint. He stated he was assigned to the review of the case after Chairman Allen had sent the case back to the OPS for clarification. He further stated that he had interviewed the complainant.

Mr. Potenza stated there were four questions that the Board had for the OPS as part of the request to further investigate. As part of that follow up, the OPS also interviewed the complainant. Detective Montalvo stated that was correct.

Anthony Potenza moved to concur with the OPS finding for the second conduct standards allegation as *not sustained*. Chairman Reverend Edward Smart seconded the motion. The motion carried unanimously.

Anthony Potenza summarized the finding of the OPS on the third allegation of conduct standards as *unfounded*, where the review showed that the act or acts complained of were misconstrued. The complainant stated that he believed he was doing the right thing by reporting the fight, but instead he was victimized by the police and they never questioned him about the fight or stabbing. Based on the OPS investigation, the report completed in reference to the stabbing listed the complainant as a witness, which documents his account as substantiated, that he had been questioned regarding the matter. All pertinent suspect information, as well as the victim's, was relayed approximately four (4) minutes after the officers initiated contact with the complainant. This was documented in the call ticket. The officers responded and conducted a search of the immediate area. They were subsequently flagged down, the victim located, and she received appropriate medical treatment. There is also documentation which lists the complainant in an ongoing open case investigation, which has been forwarded to the criminal investigations unit. The officer stated that the complainant was treated with respect and professionalism throughout the interview. Mr. Potenza also noted that the complainant was never issued any tickets for the cell phone violation, nor did he complain about receiving a ticket. The officers, after realizing the complainant was

making an emergency call, exercised better judgment and did not issue the complainant a ticket.

Anthony Potenza moved to concur with the OPS finding for the third conduct standards allegation as **unfounded**. Akosua Yeboah seconded the motion. The motion carried unanimously.

C. CPRB No. 57-09/OPS No. CC2009-093 (Anthony Potenza)

Chairman Edward Smart stated that if he recalled correctly, the Board asked for the complaint to be further reviewed by the OPS because there was new evidence and a video that would be submitted to the OPS by the complainant. Mr. Potenza replied in the affirmative. Chairman Smart asked Commander Matos if the video had been received by the OPS. Commander Matos responded in the affirmative. Chairman Smart asked Commander Matos if the video made a difference in the disposition of the complaint. Commander Matos responded that was addressed in the correspondence that was sent back to the Board. Mr. Potenza stated the correspondence was a part of the review. Commander Matos stated he believed Mr. Potenza had a copy of the letter.

Mr. Potenza explained that the complainant told the Board that his witness had recorded a video of the incident and the Board asked the OPS to investigate what the video contained. Mr. Potenza read the letter from the OPS to the Board regarding the video.

"Upon multiple attempts to acquire video of the incident, the complainant finally forwarded the video to the OPS. The video was reviewed and the quality is poor, and it appears very blurry and somewhat distorted. However, what is identifiable is the officer standing over a seated gentleman on what appears to be a bench or a half wall directly in front of a black iron fence. It appears that two officers are attempting to place the individual into handcuffs. A third officer is standing in front of the individual, as the two other officers appear to be handcuffing the individual behind his back. The person recording the incident is recording the incident up close to the officers, the person shouting repeatedly, "I got you on tape officer, I got you on tape." The third officer immediately turns around to which the person is directly in front of him at that point and it appears as though the officer is walking toward the person. The person then begins to shout, "Oh, you are going to hit me now." It appears that the officer did have his baton out in his right hand as he advances on the person. The video does not show the officer swinging or striking the person. At that point it appears as though the person ducks below a barrier line in front of Jillian's bar because then the video footage goes blank for a moment, returns to focus on the officer walking back over to the other two officers and the detained subject. The person then returns to where the officers are standing and continues to shout "I got you on tape sir, I got you on tape." Again, the person appears to hold up his cell phone in close proximity to the face of the officer who had originally advanced upon him. The video does not display any of the officers striking or using force upon anyone on the scene. The video does not display any of the officers slapping a cell phone out of the hands of the person or any other person on the scene. The video does not clearly identify

the individual being placed into handcuffs as the complainant; however it is assumed that it is him because the footage is consistent to what he explained throughout the course of the investigation. There appears to be another individual, a white male, seated along the same bench area as the individual being taken into custody was seated, and again, this individual cannot clearly be identified, but is assumed to be the complainant's son. Furthermore, the person does not appear to be handcuffed, and also appears to have his right hand pointing in the direction where officers are standing, with the first individual. After thoroughly reviewing the video footage, it does not provide any new or pertinent evidence that changes the case disposition of the findings previously submitted in the investigation."

Chairman Smart asked Mr. Potenza when the OPS received the videotape from the complainant. Mr. Potenza stated the date of the meeting when the complaint was sent back to the OPS was November 19, 2010. Commander Matos stated the video was received within days of the meeting. The complainant complied with the Board's request to send it to the OPS.

Mr. Potenza asked if Monitor Al Lawrence was present. It was noted that Mr. Lawrence was present.

Mr. Potenza asked Mr. Lawrence if he had anything to add. Mr. Lawrence replied that was an accurate summary. He stated that he just wanted to note that the description is actually longer than the video, which was only about thirty seconds long. Mr. Potenza stated Mr. Lawrence's report concluded the video did not confirm or substantiate the complainant's position any further. Mr. Lawrence stated that was correct.

Lilian Kelly asked if the Board sent the complaint back to the OPS for further investigation or voted on the allegations. Ms. Moseley stated there was no vote taken on each allegation. Mr. Potenza stated that the Board would vote. Chairman Smart stated the Board needed to vote on each count. Chairman Smart stated that he did not think Mr. Potenza had to read through all the allegations. Mr. Potenza stated they were read at the last meeting. Akosua Yeboah asked if Chairman Smart and Mr. Potenza meant the Board meeting on February 4, 2011. Chairman Smart replied the summary and allegations were read at the November 19, 2010 Board meeting.

Anthony Potenza moved to concur with the OPS finding for the use of force allegation as ***not sustained***. Chairman Reverend Edward Smart seconded the motion. Board members James Frezzell, Akosua Yeboah and Lilian Kelly abstained from voting. The motion failed to carry by a 4-0 vote with three (3) abstentions.

Chairman Smart stated that this complaint will be tabled until the next meeting of the Board. He asked Ms. Moseley to send copies of the minutes to the abstaining Board members so the case could be voted on at the next Board meeting.

IV. New Business

A. *New Complaints*

1. New Complaints Received since February 4, 2011 Meeting

Chairman Reverend Edward Smart reported that two (2) new complaints have been received by the board since the February 4, 2011 meeting. Andrew Phelan Jr. read the complaints to the Board.

CPRB No. 6-11

According to the complainant, he was assaulted approximately a month ago. The complainant alleges that when the officers arrived on the scene they would not take his complaint. The complainant further alleges that he walked to the police station to file a complaint and get medical help and he was still refused assistance. The complainant claims that the officers threatened to put him in jail if he did not leave the matter alone. The complainant further claims that the officer has been telling other people in the street that he is going to hurt the complainant.

*A monitor **was not** appointed to investigate this complaint.*

CPRB No. 7-11

The complainant alleges that he along with a passenger and one year-old child were stopped by numerous officers. The complainant further claims that he was never told the reason for the stop. The complainant further alleges that the officer told him that they were spotted getting out of another car and were not from the area. The complainant claims that officers called them an inappropriate name and told them to shut the f**k up.

*A monitor **was not** appointed to investigate this complaint.*

2. New Complaints for Review

CPRB No. 33-09/OPS No. CC2009-058 (Presented by Andrew Phelan Jr.)

Andrew Phelan Jr. summarized the complaint. Mr. Phelan stated that on January 14, 2011 and January 27, 2011, he reviewed the case at the OPS. Mr. Phelan reported that the complaint contained use of force and conduct standards allegations. The complainant alleged that he was operating his motor vehicle and was stopped in traffic waiting for a red light to proceed onto Pine Street when he heard a loud bang on his trunk. He rolled his window down and saw an officer at the back of the car. He asked the officer why he hit the car. The officer allegedly struck the car again with a baton and stated "Move, move." Allegedly the officer struck the vehicle four (4) times. The officer tried to open the driver's door, saying "Get out of the vehicle." He tried to get the keys. Allegedly the officer pulled the complainant from the vehicle. The complainant alleged the officer stated "Get the f**k out of my town and don't ever come back." Mr. Phelan noted a monitor had been appointed to the complaint.

Andrew Phelan Jr. summarized the finding of the OPS on the use of force allegation as *exonerated*, where the acts which proved the basis for the complaint occurred but the review shows that such acts were proper. The complainant alleged that he was ordered by the officer two times to move the vehicle, an order the complainant decided not to comply with. Based on the OPS investigation, the officer decided to arrest the complainant for disorderly conduct. He attempted to open the driver side door while ordering the complainant to exit the vehicle. The complainant again refused to comply and according to his statement, pulled back, shut the door, and told the officer he knew his rights. The officer stated that he only used his baton to keep the complainant from closing the door and only hit the car with an empty open hand to get his attention. The officer tried to open the door in order to remove the complainant from the car in order to make an authorized custodial arrest.

Andrew Phelan Jr. summarized the finding of the OPS on the first conduct standards allegation 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 his vehicle was struck several times with a baton, causing damage to the vehicle. At that time the complainant's supervisor inspected the vehicle near the scene and saw some scratches and marks but could not determine if the damage was recent or old. Photographs taken by the Albany Police show there were three small dents on the driver side front and rear door quarter panel. The receipt of the rental owned by Enterprise Rental shows the vehicle as having no damage. The damage noted by the supervisor and photographed by the APD did not reach the Enterprise Rental definition of "reported threshold of damages," in which case it could not be possible to determine if said damage was present on the vehicle before it was in possession of the complainant.

Andrew Phelan Jr. summarized the finding of the OPS on the second conduct standards allegation 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 the officer stated to "Get the f**k out of town and don't ever come back." The officer stated he did not make the comment. Another officer was present during the latter part of the contact with the complainant and stated he did not recall the other officer making the statement. There are no known audio or video recordings of the interaction and no witnesses came forward with regard to the incident.

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

Mr. Phelan noted that monitor Richard Lenihan was assigned to the complaint. Mr. Phelan asked Mr. Lenihan if there was anything he would like to add. Mr. Lenihan stated that the only recommendation he made was that absent any arrest report, there should have been some notification about the officer's contact with the complainant. He further stated there should have been some report made concerning the officer's contact with the complainant under the circumstances.

Mr. Phelan asked if there were any questions from the Board. Chairman Smart asked Mr. Lenihan if a report was something that was required or just a good idea. Mr. Lenihan replied that he thought it would be a good idea to get a written version of what happened rather than an oral one so that there is some documentation.

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

Andrew Phelan Jr. moved to concur with the OPS finding for the first conduct standards allegation as ***not sustained***. Chairman Reverend Edward Smart seconded the motion. The motion carried unanimously.

Andrew Phelan Jr. moved to concur with the OPS finding for the second conduct standards allegation as ***not sustained***. Anthony Potenza seconded the motion. The motion carried unanimously.

CPRB No. 4-10/OPS No. CC2010-002 (Presented by James Frezzell)

James Frezzell summarized the complaint. Mr. Frezzell reported that the complainant alleged that on January 11, 2010, he was at his girlfriend's house at 37 Liebel Street. The complainant's girlfriend was arguing with her son. After about fifteen (15) minutes of arguing the police appeared and knocked on the door. The two (2) officers went inside and the complainant's girlfriend told them that everything was okay and the officers left. A few minutes later additional officers came to the door and again knocked on the door. The complainant's girlfriend told these officers from inside the apartment that the officers could leave since everything was okay. His girlfriend then called the police dispatcher to report that the officers were knocking on the door and that she wanted the officers to leave. The complainant's girlfriend then opened the door and the officers forced their way into her apartment. The officers spoke to the complainant and his girlfriend. At the same time another officer allegedly placed a baton at the neck of the complainant's girlfriend's daughter for no reason. While providing an explanation of events to the officer, the complainant was allegedly shot with a taser by the officer. He went to the ground and was also allegedly hit with a baton in the left thigh by an officer. Then an officer allegedly hit the complainant in the chin and back with their fists. The complainant was put in handcuffs. The complainant was allegedly informed by the officer that he was being charged with resisting arrest. The complainant stated he was cooperating with the police during the discussion with the police and can't understand why he was arrested. He was then sent to Albany Medical Center Hospital. His girlfriend, her daughter, and her son were present during the entire incident. While at the hospital the officer gave him an appearance ticket.

Mr. Frezzell noted a monitor was assigned to the complaint. He reported that he reviewed the following documents: Citizen Complaint Form; Citizen OPS Notarized Statement; Witness Statements; Monitor's Determination; Call Log; Hospital Report; and Taser Protocol Report.

Mr. Frezzell stated that he concurred with the OPS findings on all three allegations. Mr. Frezzell reported that the findings were based upon conflicting and contradictory statements offered between the complainant and the witnesses account of the events cited in the complaint. Contrary to the complainant's statement there was enough noise in the apartment that warranted a neighbor's call to the police. The complainant's girlfriend also verified that the complainant and the police had an increasingly heated discussion. The complainant's girlfriend also stated that her daughters were agitated and were in need of restraint.

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

Chairman Smart asked if monitor Richard Lenihan had anything to add. Mr. Lenihan stated he had nothing to add.

James Frezzell summarized the finding of the OPS on the first 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 alleged that he was tased for no reason. Based on the OPS investigation, case file documents and officer accounts of the incident indicated that the complainant was aggressive toward officers and warnings were given for him to stop his actions. A witness stated that the complainant did not keep his hands up and the officers were telling him to do something but she could not recall exactly what was said. The complainant was advised he was under arrest and he was actively resisting officers, which led to the taser being used against him in accordance with department policy.

James Frezzell moved to concur with the OPS finding for the first allegation of use of force as *exonerated*. Chairman Reverend Edward Smart seconded the motion. The motion carried unanimously.

James Frezzell summarized the finding of the OPS on the second allegation of use of force as *not sustained*, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that he was hit with a baton on his thigh and punched in his chin and back by officers. Based on the OPS investigation, officers stated that they did not see the complainant get struck with a baton or punched. The complainant was treated at Albany Medical Center for being tased, and the report made no mention of any injuries or complaints of pain from being hit with a baton or being punched. The witnesses listed by the complainant were not able to be reached for an interview. The witnesses listed are the children of the complainant's girlfriend.

James Frezzel moved to concur with the OPS finding for the second use of force allegation as *not sustained*. Chairman Reverend Edward Smart seconded the motion. The motion carried unanimously.

James Frezzell summarized the finding of the OPS on the third use of force allegation as ***unfounded***, where the review showed that the act or acts complained of did not occur. The complainant alleged that an officer put his baton up against his girlfriend's daughter's neck. Based on the OPS investigation, there were no officers who witnessed a baton being placed against any person's neck. The mother of the female stated her kids were upset and were restrained by officers. However, she agreed that her daughters were restrained because her daughters needed to calm down. She made no mention that a baton was used in any manner.

James Frezzell moved to concur with the OPS finding for the third use of force allegation as ***unfounded***. Marilyn Hammond seconded the motion. The motion carried unanimously.

CPRB No. 5-10/OPS No. CC2010-007 (Presented by Lilian Kelly)

Lilian Kelly reported that the complaint contained one conduct standard allegation and one call handling allegation. Ms. Kelly summarized the complaint. The complainant alleged that an officer insinuated he was in a gang, was drunk or high and used a racial term against him. The complainant also alleged that a state trooper told the complainant that if he did not stop talking, the charges against him would be upgraded.

Ms. Kelly reported that the OPS finding was ***unfounded*** with regard to the conduct standards allegation. She stated that she had noticed that in this case and in similar cases, there is an OPS finding of ***unfounded*** or ***not sustained***. She further stated that in this particular case the OPS finding was ***unfounded*** and she was curious as to why the OPS found the allegation ***unfounded*** as opposed to ***not sustained***.

Ms. Kelly stated that there was a time delay between the events, which occurred on November 10, 2009, and the date the complaint was filed, November 2, 2010. She also noted that there was no officer at the APD who had the name of the target officer in this particular case. Ms. Kelly reported there were two officers who were investigated, and who came forth and discussed the particular case because they were involved.

Ms. Kelly noted a monitor had been assigned to the complaint. Ms. Kelly reported that an officer had been called to the address of the incident because they were looking for a suspect who had repeatedly threatened the owner of a convenience store with a rug cutter and allegedly on the recording of a 911 call threatened to cut the throat of the store owner. The call referred to on the dispatch ticket, was a priority one call, and as many as ten officers responded to the scene.

Ms. Kelly reported that the complainant alleged that he was about to put his key in the door when he dropped the rug cutter in front of the door. He did not want to bend over to pick up the rug cutter and have somebody think something, so he left it on the ground. The complainant alleged that the officer told him to back up and come to the car. He further alleged that the officer walked around him to the door to pick up the rug cutter. Then the officer allegedly walked back around toward the tree and turned on his

flashlight and then came back to the complainant and asked "Is this what you threw by the tree?" The complainant stated at that point he did not say anything because he did not throw anything by a tree. The complainant alleged that the officer started insinuating that the complainant was a gang member, all people of his race were, and that the complainant was high or drunk. The complainant stated he was not high or drunk. The complainant stated that when he was asked why he had the rug cutter, he pointed to the house with the door open and told the officer he was cutting rugs.

Ms. Kelly reported that she reviewed the following documents: oral statement offered into evidence by the complainant; oral statement by the officer at the scene; deposition by the store owner; arrest report; admissions screening of the complainant; property record at the booking of the complainant; suicide prevention screening record; investigation report of the surveillance video at the convenience store; call ticket which recorded the incident; incidence report as certification of conviction; complaint form; IDCs dated May 10, 12 and 13, 2010; OPS Confidential Report; and the Monitor's Report.

Ms. Kelly stated that monitor Richard Lenihan reviewed the video tape of the store, the 911 call, and was present during the interview of one of the witnesses. Ms. Kelly further stated that at 1:15 p.m., the complainant was taken into custody. Multiple sources reported that the complainant was intoxicated. At 10:21, the box cutter was recovered from the street. The call ticket revealed that the box cutter was recovered at the curb because the license plate number was recorded. At 10:23, the complainant was read his Miranda rights, questioned about the events, and made the following statement "I did not want you to think I was a violent person carrying a box cutter in my hand, so I threw it before you rolled up." Ms. Kelly described the atmosphere of the scene, which was a five minute period between when the officers arrived and identified a suspect who had just threatened to kill the convenience store owner or slit his throat with a box cutter.

Ms. Kelly asked how the OPS found the allegation to be *unfounded* as opposed to *not sustained*. Ms. Kelly noted there was a significant discrepancy between the events documented and those stated by the complainant at the time of the event and the four months later. The complainant admitted to throwing the box cutter at the beginning of the event, not that he was cutting up rugs as he stated four months later. The complainant was intoxicated as noted on all incident records at the time and the complainant himself admitted to consuming at least a six pack of beer prior to the event, yet in his complaint he stated he had not been drinking. Ms. Kelly further reported that there was a difference between the witness record of the event and the complainant's record of the events at the time of the event with respect to details that are not germane to the complaint. Ms. Kelly reported that there were three witnesses, including two officers, and the store owner who denied what occurred in their written reports and in an interview with the monitor.

Ms. Kelly asked Mr. Lenihan if he talked to the store clerk as well as the store owner. Mr. Lenihan replied that he had not talked to either, but the investigating detective had.

Chairman Edward Smart asked if the complainant was present. It was noted that the complainant was not present. Ms. Kelly stated the complainant was in jail.

Ms. Kelly asked why, in a previous case the Board discussed earlier in the evening, when there was a claim the officer made disparaging comments toward the complainant and there were no independent witnesses, as there are in this case, the allegation was *not sustained* and in this case the allegation was *unfounded*. Ms. Kelly further stated that in this particular case because of the fact that there was a the four month lapse and the fact that there is nothing that the complainant stated that the witness concurred with four months prior, she concurred with the OPS finding of *unfounded*.

Ms. Kelly stated that she believed it was important, when there are no independent witnesses, to be very careful in these cases to find some reason, because they should find *not sustained* if they have no strong evidence to suggest otherwise. She further stated that in this case there was some strong evidence based on the situation that occurred, that there was an arrest and that the complainant's own statements were contradictory.

Chairman Smart asked if the OPS knew the officer who was involved in the complaint. Commander Matos replied that the OPS was able to find out that one police officer was involved. Chairman Smart asked if it was an Albany police officer. Commander Matos replied that the first allegation was against an Albany police officer and the second allegation was against a state trooper. He further stated that the OPS found the second allegation as *no finding*. Commander Matos stated that with regard to the first allegation, there was a witness who was affiliated with the store who was not an officer's witness, a backup officer who would be deemed an interested witness, nor was it one of the complainant's friends or relatives who would also be an interested witness, but an independent witness who did not witness the allegations as set forth by the complainant. He further stated that the OPS based their finding of *unfounded* upon that witness's independent standing from the officer involved and the complainant. He stated that in cases where the complainant is making one statement and the officer is making another statement, obviously both persons are interested in that complaint, so the OPS would make a *no finding* for the allegation. In this case, there was a witness who was not interested in the actual complaint.

Ms. Kelly stated that the independent witness was the person who the complainant threatened to kill with the box cutter, so she would say that in this case, the independent witness was not entirely independent. Commander Matos stated that was true for the criminal matter, but they were not talking about the criminal matter, they were discussing the complainant's civilian complaint, which came subsequent to the criminal matter. Ms. Kelly stated that if someone was involved in a criminal matter an argument might be made that may not necessarily be independent in the case. She stated that in this particular case, the individual was asked by the police officer in question to get in the car and go and drive to identify the person who had threatened them with the box cutter. Ms. Kelly stated the person was involved in the criminal case and in her opinion, was not an independent witness. She further stated that in her view, if she were the person whose life had been threatened by the complainant, she would not necessarily be motivated to the same level of independence as someone who was walking down the street with their dog.

Ms. Kelly asked if any other Board members had any questions concerning the case. Chairman Smart asked its counsel William Kelly if this particular complaint violated the time frame for making a complaint. Chairman Smart stated the complaint was received a year after the incident. Ms. Kelly stated the complaint was filed within four months of the incident. Ms. Kelly stated the incident occurred on November 10, 2009 and the complaint was filed on February 2, 2010. Anthony Potenza stated the complaint was dated January 27, 2010. Ms. Kelly stated the date next to the signature was February 2, 2010. Marilyn Hammond stated it was the date received and stamped by the Government Law Center. Commander Matos stated the OPS visited the complainant after the complaint was filed. Ms. Kelly explained that the complaint was dated as received on February 5, 2010 and the individual was arrested on November 10, 2009. Chairman Smart asked when the incident took place. Ms. Kelly stated the incident took place on November 10, 2009. Ms. Kelly stated that the Board waited a long time to handle the complaint and the Board violated the time frame. Mr. Kelly stated that it was a violation of the time frame and the Board actually did the complainant a favor by accepting the complaint after the fact. He further stated that he believed it demonstrated the thoroughness of the Board in accepting it but the Board had to be careful. He stated that the Board was allowed to oversee and scrutinize the conduct of the investigation, and then determine what the OPS did and then analyze how they came to that decision. Mr. Kelly further stated that the Board's role was not to replace the OPS finding with their own findings. He stated the Board's role was to determine whether OPS conducted a thorough and complete investigation into the matter and whether the facts satisfy the findings, but they could not substitute their findings for OPS's if they came up with different factual findings.

Mr. Frezzell asked if a sobriety test had been administered. Commander Matos stated a sobriety test had not been given. The only time that would come into play is if the complainant was intoxicated to the point of needing medical attention or if he were charged with an alcohol related offense and that was not the case.

Ms. Kelly stated that the question involved in the case regarding the finding of ***unfounded*** as opposed to ***not sustained*** is that what occurred in this case, in looking back at previous cases in preparing this case, in which allegations against officers, were found ***not sustained*** because it was regarded that there was insufficient evidence to find otherwise. She further stated that in the present case the allegation was found to be ***unfounded*** and it was not clear to her why the OPS in this case found the allegation to be ***unfounded*** instead of ***not sustained***. Ms. Kelly stated she was trying to go through some logic to get to where OPS were going in terms of thought process. She further stated that in her opinion, which is clearly different than OPS's opinion, she does not consider the person who was threatened as an independent witness.

Lilian Kelly moved to concur with the finding of OPS for the conduct standards allegation as ***unfounded***. Chairman Reverend Edward Smart seconded the motion. The motion carried unanimously.

Lilian Kelly summarized the finding of the OPS on the allegation of call handling as ***no finding***, where the investigation revealed that another agency was responsible and the complaint and the complainant has been referred to that agency. The complainant alleged that a state trooper told him that if he did not stop talking his charges would be upgraded, which he alleged were upgraded. Ms. Kelly stated it should be noted that according to NYS Penal Law section 265.02: Criminal Possession of a Weapon in the Third Degree, states that a person is guilty of this section when such person commits the crime of criminal possession in the fourth degree and was previously convicted of the crime. The complainant had previously been convicted of a crime, therefore the charge of criminal possession in the fourth degree was upgraded to third degree pursuant to NYS Penal Law. As noted, the officer in question was a NY State Trooper and the Board's jurisdiction is only with regard to the Albany Police Department.

Lilian Kelly moved to concur with the finding of OPS for the call handling allegation as ***no finding***. Marilyn Hammond seconded the motion. The motion carried unanimously.

CPRB No. 34-10/OPS No. CC2010-076 (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint. The complainant alleged that officers responded to his home and stated someone had called because someone was messing with their girlfriend. According to the complainant, he was on his front steps drinking a beer and minding his own business when the officer allegedly hit him in his face and the other officer allegedly sprayed him in the face with pepper spray. The complainant alleged the officers put him in handcuffs and slammed him to the ground, causing his elbow to break. The complainant stated the officers were wearing uniforms and they did not arrest him.

Ms. Hammond stated that she was always under the impression that a monitor is supposed to be assigned to complaints with use of force allegations. She further stated a monitor should have been assigned to the complaint. Ms. Hammond asked if the Board legislation stated that a monitor is supposed to be assigned to all cases involving use of force allegations, and if that was the case, she believed the present complaint should be sent back to the OPS. She stated that despite the excellent job that the OPS has done with the complaint, she believes the complaint should be sent back because the Board needs clarification as to the legislation's policy on use of force allegations for monitors.

Ms. Hammond asked if the Board had any questions. Akosua Yeboah stated she agreed with Ms. Hammond. She further stated that when she read the case she thought a monitor should have been assigned as well.

Chairman Smart stated to the rest of the Board that what was being suggested was that further investigation take place with the assigning of a monitor. Chairman Smart asked Ms. Hammond if that was correct. Ms. Hammond stated that was correct and just from her review of the case, the OPS did a very good investigation, but the fact remains that a monitor should have been assigned from the beginning of the investigation, regardless if the claim is true or false.

Ms. Yeboah stated it was the Board who assigned the monitors. She did not think it was something that the OPS did. They did their job in investigating the complaint. Ms. Hammond stated that was correct. Ms. Yeboah stated that the Board needed to understand under which conditions a monitor needs to be assigned. Chairman Smart stated that part of what he was hearing is that members of the Board are saying that because there seems to be an injury of some magnitude, that it would appear that if someone was injured to that extent, a monitor would be able to investigate and concur with the OPS and that would be sufficient reason that the Board has looked at the case with all the tools available to them. Ms. Hammond stated that was correct and it was in the legislation. Mr. Potenza stated that he thought the Board was going backwards. The case was read to the Board to vote as to whether a monitor should be assigned. He stated that five Board members have to be called and if three or more members vote to have a monitor, a monitor is assigned. Ms. Hammond stated that was correct, but she did not understand why a monitor was not assigned because every Board member who gets the call knows that for a use of force allegation, under the legislation, it is stated that a monitor should investigate. She further stated that once an officer allegedly puts his hands on a citizen, it is in the legislation to appoint a monitor. Ms. Hammond stated the Board should go back, have a meeting, or some type of training so all the members know what is in the legislation. Mr. Kelly asked if the Board would like him to read the relevant section of the legislation. Chairman Smart replied in the affirmative. Mr. Kelly read from the Board Legislation that *"...in the event that a complaint alleges the use of excessive force or violation of civil rights, the CPRB shall appoint an individual to: observe and monitor the Professional Standards investigation of such complaint from the outset of the investigation."* Ms. Kelly stated that she believed it was "excessive force or civil rights violation." Mr. Potenza stated that if that was the case then complaints that allege use of force should not even be read to the Board and voted on whether a monitor should be assigned. Mr. Kelly stated that by the use of the word "shall," they could have easily used the word "must," thereby demanding the use of a monitor. He further stated that he could further investigate whether the intention of it should happen every time or if it should have been discretionary, because the use of the word "shall" could imply that it was up to the Board members to decide if it was necessary to appoint a monitor. Mr. Kelly stated it was his understanding that the appointment of a monitor was not mandatory, however he would be willing to investigate the matter. He further stated that if it were mandatory, the creation of the statute would have used "must" appoint, and it never would have come to the Board members in the first place but in the past it has. Mr. Kelly stated that he believed it was discretionary, however, if the Board would like it in writing. James Frezzell stated he thought that "may" was discretionary. Ms. Kelly stated she believed "shall" was not discretionary. Mr. Kelly stated that if it was mandatory the word "must" should have been used instead. Ms. Kelly stated she believed "shall" was a synonym for "must." Mr. Kelly stated that to his knowledge, excessive force allegations have come before the Board in the past without a monitor. Ms. Hammond stated she did not believe that was correct. Mr. Kelly asked if anyone knew for sure. Chairman Smart stated he believed use of force allegations had been before the Board without a monitor assigned in the past. OPS Detective Kathy Hendrick stated she was present during most

of the meetings since the Board has been in effect and there have been many cases of use of force where a monitor has not been assigned. Mr. Kelly stated the Board could vote to table the complaint for him to get some clarification.

Marilyn Hammond moved to table the complaint until further clarification as to the appointment of a monitor in use of force allegations was provided to the Board. Akosua Yeboah seconded the motion.

Chairman Smart asked Mr. Kelly what section of the legislation he was reading from. Ms. Kelly stated that she believed the key word was "excessive" and it was the reason why Board members take a vote on whether to appoint a monitor for some use of force allegations. She further stated the question asked is whether it was "excessive force" or "use of force," as not every use of force is excessive. She read from the legislation that if the use of force is excessive, the Board shall appoint a monitor. Ms. Kelly stated the Board gets the discretion to appoint a monitor based on the word "excessive." Mr. Kelly stated that in his role as the Board's advisor, he would have no problem coming back to the Board with a clearer definition and understanding. He further stated that it was his understanding that the word "shall" implies discretion. Mr. Frezzell stated he disagreed. Ms. Yeboah stated she was not an attorney, but the Constitution also states Congress "shall make no law regarding religion," and that is not optional. Mr. Kelly stated that he recommended that the Board table the complaint pending further clarification.

Ms. Kelly asked what would happen once the Board received clarification of the word "shall." Chairman Smart responded that if the word "shall" was mandatory for use of force allegations, the Government Law Center would automatically appoint a monitor for those types of cases instead of calling the Board for a vote for the appointment of a monitor. Mr. Kelly stated he would even say that the intent of the legislation was to make it discretionary, but he would clarify the matter.

Marilyn Hammond moved to table the complaint until further clarification as to the appointment of a monitor in use of force allegations was provided to the Board. Akosua Yeboah seconded the motion. The motion carried by a majority vote of 5-2.

Mr. Phelan explained that he opposed the motion because the Board had already voted on the matter when the members were called and asked if a monitor should be appointed. Ms. Yeboah stated that she did not believe it could be said that all the Board members voted not to assign a monitor, because a majority decided. Mr. Phelan stated that five Board members were called. Ms. Yeboah asked if that meant that a majority of the five voted not to have a monitor assigned. Mr. Potenza stated that he found it hard to believe that the Government Law Center (GLC) was acting contrary to the legislation all these years when the Board is contacted on these cases and they were never told what the allegations are, just given the particulars of the case as written in the complaint by the complainant and they are asked if a monitor should be appointed or not. He further stated that if he believes a case to be innocuous that he will vote not to appoint a monitor. He stated that if the case does present allegations of use of force or some kind of physical contact he would vote to appoint a monitor, but nonetheless he cannot see in the five and

a half years that he has been on the Board, that the GLC has been in error in assigning monitors based on the vote of the members. Chairman Smart stated that he believed the Board was asking its counsel, Mr. Kelly, to clarify the issue so that the GLC could proceed in the way the legislation intended. He further stated that in the perspective of moving cases forward, if the rule is that three Board members concur that there should not be a monitor assigned, that helps to eliminate the fact that the GLC has to call a greater number of the Board members before the assigning of a monitor. Chairman Smart stated there are many times when people are just not available. He further stated that so the Board might have a definitive statement from counsel and from those who would interpret the legislation, the Board would send the complaint back so the Board has a clear idea on how to proceed. Mr. Potenza stated that was fair. Mr. Kelly asked Coordinator for the Board Ms. Moseley if she was aware of any special duty on the part of the GLC in appointing monitors. Ms. Moseley stated that the GLC calls five Board members and reads the complaint verbatim. She stated that if someone has a broken elbow, the GLC thinks it may be an excessive use of force, but it is up to the Board members according to its by-laws whether or not to assign a monitor.

CPRB No. 35-10/OPS No. CC2010-066 (Presented by Chairman Edward Smart)

Chairman Edward Smart summarized the complaint. The complainant alleged that she along with the officer's ex-girlfriend went to the officer's residence to pick up his daughter. The complainant alleged that the officer refused to cooperate, so he called the police and requested them to file a report against the ex-girlfriend and the complainant. It is alleged that the officer used his police status to intimidate and make up lies about people, because he thinks he can get away with it. The complainant stated that she told the officer that the only reason they were taking his side was because he is a policeman.

Chairman Smart noted that a monitor had not been assigned to the complaint. Chairman Smart asked if the complainant was present. It was noted the complainant was not present.

Chairman Smart reported he reviewed the following documents: Confidential Report; Sworn Testimony; Citizen's Complaint Form; Letter dated May 24, 2010; Certified Mail Receipt; Grievance Notification; Capsnet; Incident Report; IDC dated May 24, 2010; Dispatched History; and an APD Incident Report.

Chairman Smart summarized the finding of the OPS on the allegation of conduct as ***not sustained***, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that the off-duty officer used his influence and police status to intimidate and make up lies on people. The off duty officer called the police and presented himself outside of the residence after another dispatched officer arrived. Based on the OPS investigation, no evidence was present that the officer influenced anyone and his conduct seemed appropriate. The off-duty officer presented documents to support his legal right to have his daughter with him. The off-duty officer did not file any charges against the complainant. There is no evidence to support the complainant's allegation.

Chairman Smart stated that he agreed with the OPS finding of ***not sustained***. The officer never presented himself until the other officers arrived. Also, the off-duty officer did what was reasonable and placed himself and his actions in the presence of many witnesses. The off-duty officers presented the investigating officer with proof that he had custodial rights at that time. The issue of custodial interference was the call that officers responded to and the off-duty officer gave proof of his right to his daughter. Chairman Smart further stated that no charges have been filed to date by the off-duty officer concerning this matter, therefore he concurred with the OPS on the finding of ***not sustained***.

Chairman Reverend Edward Smart moved to concur with the OPS finding for the conduct allegation as ***not sustained***. Anthony Potenza seconded the motion. The motion carried unanimously.

CPRB No. 37-10/OPS No. CC2010-075 (Presented by Akosua Yeboah)

Akosua Yeboah summarized the complaint. The complainant alleged that on June 24, 2010, he was standing in front of the Pearl Street Pub with friends when they were approached by the pub owner and asked to move to a blocked off area. The complainant stated that after they moved to that area, they were approached again by the owner who then grabbed him and tried to take his drink out of his hand. After that, security personnel from the pub, mounted police, and other police officers arrived on the scene. The complainant stated that he was severely beaten, injured and arrested by members of the APD. Records showed that the complainant was treated for injuries at Albany Medical Center and released. The complainant also claimed that his request to speak to his lawyer was denied. He alleged that he was held in jail overnight and not informed as to why he was being arrested and not permitted to make a phone call until the following morning.

Ms. Yeboah asked if the complainant was present. It was noted that the complainant was present.

Ms. Yeboah asked the complainant if he would like to make any comments to the Board. He stated he had nothing to add and his attorney was handling it. Chairman Smart asked Mr. Kelly if that affects the Board review of the complaint. Mr. Kelly asked when the incident occurred. Ms. Yeboah stated the incident occurred on June 24, 2010. Chairman Smart asked Mr. Kelly if they should proceed with the review of the complaint. Mr. Kelly replied that since the complaint was not suspended, it was fine.

Ms. Yeboah reported that she reviewed the following documents: OPS Confidential Report dated October 1, 2010; APD Subject Resistance Report dated June 24, 2010; Monitor's Report dated November 2, 2010; Intra-Departmental Correspondence Reports; Incident Report; Albany Medical Center Exit Care instructions to the complainant; APD Booking and Arrest Report; Sworn statements from State Street Pub security staff; OPS correspondence to the complainant; Citizen Complaint Form; and notes written by the investigating detective.

Akosua Yeboah summarized the finding of the OPS on the use of force allegation as *exonerated*, where the acts which provided the basis for the complaint occurred, but the review shows that such acts were proper. She reported there was an additional allegation noted in the monitor's report that the complainant was not allowed to make a phone call. She stated that the allegation was not contained in the OPS preliminary report. Ms. Yeboah further stated that she talked to the investigating detective about that and would be addressing that in her comments. Ms. Yeboah reported that the complainant was arrested for disorderly conduct and resisting arrest. The complainant had to be subdued by a police baton strike to the lower part of the body as well as the use of pepper spray after verbal commands were ineffective. None of the testimonies supported the complainant's version of the incident.

Ms. Yeboah stated that she believed the investigation would have benefited from interviews and testimonies of witnesses named by the complainant. However, multiple requests for names of witnesses from the OPS appeared to go unanswered. The complainant referred the OPS to his attorney for names of witnesses. The complainant's attorney stated there would be no cooperation until the criminal aspects of the case were completed. Ms. Yeboah further stated that with the absence of witnesses on the part of the complainant, there was no contrary evidence.

Ms. Yeboah summarized the OPS finding on the allegation that the complainant was not allowed to speak to his attorney or make a phone call as *exonerated*. Based on the OPS investigation, the complainant was being decontaminated and receiving medical treatment from the time of the arrest until the early morning hours, so it seemed reasonable that it was not logistically a possibility for him to make a call to his attorney until the next morning. He was not allowed to make the call to his attorney at that time.

Chairman Smart asked the complainant if he had any comments to make regarding the findings of the OPS on the allegation that was just read by Ms. Yeboah. The complainant stated that he did not understand the question. Chairman Smart explained that he thought that the complainant might want to add his comments to what took place that evening. The complainant stated that he forgot to include in his complaint that he was hit in the face by the officer and there was no verbal command because the whole thing happened so fast. As he was trying to tell the officer "this guy assaulted me," at no time did the officer ask him what had transpired. The incident took place at the Pearl Street Pub, and the complainant was not arrested until he got to Jillian's, which was blocks away. He stated that as he passed Jillian's and went down another street, he realized that the officer was not listening to what he was saying. The guy just assaulted him and he did not know who the guy was.

It was noted that monitor William Van Valkenburg was present. Chairman Smart asked Mr. Van Valkenburg if he had anything to add. Mr. Van Valkenburg stated that the OPS interviewed all of the available witnesses, which were six police officers, two security personnel from the Pub, and the owner, and they all gave the same testimony. He stated the testimony was not identical, but the gist of the incident was the same for all. The complainant did not provide any witnesses. In his complaint he had stated that witnesses

would be forthcoming so requests were made and none of the witnesses were provided. He further stated he did not see how anything further could have been done.

Chairman Smart asked the complainant if he had provided witnesses, with their names and a way of them contacting the OPS. The complainant replied that he provided himself and one other person as witnesses. He further stated that he forwarded them to his lawyer. He was not sure what he has done or has not done, but he understands what the Board is saying. He will definitely have to get on it because obviously his lawyer has not done anything. Ms. Yeboah stated that the reports from the OPS stated that the complainant's lawyer was contacted but did not want to cooperate by providing witnesses at that time, or stated there would be no cooperation until the criminal aspects of his case were completed.

Chairman Smart asked the complainant if he had to go to the hospital. The complainant stated he did have to go to the hospital. Chairman Smart asked Ms. Yeboah what documents referred to the complainant's hospital visit. Ms. Yeboah stated there was an unsigned report from the hospital on aftercare, or exit care, provided to the complainant describing how to take care of contusions and pain.

Chairman Smart asked the complainant if he was arrested. The complainant replied that he was arrested.

Ms. Yeboah asked the complainant if he had been pepper sprayed. The complainant replied in the affirmative. Ms. Yeboah asked the complainant if he was decontaminated during the time between when he was pepper sprayed to the time he went to the hospital. The complainant replied that there had been no decontamination. The complainant asked what Ms. Yeboah meant by decontamination. Ms. Yeboah stated the report stated that water was applied to the area which the complainant was pepper sprayed.

Chairman Smart asked if it was the complainant's contention that officers used excessive force for no reason whatsoever. The complainant stated that was correct. Chairman Smart asked if the complainant contended he did nothing wrong. The complainant stated that was correct. Chairman Smart asked the complainant if he abided by whatever the police officers stated. The complainant stated that was correct. As soon as it started, he approached and the police officer slapped him and signaled people over. He was already arguing with him because he had just been assaulted. The complainant further stated he already had his defenses up because he had been assaulted and the third time the officer tried to rip his bottle out of his hand, which he did and it was dumped on him. He was about to lose it. He stated that in the process of that whole situation the police came by and started pushing him and yelling at him to get out of there. He stated alright and went across the street. He stated that by the time he got across the street and went down the block, that was when a police officer grabbed his hand and he did not know it was the police until he turned around. He further stated that when he turned around he was punched in the face by another officer and was then beaten.

Ms. Yeboah explained that the only testimony the OPS had came from witnesses that were not provided by the complainant or his attorney. She stated that was all that the OPS and the Board had to go by in reviewing the case. Chairman Smart told the complainant it was up to him to provide witnesses to support his side of what he was saying. If the OPS came across someone who supported what he was saying it would have been included in the report, but it wasn't included in the report. Chairman Smart told the complainant that he would suggest to him, as a young man, that if an officer tells him to move or stop, he should abide the order. Chairman Smart stated that the complainant sounded like a wonderful young man who was doing some wonderful things in his life and that was great.

Ms. Yeboah told the complainant that the job of the Board was not to make a determination on as to whether or not he was treated fairly or whether or not the police officers did their job. She explained that the Board's job was to determine whether the investigation was as complete as possible. In reviewing the case, she saw that the OPS did the best that they could with the witnesses that were provided. She stated that she did not see anything else that they could have done due to the absences of witnesses on his part.

Ms. Yeboah stated that on the use of force allegation, she respectfully moved to concur that the investigation was conducted properly and thoroughly by the OPS in its finding of *exonerated*. Based on the investigation, evidence in the records and testimonies indicated that the complainant was physically combative with the police and that they used a baton strike and pepper spray in accordance with police training. Testimonies did not substantiate the complainant's claims of excessive force. Attempts by the OPS to obtain names of witnesses on behalf of the complainant were not fruitful. Given that the complainant's attorney stated to the investigating detective that there would be no cooperation given at that time, the OPS had no other avenues to pursue. She stated that she could find neither deficiencies nor additional actions that might have been taken by the OPS in investigating this complaint.

Akosua Yeboah moved to concur with the OPS finding for the use of force allegation as *exonerated*. Andrew Phelan Jr. seconded the motion. The motion carried unanimously.

Ms. Yeboah stated that with regard to the other allegation that the complainant was not allowed to speak to his attorney, the information that she got from the investigating detective and from the records was that logistically he was being decontaminated, going to the hospital, between the time he was arrested and the next morning. She further stated the complainant was allowed to call his attorney but in that time frame it was logistically not possible. She stated that that OPS did not make a finding for that concern, but logistically it was not possible.

CPRB No. 51-10/OPS No. CC2010-122 (Presented by Andrew Phelan Jr.)

Andrew Phelan Jr. summarized the complaint. Mr. Phelan reported that on February 8, 2011 he went to the OPS to review the complaint. He reported the incident occurred on September 8, 2010 and the detectives got involved due to a concerned citizen report.

Mr. Phelan stated that the complainant alleged detectives had no right to contact his employer and notify them that he posted a sexually explicit advertisement (ad) on Craigslist. He further stated that the detectives investigating the case told his employer that he was a "pedophile," and as a result, his employment was terminated.

Mr. Phelan summarized the finding of the OPS on the allegation of call handling as **unfounded**, where the review showed that the act or acts complained of did not occur or were misconstrued. The complainant alleged that detectives had no right to contact his employer and notify them that he posted a sexually explicit ad on Craigslist. He further stated that the detectives investigating the case told his employer that he was a "pedophile," and as a result, his employment was terminated. Based on the OPS investigation, the complainant admitted to posting the advertisement. A concerned citizen became alarmed and notified the APD. The complaint was forwarded to the Children and Family Services Unit for investigation. It was the collective conclusion of the detectives that the person who posted the ad was attempting to solicit a sexual encounter with an underage person in exchange for money. Given the disturbing nature of the potential criminal intent of the complainant, the detectives would be remiss in their duties if they conducted anything less than a thorough investigation of the complainant. Furthermore, the fact that the complainant worked in an environment with young people only made it more expedient for the detectives to contact the employer, as well as preserve any evidence associated with a crime that may have been on his work computer. Craigslist is a public forum and as such does not afford anyone, who chooses to use it for the purpose of posting an ad, any expectation of privacy, directly or implied. The complainant went so far as to include his first name, telephone number, motel address, and room number in the ad, evincing he made no attempt to remain anonymous. The material posted was available for any member of the general public to view, including his employer. His employer stated that the complainant's employment was terminated because he violated the company's use of the business computers policy, not because of anything involving his personal life. The employer further stated that at no time during her conversation with detectives did they ever refer to the complainant as a pedophile.

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

Mr. Phelan reported that he had reviewed all the material relevant to the case, as well as the ad that was posted. He requested that the Board not ask what it contained. Mr. Phelan stated that it was a very suggestive advertisement.

Mr. Phelan stated that he agreed with the OPS finding of **unfounded** with regard to the call handling allegation. The detectives contacted the complainant's employer regarding the posting of an explicit ad that got him fired.

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

Andrew Phelan Jr. moved to concur with the OPS finding for the call handling allegation as ***unfounded***. Chairman Edward Smart seconded the motion. The motion carried unanimously.

C. *Committee/Task Force Chair Elections*

Chairman Smart reported that the Board was to hold committee/task force chair and member elections at tonight's meeting. Chairman Smart asked Ms. Moseley to give the Board a short explanation of what the By-Laws state about member responsibilities and involvement in the committees. Ms. Moseley read the pertinent section of the By-Laws verbatim, "*no member shall serve as the Chair of more than one standing committee at the same time. Each such committee shall be comprised of not less than three nor more than five members. No member shall be required to serve on more than two committees of the Board, inclusive of the standing committees established under this Article.*" Chairman Smart stated the Board would try to establish as many committees as possible at tonight's meeting.

By-Laws and Rules

Chairman Smart stated he understood that as Chair of the Board, he was supposed to be the Chair of the By-Laws and Rules committee and there were supposed to be up to four additional members. Chairman Smart asked if there were any volunteers for the By-Laws and Rules committee. Ms. Yeboah asked if Chairman Smart could state the objectives and mission statement of the By-Laws and Rules committee so that the Board members knew what was involved. Chairman Smart responded that the By-Laws and Rules committee was charged with periodically reviewing the effectiveness of the laws. Chairman Smart asked if there were any members who would like to volunteer. Ms. Kelly asked if the names on the election sheet were the members of those committees. Chairman Smart stated they were doing elections for the chairs and members of each committee/task force. He further reiterated that each committee needed at least three members and up to five members. Akosua Yeboah stated she would like to serve on the By-Laws and Rules committee. Chairman Smart thanked her for joining the committee. Anthony Potenza stated he would like to serve on the By-Laws and Rules committee. Chairman Smart thanked him for joining the committee. Ms. Yeboah stated that she believed Mr. Potenza would well serve the committee.

Community Outreach

Chairman Smart moved on to the Community Outreach committee while waiting for members to volunteer for the By-Laws and Rules committee. Chairman Smart asked the Board who would like to volunteer for the Community Outreach committee. Chairman Smart stated that James Frezzell had stated that he wanted to chair that committee. Akosua Yeboah seconded. Chairman Smart asked if anyone else would like to volunteer

for this very exciting committee. He told the Board that the Community Outreach committee educates the community on the purpose of the Board. Ms. Yeboah stated that she served on that committee last year and it changed her life. She would encourage everyone to serve on that committee. Mr. Frezzell asked if that meant she would continue to serve on that committee. Ms. Yeboah stated she would be happy to serve on that committee. Ms. Kelly stated she would also like to serve on the Community Outreach committee.

Complaint Review

Chairman Smart noted that the Complaint Review chair was Mr. Phelan. He asked Mr. Phelan if he would like to continue to be the Chair. Mr. Phelan agreed to continue as Complaint Review Chair.

Monitors' Task Force

Chairman Smart asked if anyone would like to serve as the Chair for the Monitors Task Force. Chairman Smart noted Ms. Yeboah was not a Chair of any committees. Ms. Yeboah stated that she would be honored to serve as Chair for the Monitors Task Force. Ms. Kelly stated she would like to be Vice-Chair of the Monitors Task Force. Ms. Yeboah asked Chairman Smart if she could list Ms. Hammond's name on the Monitors Task Force subject to her approval. Chairman Smart stated that would be fine subject to Ms. Hammond's approval.

Police Department Liaison/Policy Review/Recommendations

Chairman Smart asked if anyone would like to serve as Chair for the Police Department Liaison/Policy Review/Recommendations Committee. Chairman Smart stated that the committee had been made up of Mr. Phelan, Mr. Allen, and Mr. Potenza. Mr. Potenza stated he would like to continue serving on the committee. Chairman Smart stated he believed Mr. Allen would like to continue to serve on that committee as well. Chairman Smart asked Mr. Phelan if he would like to continue to serve as Chair of the committee. Mr. Phelan stated he would like to continue as chair of the committee.

Public Official Liaison

Chairman Smart stated the next committee was the Public Official Liaison. He explained that the committee meets with public officials. Chairman Smart stated he would like to Chair the Public Official Liaison Committee. Mr. Frezzell stated he would like to serve on the committee. Mr. Potenza, Mr. Phelan and Mr. Allen were also added to the public official liaison committee. Ms. Yeboah stated she would like to join the committee.

Chairman Smart asked if any Board members would like to add their name to any committees before moving on with the agenda. It was noted the Board members did not wish to change or add to the listed committees.

D. *Report from the Government Law Center*

Government Law Center (GLC) Coordinator of the Board Sharmaine Moseley asked that the report be waived since she reported at the Board's February 4, 2011 meeting. Chairman Smart agreed to waive the report from the GLC.

E. *Report from the Office of Professional Standards*

Commander Ron Matos reported that he was going to continue updating the Board at upcoming meetings as far as policy, community policing and training updates. He stated that he mentioned at the last Board meeting, some community policing initiatives and training that the department was conducting. The department was sending six officers and one sergeant to the National Coalition Building Institute Workshop, which started today and will be held again on February 16, 2011. Commander Matos reported that the topics that they are covering are: building community trust, finding partnerships and choosing allies in the community, developing effective leadership skills, understanding how coalitions function, negotiating and resolving conflicts, and building unity across various ethnic backgrounds. He further reported that the workshop was being offered to many different officers across many units in the department. Ms. Yeboah stated she went through that training years ago and it was excellent. Commander Matos stated it was going to be a good program for the officers.

F. *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, Reverend Edward Smart, and Akosua Yeboah.

G. *Report from the Chair*

Chairman Edward Smart stated that he had nothing new to report.

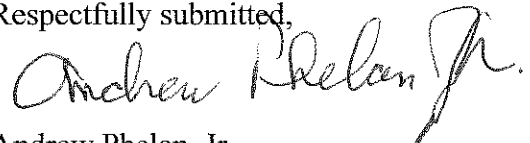
V. **Public Comment**

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

VI. **Adjournment**

James Frezzell moved to adjourn the meeting. Chairman Edward Smart seconded the motion. The motion carried unanimously. The meeting was adjourned at 8:05 p.m.

Respectfully submitted,



Andrew Phelan, Jr.
Secretary