

**City of Albany
Citizens' Police Review Board
GWU the Center
274 Washington Avenue- Teen Center Conference Room
March 10, 2011
6:00 p.m. – 8:00 p.m.**

Present: James Frezzell, Marilyn Hammond, Lilian Kelly, Anthony Potenza, Eugene Sarfoh, Reverend Edward Smart, and Akosua Yeboah.

Absent: Jason Allen and Andrew Phelan Jr.

I. Call to Order and Roll Call

Chairman Edward Smart called the meeting to order at 6:05 p.m.

II. Approval of the Agenda

The agenda was reviewed. Chairman Edward Smart noted that CPRB No. 16-10/OPS No. CC2010-021 was taken off the agenda. Akosua Yeboah moved to approve the agenda. James Frezzell seconded the motion. The motion carried unanimously.

III. Approval of the October 28, 2010 Meeting Minutes

The October 28, 2010 meeting minutes were reviewed. Anthony Potenza moved to approve the meeting minutes. Marilyn Hammond seconded the motion. The motion carried unanimously.

IV. Old Business

CPRB No. 21-09/OPS No. CC2009-037 (Presented by Anthony Potenza)

Anthony Potenza summarized the complaint. Mr. Potenza reported that the complaint was received on May 8, 2009 and contained call handling and conduct standard allegations. He noted that a monitor had not been assigned to the complaint. Mr. Potenza reported that the case had been adjourned in contemplation of the complainant agreeing to some form of mediation with the OPS and the officer. Given the fact that a mediation plan is not in place as of yet, the complainant was willing to engage in an informal conference to resolve the matters in his complaint. A letter was sent to the OPS by former Chairman Jason Allen, requesting a response from OPS. However, since there is no mediation program or process in place, the need for a response from the OPS was made unnecessary and the Board has to adjudicate the case.

Mr. Potenza reported that according to the complainant he made a U-turn on N. Pearl Street and parked in front of a handicapped sign without realizing it. He went into his business, to close for the night. He alleged that an officer came into the store with a

very loud tone and attitude yelling, "Who is driving the white BMW out front?" The complainant alleged that he replied, "That's my car" and the officer yelled at him to get out to his car and sit in it. He further alleged that when he went outside his vehicle already had a parking ticket on it issued by another officer. He claimed that officer yelled at him, "Who the f**k do you think you are parking here?" The complainant informed the officer that he did not realize there was a handicapped sign and was going in to close his business. The officer allegedly said, "I don't give a f**k," "Give me your license and registration." The complainant further alleged that the officer told him that he was going to have his "f**king car towed." After waiting 20 minutes and being humiliated, embarrassed, and harassed, the officer came back to his car and dropped 2 tickets, his license and registration, which he had crumpled, onto the complainant's lap. The complainant also alleged that the officer told him to "See if your family and friends in law enforcement can get you out of this one." He alleged the officer continued saying rude and disrespectful things to him. He further alleged that the officer then told him to "Bring his mommy's car home" and "Go back to his own f**king country," while smiling the whole time. The complainant claimed that as the officer pulled away he saw the officer giving him the middle finger.

Anthony Potenza stated that he reviewed the following documents: Citizen Complaint Form; Complainant's Statement; Civilian Complaint Report; OPS Confidential Report, including the report of the detective assigned to further investigate the case; copies of traffic tickets; Call Ticket; and an Inter-Departmental Correspondence (IDC) from officers stating that the complainant was being verbally abusive and irate after being asked to return to his car.

Anthony Potenza reported that the OPS recommended that the first conduct standards allegation be closed as *exonerated*, where the acts which provide the basis for the complaint occurred but review shows that such acts were proper. The complainant alleged that an officer came into the store with a very loud tone and attitude, yelling "Who's driving the white BMW?" The complainant responded that it was his car and the officer yelled at him to go out to his car and sit in it. Based on the OPS investigation, the back-up officer stated that he had to speak louder to the complainant when he entered the store because the complainant was not responding. The officer made an attempt to stop the complainant upon his exit of the vehicle when he and the target officer were attempting to conduct a traffic stop of the complainant's vehicle. Both officers stated that they did use emergency lights and sirens in an attempt to stop the complainant's vehicle. However, the complainant appeared to ignore them, exited his vehicle, and continued to the store. The complainant stated that the officer allegedly yelled at him to gain his attention, but he did not hear him or pay any attention to him. The back-up officer did not indicate what was said to the complainant, but stated it was somewhere along the lines of "Go out to your car and sit in it" because the officer had stated that was what he wanted the complainant to do. The complainant's witness stated that the back-up officer was rude and cursed at the complainant when he entered the store. However, the complainant stated that the back-up officer did not act out of line and there was nothing the officer did that he would want to file a complaint about. The complainant stated that the target officer raised his voice and got loud with him.

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

Anthony Potenza asked if the complainant was present. It was noted that the complainant was not present.

Anthony Potenza moved to concur with the OPS finding of *exonerated* for the first conduct standards allegation. Akosua Yeboah seconded the motion. The motion carried unanimously.

Mr. Potenza reported that the OPS recommended that the second conduct standards allegation be closed as *not sustained*, where the review failed to disclose sufficient fact to prove or disprove allegations made in the complaint. Mr. Potenza reported that the complainant alleged that the officer yelled at him "Who the f**k do you think you are parking here?" "I don't give a f**k give me your license and registration," and that he was going to have the complainant's "f**king car towed." The officer stated that he did not make such comments and both officers stated that the complainant was the one who was verbally abusive and used profanity toward them. The witness stated that he heard the target officer use profanity. Mr. Potenza reported that the witness was not an independent witness, because he was the complainant's nephew.

Anthony Potenza moved to concur with the OPS finding of *not sustained* for the second conduct standards allegation. Marilyn Hammond seconded the motion. The motion carried unanimously.

Mr. Potenza reported that the OPS recommended that the third conduct standards allegation be closed as *not sustained*, where the review failed to disclose sufficient facts to prove or disprove the allegations made in the complaint. The complainant alleged that he was humiliated, embarrassed and harassed in front of his customers. Mr. Potenza reported that based on the OPS investigation, there was no evidence to support or refute this claim. Being pulled over by police in such a public fashion would cause anyone to feel a level of humiliation. However, there was no direct evidence to prove that the officers acted in an intentional way to harass or provoke the complainant to feel a level of humiliation.

Anthony Potenza moved to concur with the OPS finding of *not sustained* for the third conduct standards allegation. Marilyn Hammond seconded the motion. The motion carried unanimously.

Mr. Potenza reported that the fourth allegation of call handling, had already been voted on by the Board during the previous review of the case and the Board had concurred with OPS finding of *sustained*. Mr. Potenza further reported that the sixth allegation regarding conduct standards, had been *sustained* by the OPS and the Board had also concurred with that finding at the previous review of the case.

Mr. Potenza reported that the OPS recommended that the fifth conduct standards allegation be closed as ***not sustained***, where the review failed to disclose sufficient facts to prove or disprove the allegations made in the complaint. The complainant alleged that the officer stated "See if your family and friends in law enforcement can get you out of this one," "Bring your mommy's car home," and "Go back to your own f**king country." It is further alleged that the officer gave the complainant the middle finger. Based on the OPS investigation, the officer denied making the alleged statements, as well as giving the middle finger. Mr. Potenza reported that he reviewed the officer statements in the case file.

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

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

Marilyn Hammond summarized the complaint. Ms. Hammond reported that the complainant alleged that officers responded to his home and stated someone had called 911 because someone was messing with their girlfriend. The complainant stated that he was just 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 claimed that the officers then put him in handcuffs and slammed him to the ground, causing his elbow to break. The complainant stated that the officers were wearing uniforms and they did not arrest him.

Ms. Hammond reported that she reviewed the following the documents: Resistance Report; call sheet; three IDCs; Confidential Report; certified letter to the complainant dated July 22, 2010 and returned as unclaimed; Article 35 of the NYS Penal Law: Justification; and Article 35.15 of the NYS Penal Law: Use of Force and Defense.

Ms. Hammond reported that she also reviewed witness statements. She further reported that the first witness was interviewed on August 23, 2010. The first witness stated that the complainant was acting very strange and it was clear he was under the influence of alcohol or narcotics. The complainant was belligerent and aggressive toward the witness. The complainant was banging on the neighbor's door and peering into the window, calling them "Sluts" and "Thieves." When the officers arrived the complainant got worse. At one point the complainant kicked one of the officers and that was when he was pepper sprayed. The witness stated the officer acted professionally and appropriately. A second witness, who was interviewed on August 26, 2010, stated the complainant was banging on her door calling them names and accusing them of stealing ecstasy out of his pocket. He was intoxicated, under the influence of another substance, and was so belligerent the witness and her friends feared for their safety. The complainant, while on the ground, was foaming at the mouth, which led officers to believe he was on drugs. He was kicking and striking the officers and at no point did the witness see the officers punch, kick or strike her neighbor in any inappropriate way. The witness also stated that she was surprised the officer did not take further action

toward the complainant given his demeanor and aggressiveness. The witness stated she did not hear throughout the incident from the complainant that he was injured, and he was still combative after he was placed on the stretcher. Many calls to the complainant went unanswered. The detective who worked on the case called the witness in the late fall to see if the complainant still lived there and the witness told him the complainant was in and out. The detective also spoke to Albany Medical Center Psych Unit intake where he was told that the complainant had not been treated since 2008. The complainant was seen in the emergency room in the early hours of June 12, 2010. Ms. Hammond reported that she had asked the detective to try and contact the witness again. Detective Battuelo stated that he tried to contact the witness but she had recently moved away from the area and did not have contact with the neighbor any longer. However, the witness does maintain contact with the people who live at the address and they have not seen the complainant.

Marilyn Hammond reported that the OPS recommended that the use of force allegation be closed as *no finding*, where the complainant failed to produce information necessary to further the investigation and where the complainant is unavailable to clarify the complaint. The complainant alleged being struck in his face by two officers. They allegedly handcuffed him, and slammed him to the ground, which caused him to sustain injuries. Ms. Hammond reported that the OPS exhausted all options to establish contact with the complainant for the investigation. The allegations presented in the complaint need additional clarification by the complainant and the lack of medical records to confirm or even document that the complainant was injured during the incident leave this area of the investigation in question. Without the input and clarification of the complainant there is only the testimony of the target officers and the two independent witnesses to arrive at a disposition. Although the target officers deny ever striking the complainant in the face and the independent witness cannot confirm that allegation it would appear that the finding should not be sustained. Ms. Hammond further reported that without the cooperation of the complainant, the more appropriate conclusion is *no finding*. The same can be said for the allegation of being slammed to the ground. First it should be noted that the complainant's handwriting is not all legible and even though the word "slammed" is not clearly written, it is the best interpretation without clarification from the complainant. Both officers stated the complainant was very combative and would not adhere to their commands. The officer further stated that the complainant was the initial aggressor in this incident and both independent witnesses concurred with that assessment. The use of arm-bars, a technique used to safely gain control over a subject without the use of impact weapons were utilized and the complainant was ultimately brought to the ground. This portion of the event did happen but the absence of the complainant to verify these injuries and elaborate on the account of the complaint prevented a complete investigation.

Marilyn Hammond asked if the Board had any questions. It was noted that the Board did not have any questions. Marilyn Hammond asked if the complainant was present. It was noted that the complainant was not present.

Marilyn Hammond moved to concur with the OPS finding of *no finding* for the first use of force allegation. Anthony Potenza seconded the motion. The motion carried by a 6-0 vote. Akosua Yeboah abstained from voting.

Marilyn Hammond reported the OPS recommended that the second use of force allegation be closed as *exonerated*, where the acts which provided the basis for the complaint occurred but the review shows that such acts were proper. The complainant alleged an officer sprayed him with pepper spray. Independent witnesses provided statements that were consistent with the officers' observations of the complainant. Also, both witnesses stated in their opinion the officers acted appropriately and did not represent any form of misconduct during the incident. This helps to argue the allegation of the complainant being slammed to the ground, as well as the use of pepper spray. An officer admitted to deploying OC spray upon the complainant and that it was reasonable and necessary given the circumstances at the time in order to place the complainant into custody. The officer stated the complainant lurched toward the other officer and kicked him as he was trying to assist the first officer. The use of profanity and racial slurs by the complainant toward the black officer coupled with his volatile behavior toward the officer made him the initial aggressor in the incident. Both officers were justified in their actions to take the complainant into custody for his safety and the safety of those around him at the time.

Marilyn Hammond moved to concur with the OPS finding of *exonerated* for the second allegation of use of force allegation. Chairman Reverend Edward Smart seconded the motion. The motion carried by a 6-0 vote. Akosua Yeboah abstained from voting. Lilian Kelly was not present for the vote. Ms. Yeboah stated she abstained from voting because she had a problem with the procedure that no monitor was assigned to the case.

V. New Business

A. *New Complaints*

1. New Complaints Received since February 9, 2011 Meeting

Chairman Edward Smart reported that two (2) new complaints were received by the Board since the February 9, 2011 meeting. Anthony Potenza read a summary of each new complaint.

CPRB 8-11

According to the complainant, he lives on a busy street that leads to I-90. There have been issues of cars speeding down that street and hitting parked vehicles, so mostly everyone parks slightly on the sidewalk to avoid being hit. The complainant owns two (2) vehicles that are difficult to fit in his driveway so sometimes they are allegedly 6-12 inches onto the sidewalk.

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

CPRB 9-11

The complainant alleges that on February 13, 2011 while he was stopped on his dirt bike, he was confronted by two (2) officers. The complainant further alleges that the officers reprimanded him and told him that he would be getting a ticket. The complainant claims that the second officer recognized him as the kid who lost his dog. The complainant alleges that the second officer called him derogatory names and threatened to tow his bike and then took his bike. The complainant alleges that he felt like he was harassed and slightly racially discriminated against.

A monitor was appointed to investigate this complaint.

2. New Complaints for Review

CPRB No. 1-10/OPS No. CC2009-135 (Presented by Lilian Kelly)

Lilian Kelly summarized the complaint. Ms. Kelly noted that the complaint contained three use of force allegations. Ms. Kelly reported that the complainant alleged she entered her building and was met by police officers, who handcuffed and tased her. The complainant further alleged that the officers tased her on forehead, chest, and back. She claimed that the officers threw her to the ground and pushed her face into the ground.

Ms. Kelly reported that she reviewed the following documents: Incident Report; Fire Department Report; health disclosures; deposition by the complainant; deposition by a witness; and the OPS Confidential Report.

Ms. Kelly reported that the OPS recommended that the first use of force allegation be closed as **unfounded**, where the review showed that the act or acts complained of did not occur. The officers had been called to the scene by the neighbor, who was a witness. The neighbor was concerned about the complainant. The complainant appeared to be intoxicated or in some kind of state or condition and the officers restrained her. The complainant alleged that there were five (5) officers at the scene, but there were only two (2) officers at the scene. The complainant alleged that the officers tased her in the forehead, chest, and back. Based on the OPS investigation, the officers denied the allegation. The officers are not certified or trained to carry or deploy a taser, and the department records indicated that the officers were never assigned tasers on the date in question. The injuries reported in the complainant's signed statement are inconsistent with injuries sustained by a taser. When the complainant was taken to Albany Medical Center there was no report from her of being tased. Furthermore, there is no indication of the alleged injuries, or complaint of injuries, sustained from a taser deployment in the Albany Fire Department Patient Care Report or Albany Medical Center Emergency Room records.

Ms. Kelly reported that the OPS recommended that the second use of force allegation be closed as **not sustained**, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that the officers

threw her to the ground. Based on the OPS investigation, the officers denied the allegation that the complainant was thrown to the ground. A witness stated that the complainant was on the ground but it was not clear how the complainant got to the ground. The complainant was agitated and the officers restrained her. During the course of the officers restraining her, the complainant was on the ground. In addition, the officers stated that they felt that the incident did not meet the criteria for filing a Subject Resistance Report (SRR).

Ms. Kelly reported that the OPS recommended that the third use of force allegation be closed as *not sustained*, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that the officers pushed her face into the ground. Based on the OPS investigation, the officers denied the allegation. A witness saw the complainant face up when she was restrained on the ground, however there were insufficient facts.

Ms. Kelly noted a Subject Resistance Report would have been helpful because the complainant was taken to the hospital and was also found on the ground. It would have been helpful to know how the complainant got to the ground.

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

Ms. Kelly stated she would also like to note that the complaint contained allegations of use of force and no monitor had been assigned.

Ms. Kelly questioned whether the complainant had been tased, since it seemed in the complaint the complainant alleged she was “teased.” She stated that if anyone had a question about whether the complainant had been teased or tased, no monitor had been assigned who could have potentially helped clarify the statement.

Ms. Kelly asked if the Board had any questions. James Frezzell stated he thought that if a case involved use of force a monitor had to be assigned. Ms. Kelly responded that for complaints involving use of force, it was optional for the Board to assign a monitor, but for excessive use of force complaints, a monitor should be assigned. She further stated that due to the fact that in the complaint it stated “I was handcuffed, teased and pushed down to the floor,” it was not clear that the complainant was tased. She stated it was not necessarily clear in the case that there was excess use of force. Ms. Kelly stated that if the complaint had said “tased” a monitor might have been assigned. Mr. Frezzell asked if there was a difference between use of force and excessive use of force. Ms. Kelly stated that the Board’s By-Laws specifies that for “excessive use of force” a monitor be assigned.

Detective Dougherty stated that when he conducted a phone interview with the complainant, it was revealed that the complainant had allegedly been tased. He further stated that he did some research and noted that the officers involved were never issued

tasers and were not trained to use tasers. He stated that he called the Government Law Center to clarify the allegation.

Chairman Smart stated that he was not sure that if a person is tased that means a monitor is automatically assigned to the case. Chairman Smart asked Coordinator of the Board Sharmaine Moseley if that was correct. Ms. Moseley replied that the assignment of a monitor is up to the Board vote. Chairman Smart told the Board that what the detective was saying was that an officer cannot mysteriously taser someone when they do not carry a taser. He further stated that tasers are used by officers who have been trained and every officer on the Albany Police force does not carry a taser. Chairman Smart told the Board that if an officer does use a taser, a special report must be filed and the cartridge retained by the APD. He stated that the use of a taser would have showed up in an investigation unless there was a conspiracy at the police department to pick up all the tasers and he did not think that was the case. Chairman Smart also noted that before an officer gets a taser he has to be tased themselves.

James Frezzell asked whether using a taser was considered excessive use of force. Chairman Smart stated it was not and it was better than shooting someone. Akosua Yeboah stated that she believed that what Ms. Kelly was saying, was that the Subject Resistance Report would have indicated whether the use of force was necessary or not necessary. She further stated that she believed the Board did not have enough information to adequately deem whether or not it would be excessive use of force.

Ms. Kelly stated that in her conversation with the investigating detective in the course of reviewing the documents, it appeared that the incident was such that the officers did not file a resistance report. Chairman Smart asked if the complainant had been arrested. Ms. Kelly replied that the complainant had not been arrested.

OPS Commander Ron Matos stated that the complainant had been intoxicated to the point where the officers had a legitimate fear for her safety. The complainant had been on alcohol or drugs so the officers were within their right to take her to the hospital, even against her wishes. Commander Matos stated that the Fire Department also showed up and evaluated the complainant. He further stated that with regard to the Subject Resistance Form, per the APD's SOP, an officer is not mandated to complete a Subject Resistance Form in cases in which they simply use physical touch. If officers use beyond physical touch, such as open hand techniques, impact weapons, compliance techniques, arm bars, tasers, or a baton, they are required to complete the Subject Resistance Form. The officers explained the incident as the subject was intoxicated and fell to the ground. They were able to manipulate her in a manner utilizing handcuffs, which is not a use of force. The APD does not complete use of force forms every time a compliant subject is handcuffed. If someone puts their hands willingly behind their back or in front of them to be handcuffed, it would never warrant the documentation on a use of force. Commander Matos further stated that it is mandated in the SOP and was provided yesterday for the Board members to review.

Akosua Yeboah asked if, as members of the Board, they could deduce that there was no resistance if the officer deemed it not necessary to fill out a Subject Resistance Report. Commander Matos replied that it was the officers accounting of the event that there was no use of force and in evaluating the medical reports as well, and the documentation of the Albany Fire Department, there were no injuries to substantiate a tasing had taken place. He further stated tasers require probes or electric current to be applied to the skin and there were no markings to indicate there was any type of tasing. Ms. Kelly stated that the complainant had indicated she had been tased three times, which is a lot of tasing.

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

Lilian Kelly moved to concur with the OPS finding of ***not sustained*** for the second use of force allegation. Anthony Potenza seconded the motion. The motion carried unanimously.

Lilian Kelly moved to concur with the OPS finding of ***not sustained*** for the third use of force allegation. Chairman Reverend Edward Smart seconded the motion. The motion carried unanimously.

CPRB No. 52-10/OPS No. CC2010-096 (Presented by Lilian Kelly)

Lilian Kelly summarized the complaint. The complainant alleged the police entered her home wielding guns and placed her sons in handcuffs and searched the home. Ms. Kelly reported that the substance of the allegation was that when the complainant requested to see a warrant and the officers' information and none of it was produced despite repeated requests. The complainant characterized the incident as a brutal and vigorous procedure that was frightening and unprofessional.

Ms. Kelly noted a monitor had been assigned to the case.

Ms. Kelly reported that the OPS recommended that the conduct standards allegation be closed as ***no finding***, where the complainant withdrew the complaint. Based on the OPS investigation, the complainant was subjected to a "no-knock" warrant. A "no-knock" warrant is ordered when a court determines that adequate grounds exist to authorize police officers to enter the premises without giving notice or purpose. In this situation, an unannounced search of the home occurred and a search warrant had been in fact issued by a judge just prior to the incident.

Ms. Kelly reported that monitor Salvatore Munafo was assigned to the complaint. She stated this case was an example in which an understanding between the community and the police was reached and an example in which having the Board in place can lead to a resolution. Ms. Kelly stated she gave kudos to the complainant and the detective. In the course of the investigation, the detective reached out to the complainant and talked to her regarding concerns surrounding the situation and the warrant. Ms. Kelly reported that the detective explained to the complainant that there was not a redacted warrant to show the

complainant at the time the incident occurred. The detective obtained a redacted copy of the search warrant, went to the complainant's house, and discussed it with the complainant. Ms. Kelly reported that just for the complainant to see the warrant and understand why officers could not show it at the time, and have a conversation with the investigating detective, was sufficient, as the complainant subsequently withdrew the complaint. She further stated she had seen the sworn statement on which the complaint was withdrawn. Ms. Kelly explained that the reason why the Board was going through it at the meeting was because the case had to be closed. She stated that she wanted to point out that it was nice work. Ms. Kelly stated that she was pleased with the outcome and it was why they were all on the Board, to generate some understanding between the community and the police. She further stated she thought the monitor's report was very good. The monitor recommended that when a similar situation arises, the APD should make available a redacted report for the citizens who are subject to the situation. Ms. Kelly read from the monitor's report that "this is an area of serious concern to any American Citizen in light of the guarantees inherent in the 14th Amendment of the US Constitution. A citizen's right to not be subjected to illegal search and seizure must be met with appropriate safeguards to protect the sensitivity of police personnel and information related to the investigation." Ms. Kelly stated that having a redacted copy of a warrant in these situations might be helpful moving forward.

Lilian Kelly moved to concur with the OPS finding of *no finding* for the conduct standards allegation. Anthony Potenza seconded the motion. The motion carried unanimously.

Ms. Kelly asked if there were any questions. Akosua Yeboah asked Ms. Moseley if it was typical if a complaint is withdrawn that it is still sent to the Board for review. Ms. Moseley replied if there was a complaint form filed and an OPS report generated, the Board has to review the complaint to close it out.

Ms. Kelly asked if the complainant was present. It was noted that the complainant was not present.

Chairman Smart asked if the monitor was present. It was noted that monitor Salvatore Munafo was present. Mr. Munafo stated that in regard to the recommendation he made, he spoke to Commander Matos, to see if a redacted warrant could be produced at the time of the "no-knock" warrants being served. He did not know if it was an APD policy. He further stated that this could, even though it was unlikely, occur again. Mr. Munafo asked if there was a policy that could require a redacted warrant being produced at the time of the "no-knock" warrant. Commander Matos replied that there is no policy. He stated that regarding the concerns raised by Mr. Munafo, he had communications with the detective lieutenant who supervises the officers involved. He further stated that the "no-knock" warrant was highly unusual in that many of the investigatory procedures were outlined within the warrant itself. Commander Matos stated that typically a warrant would simply state the address to be searched and have the judge's signature. He further stated this was a unique document that presented some problems for the detectives involved and he can only hope their supervisor will address that with them. Commander

Matos stated this was something he had never seen and it was highly unusual. Ms. Kelly stated the warrant was about eight pages long and about half was redacted in the version she reviewed. Ms. Kelly told Detective Montalvo he did a good job. Detective Montalvo thanked Ms. Kelly and stated it was unusual for all that sensitive information to be contained in the warrant and a lot of the investigatory information could not be disclosed to anyone, therefore it was not shown to the complainant at the time of the incident. He further stated that in speaking to the detective for whom the warrant was issued, it was recommended that if the situation were to come up again to provide a redacted copy so there is some kind of documentation to give the citizen.

Chairman Smart asked Commander Matos if there was a conflict as to the date on the Citizens' Complaint Form. Chairman Smart stated there were two signatures and two dates on the form. Ms. Kelly stated there was some description in the confidential report about a discussion about resolution of the dates and signatures. There was some confusion when they wrote in the dates and the times on the signatures. Chairman Smart asked if there were two different persons.

Detective Montalvo stated the Government Law Center had notice of the complaint, and the OPS learned later in the investigation that the GLC did not have it. Chairman Smart asked if something was put in place so that a complaint does not get lost. Detective Montalvo stated that the complaints were time stamped.

CPRB No. 2-10/OPS No. CC2010-001 (Presented by James Frezzell)

James Frezzell summarized the complaint. Mr. Frezzell reported that the complainant alleged that during the weekend of November 27 and 28, 2009, while at a Phish Concert, a police officer spoke of her in a derogatory manner to another officer. She also alleged that the police officer has overly scrutinized her actions as she was walking with and without her boyfriend on other occasions.

Mr. Frezzell stated that Phish concerts have generally been a source of complaints from Albany residents for unsanitary actions and suspected drug activity.

Mr. Frezzell reported that he reviewed the following documents: the Confidential Report; Sworn Testimony Statement; Witness Report-Complainant; Witness Report-Police Officers; and the OPS Investigative Report.

Mr. Frezzell reported that the OPS recommended that the conduct standards allegation be closed as ***not sustained***, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that an officer called her a "crack head whore." Based on the OPS investigation, the officer denied calling the complainant a "crack head whore." The officer admitted to telling another officer that the complainant has a habit of crack cocaine use, which was confirmed by the other officer. According to the officer, he was not addressing the complainant, and was informing another officer for police informational purposes. The witness refused to make himself available for comment in regards to the allegations.

Chairman Smart asked if the Board had any questions. It was noted that the Board did not have any questions. Chairman Smart asked if the complainant was present. It was noted that the complainant was not present.

James Frezzell moved to concur with the OPS finding of ***not sustained*** for the first conduct standards allegation. Marilyn Hammond seconded the motion. The motion carried unanimously.

Mr. Frezzell reported that the OPS recommended that the call handling allegation be closed as ***exonerated***, where the acts which provide the basis for the complaint occurred, but the review showed that such acts were proper. The complainant alleged that on January 7, 2010, an officer stopped her for no reason. Based on the OPS investigation, the officer indicated that he observed the complainant walk up to several residences and businesses and look through and underneath cigarette ashtrays. The officer also indicated that it looked as if the complainant might have been looking for hideaway keys to gain access to buildings. An officer has a common law right to inquire if the officer has a founded suspicion that criminal activity is afoot. This permits the officer to gain explanatory information of a person who he believes may be committing or about to commit a crime, which appears to be the case in this incident. The witness refused to make himself available for comment in regards to the allegation.

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

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

Mr. Frezzell reported that the OPS recommended that the conduct standards allegation be closed as ***not sustained***, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that an officer told her that she did not know how to count. Based on the OPS investigation, the officer denied the allegation. Two other officers stated they did not witness or hear the conversation between the officer and the complainant. The witness refused to make himself available for comment in regards to the allegations.

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

James Frezzell moved to concur with the OPS finding of ***not sustained*** for the second conduct standards allegation. Akosua Yeboah seconded the motion. The motion carried unanimously.

Mr. Frezzell reported that the OPS recommended that the second call handling allegation be closed as ***unfounded***, where the review showed that the act or acts complained of did not occur. The complainant alleged that she was being continually stopped by police and

harassed. Based on the OPS investigation, there are several field interview cards filed by several different officers in which the complainant was stopped and interviewed. All of the field interviews occurred in high crime areas involving drug activity and prostitution. The interview cards indicated investigations ranging from suspicious activity to loitering for the purpose of drugs. One card indicated that the complainant told the officer that she was using crack and another card indicated that she was loitering in front of a possible drug/prostitution location. An officer has a common law right to inquire if the officer has a founded suspicion that criminal activity is afoot. This permits the officer to gain explanatory information of a person who he believes may be committing or about to commit a crime. There appeared to be no pattern of harassment as alleged by the complainant. The investigative stops were conducted by several different police officers, observing the complainant's actions which were suspicious in nature.

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

James Frezzell moved to concur with the OPS finding of ***unfounded*** for the second call handling allegation. Anthony Potenza seconded the motion. The motion carried unanimously.

Chairman Smart noted that interview cards were evidence against the complainant. He asked Commander Matos if, when a complaint is made, it is the practice of the OPS to do a background check on the person. Commander Matos responded that it was not, but it was part of the complainant's allegation that she had been continually harassed by an individual officer or group of officers. He further stated that the contacts the complainant had were documented and they were able to verify she had numerous contact with police. The cards simply prove that she was stopped for police purposes.

Chairman Smart stated he thought it was important that the Board knew that. He further stated that the Board spoke with the Public Safety Committee yesterday and part of the discussion centered on that. Commander Matos stated that the discussion centered on the inclusion of criminal histories, which the Board does not get to see. He further stated that the interview cards were not criminal history, but simply documentation of police contact in response to the complainant's allegations. Chairman Smart asked Commander Matos if he would include CAPSNET in the reports. Commander Matos replied that CAPSNET is separate and distinct from a criminal history.

CPRB No. 31-09/OPS No. CC2009-059 (Presented by Eugene Sarfoh)

Eugene Sarfoh summarized the complaint. Mr. Sarfoh reported that the complainant alleged he was arrested for a buy and bust sale. He was taken to the detective's office where he was allegedly strip searched and a detective allegedly held a taser to his head. Another detective allegedly put his fingers in the complainant's rectum stating he was "looking for crack cocaine." The complainant alleged that he was then transported to the Albany Medical Center Emergency Room where the detectives told the doctor that the complainant had cocaine in his rectum. The doctors conducted x-rays, he was given several enemas without his consent and forced to drink diarrhea liquids. He was admitted

overnight and a judge arraigned the complainant in the hospital and following that he was released.

Mr. Sarfoh reported that he reviewed the following documents: the Civilian Complaint Report; Monitor's Report; Citizen's Complaint Form; complainant's three-page handwritten letter; contents of the investigation conducted by OPS, including the Confidential Report, Call Ticket, and a number of documents which comprise the file of the community response unit; Incident Report regarding the actual drug transaction; Investigation Report; Property Report; Arrest Report; Field Test Report, which tested the drugs that were allegedly purchased; Lab Submission Form; a Community Response Unit sheet; Albany Medical Center emergency records, seven pages of materials including admission notes, a teaching physician's notes, and CT scan records; and Incident Report regarding the post arrest observation of the complainant allegedly introducing a plastic baggie into his rectum.

Mr. Sarfoh noted that the incident occurred on November 7, 2007 and a monitor was assigned to the complaint on July 1, 2009.

Mr. Sarfoh stated the medical report was relevant. The doctor indicated in his report that he explained the serious consequences to the complainant regarding cocaine toxicity and that the complainant submitted to a CT scan and x-rays of his body. The complainant was also advised to ingest a laxative solution to avoid any toxins in his body. The medical report indicated that upon examination the complainant exhibited lesions or condition consistent with a foreign object(s) in his rectum and the CT scan revealed an unknown mass or object. According to the doctor, the complainant assisted with his examination. Mr. Sarfoh stated that the monitor also reviewed the results of the interviews with the detectives involved. There were two interviews with two members of the Community Response Unit. Both were veteran officers. The first officer indicated that following the arrest of the complainant, the complainant was observed engaging in behavior which suggested he was secreting or concealing something in his buttocks area. Mr. Sarfoh stated that this officer was not present with regard to the strip search and did not observe anyone putting hands in the complainant's rectum area. The officer further stated that when he arrived in the area where the search was being conducted there was no complaints voiced by the complainant. The officer stated he did not arrive at the hospital until the latter portion of the complainant's stay at the hospital. Mr. Sarfoh stated that the second officer interviewed, also a veteran officer, indicated the complainant was brought to booking, shackled to a bench, and strip searched. The search involved the complainant lifting his scrotum, turning around and being asked to bend over, which he did. It was observed that there was plastic protruding from the area of his rectum. According to the officer, the complainant was not touched and no one placed any fingers or hands, as alleged, near the complainant's rectum. The complainant was asked to take what appeared to be a baggie out and refused. It was that response that prompted the determination to take him to the emergency room. The detective did not follow the complainant to the hospital, so he was not in any position to offer any information regarding what transpired there.

Mr. Sarfoh reported that in regard to the investigation itself that led to the complainant's interaction with the detectives, the incident arrest report and the community response unit file confirmed that there was a buy/bust investigation involving a confidential informant. The transaction that led to the complainant's arrest was monitored both by video and audio. Following the arrest, the controlled substance was tested and sent to the lab and the complainant was then brought to the station.

Mr. Sarfoh reported that the OPS recommended that the use of force allegation be closed as **unfounded**, where the review showed that the act or acts complained of did not occur. The complainant alleged that he was arrested following a buy/bust investigation. He claimed that while being processed he was subjected to a strip search and a taser was held to his head. He further alleged a detective put his fingers in the complainant's rectum stating, "He was looking for crack cocaine." The complainant claimed that he was transported to the hospital and detectives told the doctor that the complainant had cocaine in his rectum, where he was then subjected to medical testing, without his consent. The complainant was arrested following a drug investigation in which detectives had the complainant on a recorded device selling crack cocaine to a confidential informant for the sum of US currency. Due to the nature of the complainant's charges, as per department policy, he was subjected to a strip search. As per Article 64.1, a strip search may be conducted when there is a reasonable suspicion, based on the fact and circumstances of the individual's arrest, that a weapon, contraband, or evidence is secreted upon the arrestee's person or in their clothing in such a manner that it may not be discovered by previous search methods. A visual search of an arrestee's anal and/or genital cavities is usually conducted by having the arrestee bend over or squat. In order to facilitate the inspection, the officer conducting this type of search does not touch the arrestee. A manual cavity search is conducted when the officer can prove there are exigent circumstances evincing a danger to the safety of the officer, arrestee, or that the evidence would be destroyed. In this particular case, the complainant's actions, as well as his charges, warranted a strip search. Upon conducting the strip search, detectives observed what appeared to be plastic protruding from the complainant's anus. When the complainant refused to remove the item, for his safety as well as the preservation of evidence, he was transported to the ER for treatment. According to the medical reports submitted by the complainant, the complainant understood what avenues the medical staff was going to take and gave his consent for the testing to be conducted. There is no indication based on the investigation that the complainant was subjected to undue force while being arrested, strip searched or at the hospital. All action conducted were within departmental guidelines.

Chairman Smart asked if monitor Richard Lenihan would like to add anything. Mr. Lenihan stated that Mr. Sarfoh had hit all of the highlights. Chairman Smart asked Commander Matos about the timeline of the incident. Commander Matos asked if Chairman Smart was referring to when the complainant filed his complaint. Chairman Smart stated that was correct. Commander Matos replied that he believed the incident occurred in 2007 and the complainant did not file his complaint until 2009. Chairman Smart stated the legislation of the Board requires complaints to be filed in a timely manner. Ms. Moseley stated it could have been before the Board for a vote at a previous

meeting. She further stated that it might have been based on the complainant's allegation that the Board decided to review it. Anthony Potenza asked if she were sure. Ms. Moseley stated she did not have the case file with her. Mr. Potenza stated that would be the only way it could have gone forward to the Board, if the Board had agreed the case warranted consideration beyond the six month time frame. Chairman Smart stated he was bringing the issue up so that the Board understood that complainants cannot wait two years before filing a complaint. He further stated that the Board must adhere to the rules of timely filing for the protection of the officers, as recollection of events may fade over time.

James Frezzell asked Mr. Sarfoh what the police determined the objects were that the complainant was hiding. Mr. Sarfoh responded that in reviewing the medical records it was not clear to him what determination was ultimately made. He stated there was reference to the officers suspecting there were twenty individually wrapped baggies of cocaine that were secreted. He further stated it was not clear whether that was something they found. The complainant was given laxatives for some period of time and there was reference to those taking effect. The report seems to suggest that it was something that would otherwise be unnatural. Mr. Frezzell asked if it was determined to be cocaine would the complainant be charged. Chairman Smart asked Detective Hendrick to respond. Detective Hendrick stated the complainant was involved in a sale and the proceeds from that sale were tested and came back as crack cocaine.

Eugene Sarfoh moved to concur with the OPS finding of ***unfounded*** for the use of force allegation. Anthony Potenza seconded the motion. The motion carried unanimously.

CPRB No. 44-09/OPS No. CC2009-086 (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint. The complainant alleged she was informed that two detectives were at her home. She further alleged a person who identified himself as a police officer got on the phone and stated her son was left alone. The complainant alleged when she arrived home, two Troy officers had her friend handcuffed and APD detectives were there as well. She alleged an APD detective told the friend if he promised to leave they would let him go. The complainant alleged the detectives were in her home approximately 30 minutes prior to her inviting them in and they did not have a warrant. The complainant alleged the detectives subjected her friend to mental and physical abuse by handcuffing him, entering her home illegally and violating her civil rights. A detective allegedly questioned the complainant's 9-year-old son without her consent.

Ms. Hammond noted that a monitor had been assigned to the complaint.

Ms. Hammond reported that she reviewed the following documents: five (5) Intra-Departmental Correspondence (IDCs); one (1) Field Investigation Report; Supplemental Report; Confidential Report; warrant for the complainant; one (1) inquiry report for the visitor; Article 10, Part II of NYS FCA-Emergency Removal without Court Order; Article 260 of the NYS Penal Law-Endangering the Welfare of a Child; Article 140 of

NYS Criminal Procedure Law; Article 195 NYS Penal Law-Obstructing Governmental Administration.

Ms. Hammond reported that on January 10, 2010, a Troy police officer stated that he saw an APD detective on the bottom of the steps to the complainant's home and they were with her visitor. Based on the OPS investigation, the officer stated the visitor was giving the detective a hard time and there was no indication that the detective had already been upstairs in the complainant's residence prior to his arrival. The Troy police stated the visitor was the cousin of the complainant. An officer stated he arrived at the same time as the other officer. He stated he was not aware the complainant was having problems. An APD detective also noted there was no indication that the APD detective had already been upstairs prior to his arrival. There was only one officer outside with the visitor. The visitor was handcuffed at the time of his arrival and the visitor was boisterous, animated, and agitated. The Troy officer stated the Albany detective never yelled at the visitor and they were professional. When the complainant arrived she was very gracious and told the visitor to be quiet and cooperate. The complainant did not appear to be upset at all and she spoke to the detective upstairs. The Troy police never entered the apartment. The complainant was a previous employee of the Troy Police Department as a booking patron. Several meetings were set up and held between the complainant, her son, and the monitor. The only conversation the officers had with the son was when they inquired about his well-being and contacted his mother.

Ms. Hammond asked if the complainant was present. It was noted that the complainant was not present.

Ms. Hammond asked monitor Richard Lenihan if he had anything to add. Mr. Lenihan stated the detectives in the case had reason to believe that the complainant had information pertaining to a murder case in Albany and that was why there were there to begin with. He further stated that when police knocked on the door the guest of the complainant seemed to want to flee for unknown reasons and they felt the child was left in the company of an unfit, unsafe individual.

Ms. Hammond asked if the Board had any questions. It was noted that the Board did not have any questions.

Ms. Hammond reported that the OPS recommended that the first conduct standards allegation be closed as *exonerated*, where the acts which provided the basis for the complaint occurred but the review showed that such acts were proper.

Marilyn Hammond moved to concur with the OPS finding of *exonerated* as to the first conduct standards allegation. Chairman Reverend Edward Smart seconded the motion. The motion carried unanimously.

Ms. Hammond reported that the OPS recommended that the second conduct standards allegation be closed as *unfounded*, where the review showed that the act or acts

complained of did not occur. The complainant alleged that officers were staking out her residence.

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

Ms. Hammond reported that the OPS recommended that the third conduct standards allegation be closed as *exonerated*, where the acts which provided the basis for the complaint occurred but the review showed that such acts were proper. The complainant alleged that the officers took advantage of a visitor in her home by handcuffing him for no reason.

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

Ms. Hammond reported that the OPS recommended that the fourth conduct standards allegation be closed as *unfounded*, where the review showed that the act or acts complained of did not occur. The complainant alleged that the officers questioned her 9-year-old son without her being present.

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

Chairman Smart asked Commander Matos if it was clear which officers from the different departments were responsible for the various actions alleged in the complaint, since the Troy Police Department and Albany Police Department were involved. Commander Matos replied that it appeared no allegations were made against the Troy officers. He stated that allegations were made against the Albany officers and actions taken by the Albany officers, so the complaint was not forwarded to the Troy Police Department.

CPRB No. 64-09/OPS No. CC2009-130 (Presented by Reverend Edward Smart)

Chairman Reverend Edward Smart summarized the complaint. The complainant alleged that he was attacked and both officers and detectives investigated the incident. The complainant further alleged the officers and detectives did not conduct a thorough investigation. He further alleged that he was a victim of false arrest, false evidence, illegally obtained evidence, malicious arrest, forcible compulsion, and coercion. The complainant felt that the investigation was biased and favored the alleged victims in his case and that he was a victim of gang assault. The complainant also alleged that while he was at the hospital he was handcuffed to a hospital bed and his family was not allowed to see him.

Chairman Smart reported that he reviewed the following documents: Albany Police Review Report; Citizen's Complaint Form; Repository Inquiry; nineteen (19) Incident Report Forms dated September 19, 2009; twelve (12) Property Reports dated September 19, 2009; Call Log dated September 19, 2009; Safety Net dated September 19, 2009; Screening dated September 20, 2009; Suicide Prevention dated September 20, 2009; eleven (11) Investigative Reports dated September 19, 2009; Photo Report dated September 19, 2009; Confidential Report dated December 1, 2010; Certificate of Conviction; four (4) Intra-Departmental Correspondence (IDC); and three (3) Times Union newspaper articles.

Chairman Smart asked if the complainant was present. It was noted that the complainant was not present but a woman who was involved in the incident was present. Chairman Smart noted a monitor was not assigned to the complaint.

Chairman Smart asked if the woman would like to address the Board. The woman stated that she would like to hear from the OPS what type of investigation was done. She further stated she believed they did not do a proper investigation, that it was skewed and biased. Chairman Smart noted that was the essence of the complaint. He told the woman that all of the documents that he had read were part of the file and part of the investigation and all of the particular files were reviewed in relation to the complaint. Chairman Smart stated the complaint was investigated by Detective Kevin Dougherty. He asked Detective Dougherty to address the Board since the complainant's family was present. Detective Dougherty stated all the documents were reviewed by him and the investigating officers and responding officers. He further stated that the case also went through a court of law and there were a lot of different aspects of that. Some of the allegations involved what happened at the hospital. Detective Dougherty stated that the complainant stated he was handcuffed at the hospital; however, he was a suspect in a serious crime so he had to be handcuffed.

The woman stated the issue as she understood it was that several people were involved on both sides, and there were serious injuries sustained by both parties, so why was he the only one arrested. She stated that it was clear what his injuries were. She further stated that she called the police and they took him from her residence to the hospital. The police proceeded to drive some of the individuals past her residence to stare him up and down. None of them were ever arrested, charged or anything. She stated that when things hit the media it put things into peoples' minds. She further stated nobody knows or cares what happened to the complainant. She stated that even looking at the Times Union article, someone has to conclude that something was missing. The woman stated that she still feels badly about what happened that day, as she pretty much witnessed it. She further stated something happened first before the next thing happened. It was her belief that the police did not do their job. The woman stated that it was a speedy arrest and because some of the students were SUNY students, as she is, they differentiated between the complainant and the students. She stated they locked the complainant up and it hit the media and then he had a speedy three (3) day trial with a public defender.

Detective Dougherty stated there were a lot of witnesses and a boatload of work that went into the case. He stated the case did go to trial, it was heard in a court of law, the complainant was found guilty and sentenced by a jury of his peers.

The woman stated that she disagreed and would like to know the OPS findings. Chairman Smart stated that he would read the OPS findings. He thanked her for coming to the meeting and being patient. He stated that the Board's job was not to determine guilt or innocence, but to determine that the case was investigated properly. He further stated that if the Board determined that it was not investigated properly, it takes action.

Chairman Smart reported that the OPS recommended that the call handling allegation be closed as **unfounded**, where the review showed that the act or acts complained of did not occur. As to the allegation that the Albany Police Detectives did not investigate the incident properly and conducted a biased investigation against the complainant, the incident in question was investigated thoroughly and properly. The case file reflects the scope of the investigation. Based on the OPS investigation, the coordinated efforts between the Albany Police Department and the Albany County District Attorney's Office led to the successful prosecution and conviction of the complainant in which he was sentenced to sixty-five (65) years in prison. The complainant was tried and found guilty and may appeal if he chooses to.

Chairman Smart informed the woman that with regard to her inquiry into why others were not arrested, the Board was not privileged to know that information. He further told her that the Board did not have the authority to ask the APD to go and arrest other people. The woman asked what does the Board do. Chairman Smart explained that the Board makes certain that in the particular case of the complainant that his rights were not taken from him. He further stated that the complainant did have a public defender and the Board looks at it from the standpoint that the matter did go to trial. Chairman Smart stated that did not mean the complainant could not still appeal. The woman stated she knew that and guessed the Board could not do anything because it takes what the court says as this is what happened so it is done and over with, there is nothing to do. She further stated that it seemed like everything was based on one part of it and the stance the court has taken.

Chairman Smart stated that he believed that if the case is vigorously defended, then that is the action the complainant and the woman should take. He stated it was not the Board's job to continue to, nor does it have the power to, overturn a case that has been adjudicated. The woman stated that she understood, but the case was just so wrong on so many levels that when she looked up what the Citizens' Police Review Board does, she understood that the Board looks into the investigation of what the police did or did not do. She stated that because the complainant has been convicted doesn't matter what the police did or did not do. The woman stated that the complainant would have his chance to appeal. Chairman Smart asked the woman if she had been interviewed by the police department. The woman stated she had been interviewed by the police, as she was the one who called the police department. Chairman Smart asked another woman who was present if she had been interviewed as well. The woman replied that the other woman

was not interviewed. She was present to support her as she went through it. The woman stated that she was very angry because she spoke up about the situation and will continue to speak up about the situation, having known what she witnessed. She stated that because she spoke up about it and because she contacted a detective, a week later he contacted her and filed charges against her. She further stated that she had never been in trouble and all of the things that she has been through, she was not his co-defendant. The things that she has continued to go through because of the incident encourages her to fight each and every day, because that is how strongly she feels about it. Chairman Smart asked the woman if she had been charged with something. The woman responded she had been charged. Chairman Smart asked the woman if she had been charged because she asked about the case and the disposition of the case. The woman stated that was correct, she had spoken up about it. She further stated the complaint was not about her, it was about the complainant and she continues to thank god she has people and she was able to afford an attorney to fight for her own rights. The woman further stated that she is part of the community and involved in the community in many different agencies and she is a criminal justice major. She stated that she cares, as it is a big issue, and that is why she has come this far. Chairman Smart asked the woman if she has filed her own complaint against the charges that were brought against her. The woman replied in the negative. She stated that she is fighting the charges against her and she had contacted the Board to find out what happened. She further stated that she knows the Board cannot do anything for her or the complainant, so it would not really make a difference. Chairman Smart stated she could appeal the case. If someone has violated her rights, or if she feels some officers have done something wrong to her, she can file a complaint with the Board and the Board would hear her complaint. The woman asked if the Board found her allegations to be true, what it would do. Chairman Smart stated it was a process by which the APD takes appropriate actions against that police officer and those actions can be quite severe, to the extent that they might lose their job or because of the incident they may not be promoted. He stated there were a number of disciplinary actions and it remains a permanent part of their file. The other woman stated that since the complainant has already been convicted, that is why the Board cannot help him, as opposed to the woman's situation still fighting the case, the Board would be better able to help her situation. Akosua Yeboah told the women that the Board is not part of the judiciary system and it is not a judicial Board. The second woman stated she understood, she was just trying to figure out if the other woman should file a complaint and whether she would get more services if a complaint were filed. She further asked the Board if, because the complainant had already been tried and convicted, if that was why the Board could not find any findings for him. Ms. Yeboah explained that the Board looks to see if during the process of interaction with the police whether civil rights were violated, such as during an arrest. It has nothing to do with the trial, sentencing or anything of that nature. Ms. Yeboah stated that the Board looked into whether citizens were treated properly and respectfully by the police and the complaints get investigated by the OPS. She further stated that the Board was an independent Board of civilians that makes sure the investigation by the OPS was conducted properly and thoroughly. The women stated they understood. Chairman Smart stated the Board did not treat any case differently than any other case. He stated that in this particular case there was a very large file, which means that there was a lot of work done.

Chairman Smart stated that the Albany Police Department investigated this matter and the District Attorney's Office prosecuted the case. The complainant was convicted and sentenced to sixty-five (65) years in prison. He further stated that he agreed with the OPS finding of *unfounded*, since there was no evidence that the complainant was attacked by a gang.

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

Chairman Smart reported that the OPS recommended that the conduct standards allegation be closed as *unfounded*, where the review showed that the act or acts complained of did not occur. As to the allegation that the detectives forcibly coerced, compelled and maliciously arrested the complaint, based on the OPS investigation, there was no evidence to suggest that any of these allegations occurred. The complainant's own voluntary statement was evidence that he gave a written statement under his own free will. The complainant initialed acknowledgment of all his rights throughout the statement and even added in his statement, "I wish this never happened, I just want to go home." The complainant's venue for the allegation would have been during the trial, where subsequently he was found guilty of all charges and sentenced to sixty-five (65) years in prison. The evidence clearly showed that the detectives did not persuade anyone to arrest the complainant. A full trial was held and opportunities were given to the complainant to present his argument.

Chairman Edward Smart moved to concur with the OPS finding of *unfounded* for the first conduct standards allegation. Anthony Potenza seconded the motion. The motion carried unanimously.

Chairman Smart reported that the OPS recommended that the second conduct standards allegation be closed as *exonerated*, where the act or acts which provided the basis for the complaint occurred, but the review showed that such acts were proper. The complainant alleged that detectives handcuffed the complainant to a hospital bed and refused to allow him visitors while at the hospital. Based on the OPS investigation, the detectives and officers at the hospital denied refusing the family members to visit him at the hospital. Officers did handcuff the complainant to a hospital bed during medical treatment. The complainant was being detained and did not have life threatening injuries, which would have prevented him from attempting to flee. The complainant was discharged from the hospital within a couple of hours of treatment. The complainant was detained for serious charges which were based on the condition of the victims, which were unknown at the time. One of the victims sustained a knife wound to the throat which may have led to the victim dying. Suspects who are being detained or who are in custody are not privy to visitors other than a legal representative or medical personnel, which includes time spent at a hospital for a minor injury. The officers acted properly under the conditions presented and the serious injuries of the victims. The complainant was detained, arrested and convicted on all charges.

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

CPRB No. 38-10/OPS No. CC2010-126 (Presented by Reverend Edward Smart)

Chairman Reverend Edward Smart summarized the complaint. The complainant alleged that she was the victim of an assault, the police who responded ignored her, and the officers submitted a false report that she was uncooperative. It was further alleged that the officers were rude to her.

Chairman Smart reported that he reviewed the following documents: Sworn Statement; Complaint dated December 3, 2010; Call Log dated July 12, 2010; Incident Report dated July 12, 2010; Mail Receipt dated November 30, 2010; and the OPS Confidential File Report Citizen Complaint Form dated July 22, 2010.

Chairman Smart reported that the OPS recommended that the call handling allegation be closed as *no finding*, where the complainant withdrew the complaint. The complainant alleged that the officers falsely reported that she was uncooperative. Chairman Smart stated that he agreed with the OPS finding of *no finding*, since the complainant willingly withdrew the complaint.

Chairman Reverend Edward Smart moved to concur with the OPS finding of *no finding* for the call handling allegation. Anthony Potenza seconded the motion. The motion carried unanimously.

Chairman Smart reported that the OPS recommended that the conduct standards allegation be closed as *no finding*, where the complainant withdrew the complaint. Chairman Smart agreed with the OPS finding of *no finding*.

Chairman Reverend Edward Smart moved to concur with the OPS finding of *no finding* for the conduct standards allegation. Anthony Potenza seconded the motion. The motion carried unanimously.

CPRB No. 40-10/OPS No. CC2010-102 (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint. The complainant alleged that he was subjected to an unlawful search and seizure during a traffic stop, by members of the Watervliet Police Department.

Ms. Hammond reported that the OPS recommended that the arrest authority and procedures allegation be closed as *no finding*, where the investigation revealed that another agency was responsible and the complaint or complainant has been referred to that agency. Based on the OPS investigation, the complaint involved members of the Watervliet Police Department and the complaint was forwarded to the Chief of that department.

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

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

The following Board members were appointed to the Committee on Complaint Review for April 2011: James Frezzell, Lilian Kelly, Anthony Potenza, Eugene Sarfoh, Reverend Edward Smart, and Akosua Yeboah. It was noted that Marilyn Hammond might not be available.

C. *Committee/Task Force Reports*

By-Laws and Rules

Committee Chairman Edward Smart reported that the committee met earlier in the day and would give a full report at a later time.

Community Outreach

Committee Chairman James Frezzell stated there was nothing new to report. Coordinator for the Board Sharmaine Moseley reported that the GLC was in the process of scheduling an outreach committee meeting to discuss the Board's previous brochure, as well as a possible second brochure to explain what happens at a CPRB meeting. Chairman Smart asked if the GLC was going to schedule a meeting to discuss meeting with various community organizations. Ms. Moseley replied that would also be discussed. Mr. Frezzell stated he would like to know how to approach and discuss the CPRB with the community before scheduling any meetings with organizations. Ms. Moseley stated there was a power point presentation. Akosua Yeboah stated she would attend the first couple of community outreach meetings with Mr. Frezzell. Anthony Potenza stated he would be happy to go with Mr. Frezzell to the community outreach meetings.

Mediation

Chairman Edward Smart reported that the committee was scheduling new dates to meet with the police department. It was reported that Commander Matos would keep the committee informed of possible dates.

Police Department Liaison/ Policy Review/ Recommendations

Chairman Smart noted that Committee Chairman Andrew Phelan Jr. was not present to give a report.

Public Official Liaison

Chairman Smart stated there was nothing new to report. Coordinator for the Board Sharmaine Moseley noted the Board had met with the Common Council's Public Safety Committee. Chairman Smart reported that the committee met with the Public Safety Committee the night before and it had been a productive meeting. He reported there were five areas of concern, which were the cameras, the SOPS for the cameras, mediation, grievance forms and the early warning system.

D. *Report from the Government Law Center*

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

Complaint Inventory as of Date of Meeting

It was reported that included in tonight's meeting packets is the complaint database scorecard. It was further reported that as of today, there are currently sixty-three (63) active complaints before the Board for review. Of those sixty-three (63) active complaints, ten (10) were reviewed at tonight's meeting, which leaves the Board with fifty-three (53) active complaints. There are sixteen (16) cases ready for review.

It was further reported that four hundred and twenty-eight (428) complaints have been closed. The total number of complaints that remain suspended from review is eleven (11). The total number of complaints filed to date is four hundred and ninety-two (492).

It was reported that since the Board's last meeting, the GLC received five (5) grievance forms. The total number of grievance forms received to date is two hundred and thirty-six (236). In response to the GLC's outreach to all individuals, we have received sixty-seven (67) CPRB complaint forms.

Training

It was reported that new board member Eugene Sarfoh completed the GLC and OPS new member orientation. All three (3) new board members have been enrolled in the Citizens Police Academy.

Upcoming Meetings

It was reported that the next Board meeting is scheduled for April 14, 2011 at GWU the Center. Ms. Moseley told the Board that the April, May, and June meetings need to be rescheduled to accommodate the three (3) new Board members. They are required to attend the Citizens Police Academy which takes place on Thursday nights. Ms. Moseley informed the Board that the GLC would schedule new meeting dates for those months.

Committee/Task Force Chair & Member Elections

It was reported that the Board did not elect a chair at its last meeting for the Mediation Committee. Akosua Yeboah asked if Jason Allen would be interested. Ms. Moseley

replied Jason Allen was not at the meeting and he would have to be asked at the next meeting. Akosua Yeboah stated Mr. Allen was the former chair of the committee and might be interested in retaining the position. Chairman Smart stated he also believed Mr. Allen would like to continue as chair of the committee. Chairman Smart asked if anyone else would like to serve on the committee. Mr. Potenza replied that he would like to join the committee. Ms. Moseley stated that Mr. Sarfoh needed to join a committee. Mr. Sarfoh stated he would like to join the community outreach committee.

E. *Report from the Office of Professional Standards*

Commander Ronald Matos reported that the APD decided to participate in the Civil Service Exam for police officers applicants. The exam is scheduled for Saturday, April 30, 2011. He stated that he was informing the Board because he knew a lot of people in the room were involved in community outreach. Commander Matos stated that the department was taking an all hands on deck approach to assist in recruiting applicants, so if anybody knows somebody who would make a good police candidate let them know the date. He stated there are video messaging boards throughout the city announcing it as well. Commander Matos reported there were a couple of meetings at the Public Safety Building which included some members of the community to discuss when the exam will take place. He stated that the Department will be hosting test prep courses, free of charge, and each applicant will be advised of when the test prep courses will be held. He further stated that the department has appointed some department employees as mentors, where an applicant could have his or her questions answered. He told the Board that if they just referred people to the City's website, www.albany.ny.org, they can access the applications. The deadline for applications is March 23, 2011. Chairman Smart asked if there was an age limit for police officer applicants. Commander Matos stated he believed the age limit was thirty-five (35) and there are some exceptions for military service. Chairman Smart stated that he commended the police department and the Chief for setting a high mark, as well as vigorously trying to recruit minorities as well as others to apply for those positions. He stated that people cannot say that the Albany Police Department is not trying. Chairman Smart stated that he has seen the billboards everywhere. Commander Matos reported that over the last six (6) weeks the office has been participating in the canvassing of the fire department applicants. He stated over one hundred applicants have been canvassed. He further stated about 40-47 have responded and been processed, mostly through the hard efforts of Detective Kathy Hendrick. In addition to her other duties, she has been walking applicants through the process. Commander Matos stated they expected the process to continue into May, in addition to handling complaints and departmental issues.

F. *Report from the Chair*

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

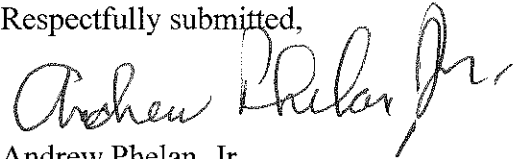
VI. **Public Comment**

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

VII. Adjournment

Anthony Potenza moved to adjourn the meeting. Akosua Yeboah seconded the motion. The motion carried unanimously. The meeting adjourned at 8:15 p.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Andrew Phelan, Jr.", written in black ink.

Andrew Phelan, Jr.
Secretary