

**City of Albany
Citizens' Police Review Board
GWU the Center
274 Washington Avenue- Teen Center Conference Room
April 11, 2011
6:00 p.m. – 8:00 p.m.**

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

Absent: Jason Allen and James Frezzell.

I. Call to Order and Roll Call

Chairman Reverend Edward Smart called the meeting to order at 6:00 p.m.

II. Approval of the Agenda

The agenda was reviewed. Lilian Kelly moved to approve the agenda. Akosua Yeboah seconded the motion. The motion carried unanimously. Chairman Smart stated that the New York Civil Liberties Union asked to be placed on the agenda for a brief statement. Chairman Smart asked the Board if it would be alright to place the statement towards the beginning of the agenda. The Board agreed that the representative could give the statement.

III. Approval of the November 19, 2010 and December 16, 2010 Meeting Minutes

The November 19, 2010 meeting minutes were reviewed. Marilyn Hammond moved to approve the meeting minutes. Anthony Potenza seconded the motion. The motion carried unanimously.

The December 16, 2010 meeting minutes were reviewed. Marilyn Hammond moved to approve the meeting minutes. Akosua Yeboah seconded the motion. The motion carried unanimously.

IV. Old Business

A. CPRB No. 53-09/OPS No. CC2009-117 (Presented by Marilyn Hammond)

Marilyn Hammond reported that the case had been sent back to the Chief of Police with some questions from the Board. She stated that she was informed that the complainant had withdrawn his complaint. Ms. Hammond asked if the Board wanted her to summarize the complaint. Chairman Smart stated that since the OPS has closed the complaint, the Board should review it, but she could make the summary brief. Ms. Hammond stated that the complainant alleged that he was discriminated against by an officer on or about September 2005 when he started to inquire about a taxi cab medallion. The complainant alleged that he received information from City Hall that the officer had the medallion applications in his office and the only way to get an application was from

the officer. The complainant alleged that he asked the officer for an application and the officer told him that they were located at City Hall and he needed to get copies made. The complainant alleged that the officer told him that they were in transition from City Hall to his office and that the economy cannot stand any more cabs so there was no need to give out applications. The complainant alleged that after going to the officer's office once a week for a year, the officer gave him an application and told the complainant to "take his time with it." The complainant further alleged that in November of 2007, he was told that he was first on the list and it would not be approved until January of 2008. He alleged that he submitted his application on November 5, 2007. According to the complainant, in January of 2008, the officer allegedly gave ten medallions to two other cab companies. The complainant alleged that the officer gave the following reasons for skipping the complainant: the Common Council put a freeze on giving out medallions; the Common Council stated that the medallions were to be given out only to companies that already had medallions; the Common Council scheduled a meeting with the officer but it was canceled due to vacations; and the economy cannot stand any more cabs unless the companies put them out. The complainant alleged that when he asked how he could question the procedure, he was told that the medallions belonged to the Albany Police Department; that the officer could give the medallions out to whomever he wanted; and there was no way to question the procedure. The complainant further alleged that in June and July of 2009 he was in touch with Common Council President Carolyn McLaughlin and she told him that everything the officer told him was a lie. The complainant alleged that he was informed by Ms. McLaughlin that there were never any meetings scheduled and there was never any contact between the Common Council and the officer about medallions. The complainant alleged that he had been lied to and misled for over two years and the behavior by the officer was very unprofessional.

Ms. Hammond 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. She also reported that the complaint was previously reviewed by the Board and sent back to the OPS with questions from the Board. Chairman Smart asked Ms. Hammond for her recommendation. Ms. Hammond responded that she agreed with the OPS finding of *unfounded*, as the complainant withdrew the complaint. Chairman Smart asked Ms. Hammond to make a motion.

Marilyn Hammond moved to concur with the OPS finding of *unfounded* as to the conduct standards allegation.

Coordinator for the Board Sharmaine Moseley asked if the OPS finding would be *no finding* instead of *unfounded* since the complaint was withdrawn. Commander Matos replied that the conclusion of the OPS the first time around was *unfounded*, in November 2010. He explained that the complainant received the medallion he was seeking and decided to make a different decision with regard to his complaint. He further stated that was why the original complaint was *unfounded* as the original finding. Marilyn Hammond asked if the Board should leave it as *unfounded*. Chairman Smart stated that the findings would still be the same as to the investigation by the OPS. That has not changed, so therefore the Board should concur with the OPS at this point. Ms. Hammond stated she did concur with the OPS.

Chairman Smart asked if the Board had any questions. Ms. Kelly stated she did not have a question, but would like to make a statement. She stated that she read the responses by the Chief to the questions that the Board raised and it raised some concerns, as it seems that this is certainly a case in which the questions that the Board raised reflect a process that does not have a lot of clarity to it. She further stated the police are in a position to determine economically how many medallions are best for the City, how the process operates, how decisions are made, how many are to be released, where, when, and how. For those who drive taxis this is a way to earn a living, and a way to create economic activity. For many people it is the only known mode of transportation in the City of Albany. The complaint raises some questions about if, in fact, the police department is making these determinations based on its Standard Operating Procedures (SOP) or is there a process that is very transparent as to how the decisions are made. Ms. Kelly further questioned how it is determined how many medallions are released. She stated that this can determine the number of businesses, the number of people who have jobs, and the number of taxis that are on the street. She further stated the Board took the time to raise a bunch of very good questions that were responded to by the Chief. Ms. Kelly read one of the questions asked as an example, "Who determines whether the City of Albany has too many taxi cabs on the street?" and "How can the City tell the complainant that the economy cannot handle more taxis when the citizens of Albany are often forced to ride share when taking a cab from downtown?" She stated that she did not think the questions in the complaint were answered and she was not going to vote in agreement with the Board because she believed the finding should be *not sustained*.

Chairman Smart stated that he was present when the case was first reviewed and the Board raised those questions. In the process of sending the letter and understanding the plight of the complainant, the complainant was able to get his medallion. He stated that the Board's process, in which they received a letter back, had some bearing upon the complainant getting his medallion. Chairman Smart stated that he believed the Board's work was good and they took up the cause and raised the same questions that Ms. Kelly is currently raising. Ms. Kelly stated that she was addressing the Board's letter, which was what she was quoting, but still the question is open as they addressed the concerns of the complainant. Going forward in the future the question will still remain and could be something for the Common Council or police department to address. Chairman Smart stated he agreed and that it was a Common Council or police department issue. He thanked Ms. Kelly for her comments.

Marilyn Hammond moved to concur with the OPS finding of *unfounded* as to the conduct standards allegation. Chairman Edward Smart seconded the motion. The motion carried by a 7-1 vote. Lilian Kelly voted against the motion.

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

Anthony Potenza reported that the case was initially reviewed on November 19, 2010 and it was documented in those meeting minutes the documents he reviewed. Mr. Potenza stated that instead of extensively reviewing the aspects of the case, he would like to review the case from the time it was sent back to the OPS for further investigation. He reported that at the November 19, 2010 Board meeting, he made a motion, seconded by

Chairman Smart, to send the case back to the OPS for further investigation on the condition that the complainant provide the OPS with a video which the complainant stated was taken of the incident by a witness. The video was received and reviewed by the OPS. The video was requested because the Board hoped that it would shed some light on the case. The video was reviewed by the OPS and the following was reported to former Board Chairman Jason Allen.

Mr. Potenza read the letter verbatim 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 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."

Anthony Potenza commended the OPS in reviewing the video and thoroughly investigating the complaint. He reported that the monitor also reviewed the video and submitted an addendum to his report.

Mr. Potenza asked if monitor Al Lawrence was present. It was noted that Mr. Lawrence was present. Mr. Lawrence stated that he agreed with the letter. Mr. Potenza asked Mr. Lawrence if he should read his addendum. Mr. Lawrence stated that would not be necessary, as it just substantiates what was previously read. Mr. Potenza thanked Mr. Lawrence.

Mr. Potenza stated that upon sending the case back to the OPS for further review, they did their best to investigate the case. Mr. Potenza further stated that the video did not show anything that would change the disposition of the case.

Chairman Smart asked if there were any questions from the Board. It was noted the Board did not have any questions.

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

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

Chairman Smart asked Mr. Potenza if, for the new Board members, he could explain the circumstances surrounding the complaint. Chairman Smart stated that he believed this was the case where Jillian's called the police in. It was not a case where the police were on patrol or walking by and saw something, but it was the owner who complained about the gentleman. Mr. Potenza stated that was correct and that the owner of Jillian's complained that two of his employees witnessed cocaine use in the bathroom and the police were called. The officers were outside on patrol when the call came in. Mr. Potenza further stated that at that point the two employees of Jillian's escorted the complainant and others outside and that was when the incident took place.

Anthony Potenza moved to concur with the OPS finding of *not sustained* as to the first use of force allegation. Marilyn Hammond seconded the motion. The motion carried unanimously.

Mr. Potenza reported that the OPS recommended the finding as to the second use of force allegation be closed as *exonerated*, where the acts which proved the basis for the

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

Anthony Potenza moved to concur with the OPS finding of *exonerated* as to the second use of force allegation.

Ms. Kelly stated that the previous count was *not sustained* because it could not be determined whether the individual had the handcuffs on or not on. She asked if one of the problems was whether the handcuffs had been on or when exactly they were on. Mr. Potenza replied in the affirmative. Ms. Kelly stated that her problem was with the use of force because in reading the case, the prior allegation was *not sustained* for use of force, so it does not make sense to *exonerate* the second allegation of use of force. She stated that whether it was proper use of force has to depend on whether the individual was or was not handcuffed. Mr. Potenza stated that the definition of "*not sustained*," is where the review failed to disclose sufficient facts to prove or disprove the allegations made in the complaint. He further stated that the definition of *exonerated* was where the acts which prove the basis for the complaint occurred, but the review shows that such acts were proper. He stated that with regard to the first allegation, which was *not sustained*, the way he understood it, is that it meant that there was not enough facts to prove or disprove the allegations. Ms. Kelly stated that her problem is that if they cannot determine whether the person was handcuffed or not for the first allegation, then it cannot be determined whether the use of force for the second allegation was appropriate, because if the individual was in fact handcuffed, then punching him in the face, hitting him twice in the side of the body and striking him in the knees would seem to be significantly excessive force. She further stated that if the person was not handcuffed, then it could be justified. Mr. Potenza stated that it was unclear whether the allegations were in chronological order. Ms. Kelly stated they appeared to be in order and the fact that they could not determine whether they were in chronological order is a problem. Chairman Smart stated there was a monitor assigned to the complaint. He asked the monitor which event occurred first.

Monitor Al Lawrence stated that the way he interpreted it was that there was an allegation by the complainant that he was grabbed, pushed and struck without provocation and that was recommended to be closed as *not sustained*. Mr. Lawrence further stated there was an allegation of excessive use of force, by the striking and punching at his face. He further stated that one of the allegations was that a different

officer was accused of excessive use of force and it became clear during the investigation that the complainant was mistaken about which officer that was. Mr. Lawrence stated that he called them "officer B" and "officer C." The complainant alleged that officer C used excessive force. By officer B's account, officer B was the one who punched the complainant.

Chairman Smart asked Mr. Lawrence if he could answer Ms. Kelly's question. Ms. Kelly asked if they were dealing with two separate officers and they were not sustaining one officer, while exonerating that officer on a claim that was brought falsely against him for the excessive use of force of another officer. Mr. Lawrence stated that was correct. Officers A and B were the actual officers, by their own acknowledgment, who used force. He further stated that officer C was on the scene but did not strike the complainant. Ms. Kelly asked if the complaint was filed against an officer and the OPS and the Board were exonerating the officer who was the target of the investigation for the second allegation because that is not who the complaint was against. Ms. Kelly stated that she was confused. Mr. Lawrence stated it was clearly a case of mistaken identity. Commander Matos stated that the incident occurred when the complainant, the complainant's son, and a friend were all ejected from Jillian's. The complainant and his son were being accused of using cocaine on the premises. Officers were flagged down. When officers responded to investigate, the supervisor became engaged in a physical confrontation with the complainant after the supervisor had approached the complainant's son to investigate the use of narcotics. Commander Matos stated that while the supervisor was in that altercation with the complainant, the other officer who threw the punch arrived and deployed force due to the fact that he observed the sergeant in some type of physical peril. Mr. Potenza stated that was enumerated in the Subject Resistance Report. Commander Matos stated that the incident continued to the point where subjects were handcuffed. He further stated that the complainant alleged that after that strike, while he was handcuffed, there was more force deployed on him. Commander Matos stated that could not be sustained. He stated that while the complainant was in handcuffs he alleged that he was also subjected to force. He further stated there was the initial start-up confrontation with the sergeant, and other people were placed in handcuffs, was where the complainant is alleging that he was subjected to use of force. Commander Matos stated that once the complainant was in handcuffs he was subjected to force. He further stated that the OPS could not find, through interviews or any other evidence that was collected, whether or not it was true or not true, so that was why it was not sustained. Commander Matos stated that the other allegation was found to be **exonerated** because the officer admitted to throwing the punch. The acts were confirmed through the testimony of the officer and through the subject resistance form prior to the filing of any complaint. Ms. Kelly asked if that was prior to the complainant being handcuffed. Commander Matos stated that was correct. Chairman Smart stated that made sense to him. Commander Matos stated there were many findings as to the many allegations that were made by the complainant. Chairman Smart asked if the determination of **exonerated** meant that the incident took place, but the officer was within his rights to take that particular action. Commander Matos stated that was correct. Mr. Potenza stated that was stated in the Subject Resistance Report which he had read.

Anthony Potenza moved to concur with the OPS finding of ***exonerated*** as to the second use of force allegation. Marilyn Hammond seconded the motion. The motion passed by 7-0 vote, with Lilian Kelly abstaining from voting. Ms. Kelly stated that she abstained from voting because on this particular allegation she was not convinced that all of the force was used before and after the complainant was handcuffed.

Mr. Potenza asked Ms. Kelly if she was present during the Board's initial review of the case. Ms. Kelly responded that she was not present, but she read the information in the meeting packet regarding the complaint. Ms. Kelly asked Mr. Potenza if he was implying that she could not read and whether she was unable to make an informed decision based on the materials provided. Chairman Smart stated that of course she could read and make a decision.

Mr. Potenza reported that the OPS recommended that the finding for the third use of force allegation be closed as ***unfounded***, where the review showed that the act or acts complained of were misconstrued. The complainant alleged that he was struck in the side by an officer while being held by another. Based on the OPS investigation, an officer admitted to striking the complainant in the side twice during the incident, which was further documented in departmental reports. The officer indicated, in the course of the investigation, was not in fact the officer who deployed the force upon the complainant. The complainant is mistaken as to which officer actively struck him during the incident. That is not to say that this portion of the allegation did not occur, but to stress that the specific officer mentioned in the complaint is not the officer responsible.

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

Mr. Potenza reported that the OPS recommended that the finding for the call handling allegation be closed as ***not sustained***, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. The officer indicated that all parties arrested were placed in handcuffs behind their backs, pursuant to the SOP.

Anthony Potenza moved to concur with the OPS finding of ***not sustained*** as to the call handling allegation. Andrew Phelan Jr. seconded the motion. The motion carried unanimously.

Mr. Potenza reported that the OPS recommended the finding as to the first conduct 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 his son's cell phone was slapped from his hand while he was taking pictures of the incident. Based on the OPS investigation, the officer stated that he recalled the son retrieving an item from his pocket and the officer took possession of said item by grabbing it. The officer then placed the son into custody, and later identified the object as a cell phone. Mr. Potenza reported that there are firearms that are designed to look like a cell phone or other dangerous weapon. At the time the officer was unaware of what the object was, however, due to the nature of the scene and aggression of the complainant, the officer acted to control the complainant's son.

Anthony Potenza moved to concur with the OPS finding of *exonerated* as to the first conduct standards allegation. Marilyn Hammond seconded the motion. The motion carried unanimously.

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

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

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

Chairman Reverend Edward Smart reported that the complaint was initially reviewed at the Board's meeting on February 4, 2011. He stated that on the advice of the Board's counsel, the complaint was tabled pending the possibility of action by the complainant, who had been present at the meeting with his lawyer. Chairman Smart stated that during the initial review, the Board reviewed most of the allegations made by the complainant.

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

Chairman Smart stated that the reason the case was sent back to the OPS was because there was a possibility of some kind of legal action on the part of the complainant. Chairman Smart asked Board Counsel William Kelly if legal action was taken. Mr. Kelly replied that there had been no legal action taken.

Chairman Smart reported that the OPS recommended that the finding for the use of force allegation be closed as *unfounded*, where the review showed that the act or acts complained of did not occur or were misconstrued. The complainant alleged that he was shoved, which caused him to fall and sustain injuries. Once on the ground his head was

smashed into the ground, causing him to lose a tooth and a laceration to the eye. One of the off-duty officers was from the Albany Police Department and the other was from the Albany County Sheriffs Department. The officer from the APD stated the complainant fell on his own accord and the officers restrained the complainant while he was on the ground. An independent witness stated that the complainant was not pushed or shoved to the ground, rather the officers had restrained the complainant and brought him to the ground. The witness' statement was that the complainant was attempting to fight off the officers and in the process of wrestling with the complainant, both off-duty officers had brought him to the ground. The target officer also stated that he did not smash the complainant's head into the ground. The witness also stated that he did not witness what the complainant said had occurred. However, even with the witness account, the OPS was unable to support or refute the allegation made by the complainant due to the lack of direct evidence or admission of the officer.

Chairman Smart stated that the complainant did not sustain his allegation of being victim to alleged excessive use of force while fighting off police officers. The complainant knew the persons requested him to stop were police officers and he refused. The complainant was restrained and brought to the ground. According to various witnesses, the complainant's account of the incident only attributed credibility to those independent witnesses who gave statements to the full disclosure of the disputed facts.

Chairman Edward Smart moved to concur with the finding of *unfounded* as to the first use of force allegation. Marilyn Hammond seconded the motion. The motion carried unanimously.

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.

Chairman Smart reported that the OPS recommended the finding as to the second use of force 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. Chairman Smart stated that it has been established that the complainant appeared to be very intoxicated during the incident. Numerous witness accounts concurred that the complainant not only had a knife in his possession, but displayed it in a disconcerting manner. Chairman Smart also noted the complainant ran with his pants down. It is very difficult to remain balanced with sagging pants and there are some questions as to whether the complainant really just fell on his own. Chairman Smart stated that in his opinion, if the complainant had been intoxicated and running with his pants down, it would have been difficult to get away and sustain his case. The complainant had a knife in his possession. The knife was retrieved from the complainant at the scene. The complainant initiated unwanted physical contact by pushing the off-duty officers. The officers' actions were reasonable. The complainant was apprehended and the knife was taken and placed into evidence.

The officers felt that the complainant was a threat to other citizens. The injuries sustained by the complainant did not appear to be a result of excessive force.

Chairman Smart stated the complainant had a knife and had been drinking. The complainant's pants were sagging and the older gentleman who was at the scene believed he was a threat to the well-being of those present.

Chairman Edward Smart moved to concur with the OPS finding of *exonerated* as to the second use of force allegation. Marilyn Hammond seconded the motion. The motion carried unanimously.

Chairman Edward Smart acknowledged that Chris Smith from the New York Civil Liberties Union (NYCLU) was present and would like to read his statement to the Board. Mr. Smith read his statement verbatim.

"Good Evening. I am Chris Smith, an intern at the New York Civil Liberties Union Capital Region Chapter.

We presented this testimony to the CPRB on June 11, 2009. Although some of the recommendations that I will make here have been addressed by the Board, we encourage you all to take them all seriously this year and rejuvenate the Board's power and efficacy through changes in its charter and legislation.

The NYCLU was involved in the creation of and has been observing the Albany Citizens' Police Review Board since its inception in 2000. Over the years we have periodically made recommendations to the Board about enhancing its power and increasing its credibility among the citizens and police of Albany. We encourage the Board at all times to work towards full autonomy and authorization to conduct independent investigations. This is the only way the Board will be fully effective as an oversight authority and gain the full confidence of the public. Tonight I will make further recommendations in the hopes that you will take them seriously and make the necessary changes to your legislation and charter to further empower the Board. These recommendations are based on an analysis of best practices of citizen police review boards across the country and on a case study conducted by the NYCLU in 1993.

- 1. Complainants should be encouraged to attend the hearing that will consider their complaint. Despite the interviews that take place with the complainant during the investigation, personal testimony at the CPRB hearing is crucial for the Board to consider whether or not the police department has conducted a thorough investigation of the complaint. Personal testimony is very helpful in a "he said, she said" situation. Written notice of the upcoming hearing a week or two beforehand and a telephone reminder the day before the hearing should be made to the complainant.*
- 2. The CPRB should hire its own counsel. It is not advisable that the review board use the same attorney as the police department. It is best to avoid conflicts of interest.*
- 3. The CPRB should have the power to subpoena materials during an investigation. Although the City Council maintains that power, political pressure may influence its use*

and access to subpoena may not be provided at the CPRB's request. Our goal is to remove the CPRB from the political process in order that it may act independently.

4. The CPRB should be able to recommend disciplinary action to the police department.

5. The CPRB has the power to recommend police, procedures, practices and rules to the Albany Police Department and should continue to analyze the department's manuals and make recommendations that would enhance the public's perception of the department's integrity.

*6. The CPRB has the responsibility to educate the public about its activities. In addition to issuing its annual report, the Board, in concert with the Government Law Center should conduct an analysis of the **not sustained** complaints. **Not sustained** complaints indicate there may not have been a thorough investigation of a complaint. The goal would be to reduce the number of **not sustained** complaints by providing the police department with strategies that might be useful in the complaint process. These strategies might only be discovered by analyzing the yearly data.*

7. Compel cooperation of the police officers with the CPRB as a condition of employment.

8. Continue to encourage the police department to use mediation as a means of resolving complaints.

9. Adopt the preponderance of evidence standard in adjudicating complaints of police misconduct.

10. Re-establish an advisory board for the CPRB that will recommend best practices.

As always, the NYCLU Capital Region Chapter would be happy to assist the Board in promoting any of the above enhancements. Please let us know if you would be interested in our participation. Thank you for listening."

Chairman Smart thanked Mr. Smith and told him that the Board appreciated the comments. Chairman Smart stated that with regard to the last point, the Board has tried to contact the originators of the initial policies and they have not responded yet. Chairman Smart asked Ms. Moseley if that was correct. Ms. Moseley stated that Mr. Smith was referring to the By-laws. She stated that there were two different procedures, the operating procedures and the By-laws procedures. She further stated that former Board member Michael Whiteman drafted the Board's By-Laws and the Board was discussing its operating procedures before tonight's meeting began. Chairman Smart told Mr. Smith that the Board was working on at least three of the NYCLU's recommendations and one or two others they have made progress on. Chairman Smart stated that the Board encourages complainants to attend its meetings. He further stated that the Board gives complainants the ability and the opportunity to speak at will when their case is reviewed. When a complainant comes to the meetings, the Board hopes to speak to them in such a manner to resolve the dispute or differences between the police department and the complainant. Mr. Smith asked if the Board sent written letters to the complainants to notify them of the meetings. Ms. Moseley responded that letters are sent to complainants ten (10) days before the meetings and complainants also receive phone calls. Chairman Smart stated that if a

complainant cannot come to the meeting when their case is scheduled for review, the Board will change its schedule to meet the complainant's schedule. Chairman Smart stated that with regard to the recommendation that the Board give recommendations to the police department for training, the Board does that quite often through meeting with the Common Council's Public Safety Committee. He stated that the Board's concerns are brought to the Public Safety Committee and it is up to the Common Council to look at those suggestions and make changes or adjustments to what the legislation says and what policies the Board is able to work under. Chairman Smart stated that with regard to the recommendation to educate the public, the Board has a standing committee that meets with neighborhood associations, organizations, and other groups. Chairman Smart stated that no complaints are tossed out. The Board will hear the complaints even if they fall past the filing deadline. He stated the Board has a policy of hearing every complaint. He further stated the Board often asks the OPS to reinvestigate complaints, as was seen earlier in the meeting. Chairman Smart stated that the Board tries to protect officers and the citizens of Albany. He stated that the Board is not out to destroy officers, and not out to rubberstamp the actions of the APD either. While they understand that the APD does their job very well, they also understand that the citizens of Albany ought to be protected. Mr. Smith asked what organizations has the Board visited to educate the public. Chairman Smart responded that the Board has gone to churches of various faiths, colleges, distributed pamphlets in English and Spanish located throughout the city, a website, and the Board has attempted to get bus stop signs. Mr. Smith asked for more information about the billboard campaign. Chairman Smart stated the Board was making progress and they were asking to be next on the list for bus stop billboards. Chairman Smart stated the idea originated when some members of the Board attended the NACOLE conference. Chairman Smart thanked Mr. Smith and told him the Board would try to implement and work on the recommendations.

V. New Business

A. *New Complaints*

1. New Complaints Received since March 10, 2011 Meeting

Chairman Edward Smart reported that six (6) new complaints were received by the Board since the March 10, 2011 meeting. Andrew Phelan Jr. read the new complaints.

CPRB No. 10-11

According to the complainant, on March 3, 2011, she was celebrating her dad's birthday with her family. The location where the party was held required guests to sign an attendance sheet which the complainant allegedly signed before she left the building. When the complainant returned to the building she signed the attendance sheet. As the complainant was waiting for the elevator, an officer allegedly told her to come back and sign the correct address or get out of the building. The complainant alleges that when she went back to sign the sheet, the officer lightly brushed up against her, so she told him to give her some space. She thanked the officer for pointing out her error and walked towards the elevator. The officer allegedly yelled again for the complainant to come back and he started to threaten her but did not finish his statement. As the complainant

began to leave the building, the officer allegedly came up behind her, yelled at her to leave now, grabbed her arm and shoved her into the lobby door.

A monitor was appointed to investigate this complaint.

CPRB No. 11-11

On March 5, 2011, the complainant's sister was hit by a car driven by a female. The complainant alleges that when she approached the officer who arrived, to explain to him what happened, the officer walked right past her toward the vehicle that struck her sister. The complainant further alleges that none of the officers on the scene asked her what happened. The complainant claims that a sergeant told her to leave the scene or she would be arrested. As the complainant walked back towards her car, she was approached by a drunk belligerent female. Another officer told the female to go home. Meanwhile, the sergeant approached the complainant again and asked, "Why is it that I'm seeing you again for the third time?" The complainant told the sergeant that the officer told her to stay there until the drunk belligerent female left. The complainant alleges that the sergeant told her that she did not care what the officer said because she was in charge. The complainant further alleges that she felt that the sergeant was biased because of the neighborhood in which they were in. The complainant alleges that the sergeant failed to address the behavior of the female.

A monitor was not appointed to investigate this complaint.

Akosua Yeboah asked what was it about the neighborhood that would have precipitated bias on the part of the officer. Andrew Phelan replied that he did not know. Ms. Yeboah stated that it did not say in the summary, but she was just wondering if it might have some implications concerning civil rights as far as gender or racial bias. She stated that if that was the case, then a monitor should have been appointed. Andrew Phelan stated he did not have that information. Ms. Yeboah asked if it would be in the complaint form because it was not clear from the summary and she cannot tell if a monitor should have been assigned. Akosua Yeboah asked if they could find out more information regarding the bias. Chairman Smart asked if Ms. Yeboah was talking about the bias of the neighborhood. Ms. Yeboah stated she was wondering about the characteristics of the neighborhood that would precipitate bias. Chairman Smart asked if the complaint had been forwarded to the OPS yet. Commander Matos stated it was a new complaint and OPS would certainly investigate those aspects of the case, but as far as appointing a monitor, that was the Board's decision to make. Ms. Kelly stated that she saw Ms. Yeboah's point. Chairman Smart asked Ms. Yeboah if she was making a motion to have a monitor assigned. Ms. Yeboah stated she was not, but she was asking whether a monitor should be assigned based on the allegation of bias of the neighborhood. She stated that neighborhoods tend to have certain characteristics. Marilyn Hammond stated it was unclear and there was no indication of where the neighborhood was located. Chairman Smart stated it might not even be in the complaint. He asked the Board what action it should take if it was unclear where the neighborhood was located. Ms. Kelly stated if the location was not given then it would be difficult to make a determination. It

should be questioned whether it is germane to the complaint itself. Detective Andrew Montalvo stated that if he recalled correctly, the incident took place on Western Ave and Lake Street, which is a college area. Ms. Yeboah thanked Detective Montalvo. Chairman Smart asked Ms. Yeboah if that changed her opinion. She replied that it did change her opinion and she would not have assigned a monitor if it was college based area.

CPRB No. 12-11

On March 5, 2011, the complainant was a witness to an accident involving her sister being hit by a car driven by a female. The complainant's sister was hit while crossing an intersection and dragged. The complainant alleges that when she waved her arms to signal the officer to the victim, the officer threatened to arrest her if she did not leave the scene. When she told the officer that she was the sister of the victim, the officer allegedly said the same thing. The complainant alleges that her sister was not given proper attention. The complainant further alleges that a sergeant yelled in her face and was disrespectful.

A monitor was not appointed to investigate this complaint.

CPRB No. 13-11

On March 5, 2011, the complainant was involved in an accident in which she was struck and dragged by a car as she was crossing the street in a crosswalk. When the police arrived, they went directly over to the driver of the car. The complainant alleges that the officers ignored her, and others who were requesting assistance. The complainant further alleges that the officer did not talk to her until approximately two (2) hours later while she was at the hospital. The officer allegedly gave the complainant paperwork and a ticket. The complainant alleges that the officer admitted to not speaking to her sisters and others. The complainant further alleges that incorrect insurance information was taken by the officer from the driver of the vehicle.

A monitor was not appointed to investigate this complaint.

CPRB No. 14-11

According to the complainant, an officer allegedly stopped and searched him. The officer allegedly dropped the complainant's cell phone on the wet ground. The complainant alleges that the officer picked it up and placed it with the complainant's other belongings on top of the car. The complainant further alleges that the phone was not documented on the APD Property Report. The complainant claims that the officer stopped him because he was on a 7 year-old girl's bike.

A monitor was not appointed to investigate this complaint.

CPRB No. 15-11

According to the complainant, he went to the police station to bring his friend some cigarettes. When the complainant asked his friend for a cigarette, the friend yelled "Hell no." The complainant alleges that an officer grabbed the complainant by the neck, dragged him to the front entrance, and tried to throw him out the door.

A monitor was appointed to investigate this complaint.

2. New Complaints for Review

CPRB No. 16-10/OPS No. CC2010-021 (Presented by Akosua Yeboah)

Akosua Yeboah summarized the complaint. The complainant alleged that while she was picking up her 3 year-old grandson, she was pulled over for tinted windows on her vehicle. At that time, the officer discovered that the complainant's license was expired and that there was a parking ticket associated with the vehicle. The complainant does not dispute the validity of the two (2) traffic infractions. The officer informed the complainant that because of the unpaid ticket her vehicle needed to be towed. The complainant alleged that the incident occurred on a chilly day in March in an unfamiliar area of town known to have drug related crimes and her request was denied that the officer wait before calling the tow truck until she and her grandson were picked up by a family member for her safety and comfort. When the tow truck arrived the officer refused to allow them to wait inside the warm tow truck, even though the tow truck driver was willing to let them do so. The complainant felt that the officer showed disrespect for the safety of her and her grandson and had no right to tell the tow truck driver what to do.

Ms. Yeboah reported that she reviewed the following documents: the OPS Confidential Report; Citizens' Complaint Report; and vehicle reports.

Ms. Yeboah reported that the OPS recommended the finding as to 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 officer was operating on the basis of his experience. It was unadvisable to allow a tow truck driver and the owners of towed vehicles to stay together during a police tow. The officer was not willing to wait with them for an indeterminate amount of time to ensure that no incident occurred as a result. When an officer is performing police duties and issues instructions to a citizen, it is incumbent upon the citizen to follow those instructions. Ms. Yeboah stated that this seemed reasonable to her, however, the complainant also stated that she wondered if the officer would have treated her differently in that neighborhood and in that situation if she had been a white woman rather than a black woman. Ms. Yeboah stated that given this stated concern of the complainant, she believed an independent monitor should have been assigned to address that specific concern. She stated that no monitor had been assigned to the case. She further stated that if she were in the complainant's place she might not have understood why the officer was apparently showing so little compassion for a woman and small child on a cold day. Ms. Yeboah stated the outcome might have been the same with an independent monitor assigned, but in an effort to enhance trust and communication between the Albany Police

Department and the citizens of Albany, which is the cornerstone of the function of the Board, every effort should have been made to legitimize any concerns of bias. She stated a monitor should have been assigned to the case and would like to move to send it back to the OPS. She further stated the OPS did their job, but the Board should have assigned a monitor.

Akosua Yeboah moved to send the complaint back to the OPS and a monitor be assigned to address the concerns of the complainant regarding racial bias. Marilyn Hammond seconded the motion. The motion carried by a majority vote of 4-3. Eugene Sarfoh, Anthony Potenza, and Andrew Phelan Jr. voted against the motion.

CPRB No. 11-10/OPS No. CC2010-014 (Presented by Akosua Yeboah)

Akosua Yeboah summarized the complaint. Ms. Yeboah reported that the complaint contained use of force and call handling allegations. The complainant alleged that the APD used excessive force during an arrest in August 2010. He further alleged that the officers drew weapons, pulled him out of his car, and forced him to the ground at which time, he sustained injuries to his face, arms, and left shoulder. The complainant also alleged that he was strip searched and refused medical attention.

Ms. Yeboah stated a monitor had been assigned to the complaint. She reported that she reviewed the following documents: Citizen Complaint Form; Monitor's report; OPS Confidential Report; Medical Reports from Albany Medical; CRU-Buy Sheet, indicating the sale of crack cocaine by the complainant; a Field Test Report on the substance found to be crack cocaine; APD Strip Search Report; APD Booking and Arrest Report; and an APD Subject Resistance Report.

Ms. Yeboah stated that the complainant indicated that his request for medical attention was ignored but reports showed that the arrest occurred at approximately 18:45 and the complainant was seen in the ER a little over an hour after the arrest at approximately 19:55 of the same day. She stated that seemed like a reasonable amount of time between the arrest and the medical examination.

Ms. Yeboah reported that the complainant stated his car was not pulled over during a routine traffic stop but inappropriately pulled over. Based on the OPS investigation, reports showed that the complainant was pulled over as a result of a recent sale of crack cocaine where he was identified as the seller.

Ms. Yeboah reported that the complainant alleged that the APD used excessive force during the arrest resulting in pain and injury to his face, arms and left shoulder. Based on the OPS investigation, the APD had sufficient reason to believe that the complainant has a gun in his possession and the complainant refused to remove his hands from the area of his pants waist. The APD took precautions during the arrest.

Ms. Yeboah reported that any audio or visual recordings of the incident were expired because of the time lag between the incident and the filing of the complaint so they only have the written records as evidence for this complaint. The complainant alleged that there was a witness to the use of excessive force by officers, but no evidence that a witness was interviewed was in the records.

Ms. Yeboah reported that the OPS recommended that the finding for the use of force 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. Based on the OPS investigation, no audio or visual records were available to substantiate the complaint of excessive force. The witness referred to by the complainant may have been able to provide additional information on this complaint but none of the records indicated that the witness was found or interviewed. Even if a witness corroborated the complainant's version of the arrest, the fact that the APD suspected that the complainant had a gun would support the use of force indicated in the subject resistance report. No sprays, tasers, batons, or firearms were deployed at that time. The APD's use of physical contact and open hand technique seemed appropriate to the situation. Ms. Yeboah further reported that the independent monitor concurred with the OPS finding of *exonerated*.

Ms. Yeboah asked if the monitor was present. It was noted that monitor George Kleinmeier was present. Ms. Yeboah asked if he had anything to add. Mr. Kleinmeier stated that the incident actually happened in 2009, not 2010.

Ms. Yeboah asked if the complainant was present. It was noted the complainant was not present.

Akosua Yeboah moved to concur with the OPS finding of *exonerated* as to the use of force allegation. Chairman Edward Smart seconded the motion. The motion carried unanimously.

Ms. Yeboah reported that the OPS recommended that the finding for 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 was pulled over by the APD as a result of a crime he was alleged to have recently committed. Ms. Yeboah further reported that the independent monitor concurred with the OPS finding of *exonerated*.

Ms. Yeboah stated she could find neither deficiencies nor additional actions that might have been taken by OPS in investigating this complaint.

Akosua Yeboah moved to concur with the OPS finding of *exonerated* as to the call handling allegation. Lilian Kelly seconded the motion. The motion carried unanimously.

CPRB No. 20-10/OPS No. CC2010-025 (Presented by Reverend Edward Smart)

Chairman Edward Smart summarized the complaint. The complainant alleged that while standing with a friend on the corner, she witnessed an officer screaming at a group of people. The officer allegedly pushed a female into the street while screaming, "Get the f**k off the sidewalk." The complainant and her friends yelled, asking what the female had done, and for the officer to stop pushing them. The complainant alleged that the same officer started screaming, "Get the f**k off the sidewalk, get the f**k off the sidewalk." The complainant alleged that the officer then stated, "If you don't get off the sidewalk, I'm going to pepper spray you all." The complainant alleged that the officer pepper sprayed her entire group of friends. The complainant further alleged that the officer started marching towards her group, along with a few other officers, and they

began to push them towards Pine Street. The complainant claimed that the officers pushed them out into the street. The officer who pepper sprayed them then grabbed her other friend by the face and shoved him into the street. The complainant alleged that her friend who was pushed by the officer sustained a bloody mouth, and the friend who was pepper sprayed had swollen and bloodshot eyes. The complainant attempted to make a complaint against the officer, by approaching two separate officers on the scene. The complainant alleged that the first officer she approached stated, "Go home, it's over," and the second officer she approached stated, "Go complain to the Mayor, I don't need to deal with any of your sh*t."

Chairman Smart noted that a monitor was assigned to the complaint.

Chairman Smart reported that he reviewed the following documents: OPS Confidential Report; Article 35.05: Justification Rules of Conduct-Use of Force; Article 42.2; Certified Mail Receipts; Citizen Grievance Form; Citizen's complaint form; a letter to the Mayor; Notarized Statements; Notary Letter; Photos; Ten (10) IDCs; Resistance Report; Lieutenant Report; Call Report; Log Report; Incident Report; and Policy Training.

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

Chairman Smart noted that the monitor was present.

Chairman Smart reported that the incident occurred on St. Patrick's Day and a group of people had been in Jillian's. When the group left Jillian's, the police were breaking up a fight across the street at a pizzeria. In the midst of this, the complainant and a friend went into the pizzeria to use the bathroom. Chairman Smart stated that he presumed the bathroom in Jillian's was not up to par, so they crossed the street. While the police were stopping the fight and disturbance, the police then had to disperse the crowd.

Chairman Smart reported that the OPS recommended that the finding for the use of force allegation be closed as *not sustained*, where the review failed to disclose sufficient facts to prove or disprove the allegations made in the complaint. The complainant alleged that an officer pushed a female into Pearl Street. Based on the OPS investigation, all of the officers stated they did not recall that a female was pushed. There is no independent witness to attest to this portion of the incident. However, the video captured by a police unit, did not show a female being shoved or pushed by any of the officers on the scene, rather it did show two males being pushed onto North Pearl Street by unidentifiable officers. This allegation cannot be refuted or proved by any evidence or testimony that has been compiled.

Chairman Smart stated that the complainant alleged that a female was pushed. Based on the OPS investigation, the video shows that two males were pushed onto Pearl Street by unidentifiable officers. No females came forward to file a complaint against any officers. Chairman Smart stated that reason would dictate that the female pushed with or without cause would file a complaint and give evidence to the alleged pushing of a female, therefore, the allegation cannot be refuted or proved by the evidence presented.

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

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

Chairman Smart reported that the OPS recommended that the finding for the conduct allegation be closed as ***sustained***, where the review disclosed sufficient facts to prove the allegations made in the complaint. The complainant alleged that an officer was screaming "Get the f**k off the sidewalk." The officer admitted that he did in fact use profanity. The officer stated, "I might have said get the f**k off the corner, or clear the f**king street, yes." Based on the OPS investigation, the officer was in violation of SOP Article 14.1.24: Members shall be courteous to the public. In the performance of their duties, members shall not use coarse, violent, profane, or insolent language.

Chairman Smart stated that the officer admitted to the violation of SOP Article 14.1.24. Although there may be reason to believe the officer was, to some degree, provoked, officers are expected to conduct themselves in a professional manner at all times.

Chairman Edward Smart moved to concur with the OPS finding of ***sustained*** as to the first conduct allegation. Akosua Yeboah seconded the motion. The motion carried unanimously.

Chairman Smart reported that the OPS recommended that the finding for the second use of force allegation be closed as ***exonerated***, where the acts which prove the basis of the complaint occurred but the review showed that such acts were proper. The complainant alleged that an officer deployed pepper spray at her and her group of friends. Based on the OPS investigation, officers confirmed that pepper spray had been deployed towards the complainant and her group of friends. The officer stated that he believed the situation to be unsafe, and that the group which included the complainant, created a hostile situation. The officer stated that he and the other officers were already dealing with a fight and the complainant's group were screaming and heckling the police while they were dealing with the fight. The complainant admitted that she and her group of friends were shouting at the police and continued to stay in the immediate area after the officer issued several verbal commands to get off the sidewalk. At this point, the argumentative approach admittedly displayed by the complainant, coupled with the officer testimony of the atmosphere of the scene, allowed the officer to utilize force in order to disperse the crowd. Chairman Smart further reported that Article 35.05 the NYS Penal Law, states that the use of physical force is justified when it is performed by a public servant in the reasonable exercise of his official powers, duties or functions. SOP Article 20.6: Use of Force and Non-Lethal Weapons, states that the use of OC spray will be restricted to those circumstances authorized by law, and only to the level necessary to accomplish a lawful task. In this case, the officer stated that OC spray was the most appropriate force to disperse the situation given the number of people on the street. OC spray is a commonly used method for riot control and the dispersal of civil disturbances.

Chairman Smart stated that the complainant and her friends admitted that they yelled and screamed at the officers while a hostile environment existed. He stated that many of us know how St. Patrick's Day is in New York. He further stated that he was certain that the APD was on a high level of alert. Chairman Smart stated that the officers were engaged in breaking up a fight and had directed this group of people, and others were warned and given a command to get off the sidewalk. The action and use of OC Spray seemed to be a reasonable use of force under the circumstances. This non-lethal use of force dispersed the crowd and given the circumstances none of the complainant's group was arrested.

Chairman Reverend Edward Smart moved to concur with the OPS finding of *exonerated* as to the second use of force allegation. Marilyn Hammond seconded the motion.

Chairman Smart asked if the Board had any questions. Ms. Kelly asked that in the context of the SOP and the escalation of the incident, the fact that the gentle way in which the officers were trying to direct the crowd to get them off the sidewalk by shouting the f-word at them, she was not clear as to why the officers were trying to get the crowd to disperse. She asked if, when the incident was over, weren't the officers just walking to their police car. Ms. Kelly stated that when added to the fact that the officers did not fill out some paperwork, they did not turn on their video recording device, and they were shouting profanities at the crowd, it seems that there was a lot of escalation at this particular scene and all the audience, or the crowd, was doing, was standing around. She stated the people who were pepper sprayed and the rest of the people on the street were not actually involved in any fights and there was no violence. She stated the best way to resolve the issue was to just not engage. She stated that she was wondering if this was a case of escalation.

Chairman Smart stated that he agreed with Ms. Kelly and to a point she was correct. He further stated that he believed it was escalation, because if someone is standing watching something happen, and then walk into the situation, the situation escalates. Personally, if the police officers are standing on the other side of the street with lights on and they are trying to control a crowd, the last place he would want to be, after drinking, would be to walk towards the officers and get involved in that particular situation. Chairman Smart stated that he believed one of the last places reasonably thinking people would go is to where the police are breaking up a fight, especially if all they need to do is use the bathroom. He stated that his question, and he tried to find this out, was what was wrong with the bathroom at Jillian's.

Ms. Kelly stated that she believed anyone had a right to walk on the street without being yelled at by police officers or peppered sprayed. Chairman Smart stated that she was correct and that the complainant had stated that when the group saw the police officers doing their job they alleged that there was a woman who was pushed. He further stated that the OPS tried to find that woman, but she did not come forward. He further stated that the group questioned the officer as to why he was pushing the woman. Chairman Smart stated he had difficulty with the knowledge that as a citizen, if the officer is doing his job that he has a right to question him and say to him "Why are you arresting that person?" Chairman Smart stated that he thinks there could be a thousand reasons why an officer is arresting a person, and it may not be obvious, as the person might have a

warrant out, or they might be one of the top ten wanted in the Capital Region. He stated that he did not know whether they, as citizens, have the right to scrutinize the actions of a police officer that closely. He further stated that in this particular case, he feels that the initial escalation of the incident was precipitated by the complainant and her friends. Chairman Smart stated that it seemed to him that if they had not crossed the street none of this would have taken place. They could have gone home. He further stated that Ms. Kelly had stated earlier that the officers could have just gotten in their cars, but the same is true for the complainant and her friends. He further stated they could have gotten in their car and gone to wherever they were going to go.

Ms. Kelly stated that it was the officers' job to maintain their protective roles. Chairman Smart stated that no one was arrested and no one was taken into custody. There are some allegations that were sustained. He further stated that in this particular case there are at least two incidents where the complainant did not make the allegations against the police department. Chairman Smart stated that the police department came and said to the officer "You didn't file your papers in a timely fashion?" He stated that one officer, who was not really a part of the incident turned off his video equipment. He further stated that would have never been an allegation on the part of the complainant. Chairman Smart stated that was something that was done to the credit of the police department. Ms. Kelly stated that was not what she was debating. She stated she was not debating the investigation and that was separate from the escalation issue. Chairman Smart stated that Ms. Kelly had mentioned the officer turning off his video and that the officer did not file his paperwork in a timely fashion. He stated that was done at the scene and that had very little to do with the escalation or the real conduct of the officers at that time. He stated that the officer had violated procedures. Ms. Kelly stated the Board would have discovered that in the course of its investigation because she would have asked if there was a video and if there was a Subject Resistance Report and it would have become clear in the course of their investigation that those things did not exist. She stated that would have been the Board's recommendation if it became clear that those things did not exist. Chairman Smart stated that the officer did not file the report on using the spray and that was verified by the OPS through his supervisor who stated that he did not receive the report in a timely fashion. He stated that he gave a lot of credit to the OPS and the officer. He stated that the officer did admit that he used profanity. Chairman Smart stated that the officer did not try to snowball anyone and admitted that he might have said something he should not have said.

Eugene Sarfoh stated that it appeared that Chairman Smart and Ms. Kelly did not disagree on the direction of the investigation, but Ms. Kelly's issue is whether the behavior of the officers escalated the situation. Mr. Sarfoh stated that it seemed like a chaotic event where the group of complainants was leaving one establishment, and, reading between the lines, may have gone to go see what was going on with the fight and that escalated the situation. The officer tried to dissolve the altercation and then the young group approached and who knows exactly what was said back and forth. It would not be unreasonable to say that the language used and actions of the officers were not according to protocol. The meaning behind the protocol is that some ways that you might act might impact the situation that you are being confronted with. Mr. Sarfoh further stated that in this case, having talked to the group of people that way, it definitely

escalated the situation. Maybe the Board was on the verge of suggesting some type of policy training, but it sounds like the OPS highlighted all of the failures in abiding to the protocol.

Ms. Kelly stated that at some point officers can say that they were within their rights to use pepper spray because the statute allows them to use it, but if the situation had not escalated they would not have needed to use it.

Mr. Sarfoh stated that in looking at the documentation it was unclear whether they could say that the officers were just walking to their cars and just happened upon the group and pepper sprayed them. He stated that it did not sound like the situation ended right away. He further stated that there was an altercation across the street and they were trying to get order restored and trying to get people to move on. He did think that it would be fair to simply say that the officers should have told them to move on, but by the same token it was fair that the officers were punished for the language that they used because when trying to quell an altercation that is not going to help when using that language.

Chairman Smart stated they could agree to disagree.

Chairman Reverend Edward Smart moved to concur with the OPS finding of *exonerated* as to the second use of force allegation. Andrew Phelan Jr. seconded the motion. The motion carried by a 6-1 vote. Lilian Kelly opposed the motion.

Chairman Smart reported that the OPS recommended that the finding as to the use of force allegation be closed as *not sustained*, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged the officer only gave one warning about using pepper spray against her and the group she was accompanying. Based on the OPS investigation, the officer stated that he gave several verbal warnings regarding the use of pepper spray. Pursuant to Article 20.6 of the SOP, an officer should give a verbal warning followed by a command prior to utilizing OC spray. It is unclear through the facts gathered in this investigation as to how the verbal warning was truly administered.

Chairman Smart stated the complainant alleged the officer only gave one warning before the use of a non-lethal force and the dispersing of a hostile crowd. The evidence clearly states that the complainant understood the hostile environment that existed and made a decision to scream and heckle officers assigned to duty. A proper warning was given and statements by witnesses are not on file to show that the officers did anything in violation of the SOP article 20.6.

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

Chairman Smart reported that the OPS recommended the finding as to the fourth 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 an officer grabbed her friend by his face and pushed him into the street. Based on the OPS investigation, the only direct evidence collected was from the police unit. The

friend met with the OPS and had an opportunity to view the video, but could not positively identify the officers or the civilians shown in the video. Furthermore, the video did not clearly depict anyone being pushed in the face by any of the officers. The officer stated that he did not recall pushing a male in the face. There are contradicting accounts of the officer, friend and complainant, and a lack of additional evidence or an independent witness, therefore the OPS is unable to prove or disprove this allegation.

Chairman Smart stated that one of the things that he embraced in this particular case is that all of the notarized statements were done by a family member of the complainant. He stated that his first apprehension was that things were being stacked against the police department, but after reviewing the case file, he found that all of the witnesses did not clearly define and give an exact account of what transpired. He further stated that one witness stated it was the throat, another stated it was the head, and the actual video did not show any of that kind of evidence.

Chairman Edward Smart moved to concur with the OPS finding of ***not sustained*** as to the fourth use of force allegation. Akosua Yeboah seconded the motion. The motion carried unanimously.

Chairman Smart reported that the OPS recommended the finding as to the fifth 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. Based on the OPS investigation, the complainant's friend was contaminated by the OC spray but was not offered medical attention or assistance in decontamination. Chairman Smart stated that this was not an allegation presented in the complaint, but was acknowledged by the OPS as a possible deficiency on the part of the officer. However, the officer stated that he was unaware that anyone had been contaminated by OC spray. Furthermore, all of the officers stated that they did not recall witnessing or encountering anyone who had been contaminated by the OC spray on the scene. Although the friend did not allege that she was not assisted with medical attention, it is the opinion of the OPS that the responsibility should ultimately lie with the user as stated in the SOP. It is the user's responsibility to make every effort to relieve the subject's discomfort after being sprayed with OC spray; however, the officer denied ever witnessing the friend displaying signs of contamination. In fact, she had previously stated that her fiancé had taken her to Jillian's for decontamination, so she was not present in the immediate area after the deployment.

Chairman Smart stated that this bothered him because he believes that if an officer uses pepper spray they ought to somehow seek out if someone really needs medical care. He stated that however, in the SOP, it does not specifically state that an officer should go out and find the contaminated person.

Commander Matos stated that Chairman Smart's point also troubled the OPS as well. He stated the fact that no effort was made by the officer was troublesome, but looking at the policy, it states that when the officers are aware that someone has been contaminated the officer should offer assistance. He further stated that in this case the person removed herself from the scene; therefore it was plausible that the officers did not know about the contamination and that was why the finding was ***not sustained***. The OPS wished something had been done, however, given the circumstances of the crowd situation and

the chaos that was going on, it is understandable and certainly plausible that the officer did not know that the woman was affected by the OC spray. Chairman Smart stated that he totally agreed.

Chairman Smart stated that they had discussed this and it was just his independent thinking. He stated the complainant and the group were dispersed by the use of OC spray and no one approached and requested medical attention. He further stated that no one was refused medical attention, the crowd dispersed, and no information was given to the officer who used the OC spray that someone had been contaminated. Chairman Smart stated no one was forthcoming and therefore he agreed with the OPS finding of ***not sustained***.

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

Chairman Smart reported that the OPS recommended the finding as to the first call handling allegation be closed as ***not sustained***, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that when she attempted to make a complaint with an unidentified officer, the officer responded, "Go home, it's over." She approached another officer and stated she was going to go to Mayor Jennings if the officer did not help. The complainant alleged that the second officer responded, "Go complain to the Mayor," "I don't need to deal with any of your sh*t." Based on the OPS investigation, all of the officers failed to identify anyone on the scene who expressed a desire to file a complaint against any member of the department. A supervisor acknowledged that he recalled hearing a female state something about going to the Mayor, however, he did not recall anyone who wanted to file a complaint. One officer stated that he did encounter a female wishing to speak with a specific officer, but he stated that female did not express to him she wished to file a complaint, and she did not ask for a supervisor. The OPS has not acquired any information or evidence through the course of the investigation to prove or refute the allegations.

Chairman Smart stated that the complainant alleged that the officers were rude and refused to hear or take the complaint. He stated no evidence was received and no supervisor was called. He further stated that no evidence was given to refute or sustain the allegation, therefore he agreed with the OPS finding of ***not sustained***.

Chairman Edward Smart moved to concur with the OPS finding of ***not sustained*** as to the first call handling allegation. Akosua Yeboah seconded the motion. The motion carried unanimously.

Chairman Smart reported that the OPS recommended that the finding as to the second call handling allegation be closed as ***sustained***, where the review disclosed sufficient facts to prove the allegations made in the complaint. Chairman Smart noted that this was not an allegation made in the complaint, as the complainant would not have knowledge of it. He reported that the OPS discovered violations of department policy through the investigation. Based on the OPS investigation, with respect to Articles 20.6 and 21.1 the

officer failed to notify his immediate supervisor as soon as practical after he deployed the OC spray. The supervisor admitted that he was not aware of the incident until he received a phone call several days later. The Subject Resistance Report was not submitted for approval by a supervisor until several days after the incident. This is a violation of Article 14.1.38 which states that members shall submit all necessary reports on time and in accordance with established departmental guidelines.

Chairman Smart stated that the officer failed to report and notify the supervisor in violation of department policy and therefore he agreed with the OPS finding of *sustained*.

Chairman Edward Smart moved to concur with the OPS finding of *sustained* as to the second call handling allegation. Akosua Yeboah seconded the motion. The motion carried unanimously.

Chairman Smart reported that the OPS recommended that the finding as to the third call handling allegation be closed as *sustained*, where the review disclosed sufficient facts to prove the allegations made in the complaint. Based on the OPS investigation, the OPS found an officer on the scene manually deactivating his mobile video moments after arriving. Article 42.2 states that when an officer is assigned as the operator of a police unit containing a mobile DVR and has been authorized to utilize the equipment, he or she shall...record an incident until it is completed, unless directed otherwise by a supervisor. The officer stated that he was not directed by a supervisor to deactivate the system.

Chairman Smart stated that clearly the officer was in violation of Article 42.2 and disengaged the video without authorization, therefore he agreed with the OPS finding of *sustained*.

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

Chairman Smart stated to Commander Matos that the Board did not have the SOP for the video cameras and it was obvious that the police department has it.

CPRB No. 53-10/OPS No. CC2010-099 (Presented by Anthony Potenza)

Anthony Potenza reported that a monitor was assigned to the complaint. The complaint contained conduct standards allegations. Mr. Potenza reported that he reviewed the following documents: the Citizen's Complaint Form; the APD Civilian Complaint Report; the Monitors Report; OPS Confidential Report; five (5) IDCs submitted by the officer; APD Booking and Arrest Report; Capsnet Report with call details; and the handwritten notes of the detective.

Anthony Potenza summarized the complaint. The complainant alleged that as he was driving down Second Street, he noticed an SUV driving 10 mph. The speed limit is 30, so he began to honk his horn. As he passed the SUV, the driver rolled down his window and said "What the f**k is wrong with you?" The complainant stated he said "Don't do that again." They both parked on Second Street and North Manning, at which time the driver (officer) got out of his vehicle and walked towards the complainant. The officer

allegedly had his hand on his gun and the complainant immediately sped off. The officer got in his vehicle and followed. The complainant stated that he ran 2 red lights to get away from the officer, and when he pulled into the Sunoco station at Clinton and Quail, he noticed marked police units behind him.

Mr. Potenza stated that this was a case where the complainant was impatient because the car in front of him, driven by a police officer, was moving slowly, and that is what precipitated the incident. He stated that in reviewing the case, there were a couple of interesting points. One interesting point is that the findings of the OPS are ***not sustained*** regarding the single allegation of improper conduct standards.

Anthony Potenza reported that the OPS recommended the finding as to 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 SUV was driving at 10 mph, so the complainant used his horn to get the vehicle to speed up. The complainant pulled around the SUV and allegedly the driver stated "What the f*ck is wrong with you?" When both vehicles parked, an officer allegedly exited the SUV and placed his hand on his gun, never identifying himself. The complainant stated that he was in fear for his safety and sped off running two red lights in an attempt to get away. Based on the OPS investigation, the officer stated that he approached the vehicle in an effort to obtain the license plate number. The officer further stated that he was wearing a checkered button up shirt over his police uniform shirt and he opened the button up shirt so the complainant could see that he was a police officer. The officer stated that he placed his hand on his gun in its holster only to help pull his shirt open and did not do it to show he was armed. The officer stated he never made any comments to the complainant during the encounter. Attempts were made to contact the witness listed by the complainant as well as a request to interview the officer's son to which he denied. It should be noted that the officer is under no obligation to honor any such request.

Mr. Potenza stated that he believed, based upon the record of the investigation and the monitor's report, that a thorough, complete and professional investigation was conducted by the OPS. He stated that he would move to concur with the findings of the OPS, as ***not sustained***, but a couple of things troubled him regarding the case. He stated that even though the complainant was cited for aggravated operation of a motor vehicle, the complainant was approached by an officer in his private vehicle, with the officer's son in his vehicle with him. He stated that upon reviewing the case and discussing it with the OPS, the officer at the time was off-duty, and on his lunch hour. He further stated that everyone would assume that when an officer is on his lunch break they would still be in their marked or unmarked car, wearing their uniform, have lunch and then go back to work. Mr. Potenza stated that in this case, this particular officer was not assigned to a patrol car and his work was more civilian-like, in that he had a starting time and a lunch hour in which there was very little expectation of being called back to duty. He stated that it was a typical work lunch hour where the officer was off the clock and could do anything he wanted. He stated that was why the officer's son was in the car with him. Mr. Potenza further stated that when an officer is on his lunch hour he will put a jacket or a coat over his uniform top so that he is not identified or recognized driving a private

vehicle in full uniform. That explains the situation in regards to the officer's son being with him and the officer wearing a shirt over his uniform. Mr. Potenza stated that the one thing that continued to trouble him was that even though the officer was off-duty, he decided to take it upon himself to pursue the case without calling for assistance and letting it be handled by on-duty officers. He stated that that being the case, he nonetheless has to respectfully move for concurrence with the finding of ***not sustained*** as to the conduct standards allegation. He stated that the whole incident resulted in the stopping of an individual who was cited for aggravated operation of a motor vehicle. He further stated the case had some turns and twists which had disturbed him, but he received an explanation from the OPS, read the report and is able to concur with the OPS finding of ***not sustained***. Mr. Potenza stated that he believed a thorough and complete investigation was conducted with regards to the case.

Ms. Kelly asked Mr. Potenza if it was typical for an officer on his lunch break, if he sees something, to have to act. Mr. Potenza responded that as he understood it and in his conversations with the OPS, normally an officer who is on a lunch hour would just call active duty officers to help get the matter pursued or resolved. He stated that there was no doubt about it that this particular officer exhibited overzealous behavior in his desire to pursue the complainant. He further stated his short answer would be "No." Ms. Kelly stated that she just wondered if an officer in that situation would be obliged to act if they saw something. Mr. Potenza stated that maybe the OPS could shed some light on the question. Commander Matos stated that an officer would be duty bound to report a violation or some type of criminal act. Ms. Kelly asked if an off-duty officer would be duty bound to intervene. Commander Matos stated that it was a pretty fluid situation where the officer could act and they could be well within their rights to act, they just have to adhere to policy. He further stated that many times the prudent thing to do would be to call it in so that someone is aware of where the officer is at, what they are doing, and what car they are driving. He stated that this was a situation in which the officer's uniform was obscured by an outside garment, however, with that being said, policy dictates that the officer report his actions after he has concluded with the action. Ms. Kelly thanked Commander Matos.

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

Chairman Smart noted that on the Citizen Complaint Form, the name had not been redacted. Commander Matos apologized for the error.

CPRB No. 7-10/OPS No. CC2010-008 (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint. The complainant alleged that he was falsely arrested, even though he was the victim of an assault by another man who struck him with a cane. When he tried to file a complaint against the man who had struck him, he was told by the police that they could not accept the complaint. On August 15th, at about 8:30 p.m, the victim assaulted the complainant without provocation with a metal cane on Robbins Street. The complainant called police and complained that he had been assaulted and wanted to press charges. He was taken by ambulance to Albany Medical

Center for treatment of his injuries and after being examined he was arrested for assault in the third degree by two (2) officers, who she will refer to as officers A and B. The complainant informed the officers that he was the person assaulted and he wanted to press charges, but they refused to take his complaint. After his arraignment on August 17th, the complainant went to the South Station again and attempted to file a complaint against the victim. The officer on duty referred him to the Central Station. At the Central Station, the complainant was told by Officer B that he would have to return to speak with the sergeant on-duty on a later shift. The duty sergeant referred the complainant to the commander. The commander called a supervisor. The complainant overheard the commander tell the unknown supervisor "We have to take care of our own," and then told the complainant that he would not accept his complaint.

Ms. Hammond reported that she reviewed the following documents: Witness Statements, IDCs, Call Tickets, Incident Report, Investigative Report, Criminal Report Sheet, charges filed, Ambulance and Fire Department Sheets, Albany Medical Center Report, Medical Records, and the Confidential Report.

Ms. Hammond stated that based upon her review of the case file, there was a female witness who stated that the victim was not the complainant. The witness stated that the complainant initiated the attack. Ms. Hammond reported that the witness stated that the complainant came onto the victim's property and swung at him and there were many neighbors outside telling the complainant to leave the victim alone.

Ms. Hammond noted a monitor had been assigned to the case. It was noted that monitor Al Lawrence was present.

Ms. Hammond asked Mr. Lawrence if he had anything to add. Mr. Lawrence stated that this case comes down to whether the arresting officers had sufficient grounds to believe the complainant was the victim or the perpetrator. He further stated that the complainant was intoxicated by all accounts. The person who was the victim and another witness came forward so the officers arrested the complainant.

Ms. Hammond reported that the OPS recommended that the finding as to the call handling 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 on-scene officers inappropriately arrested the complainant and that they should have arrested the other party. Based on the OPS investigation, there was enough probable cause for the officers to make the arrest, based on the victim's and the witness' oral statements, as well as the people in the area who corroborated the victim's account of what happened. Furthermore, the victim expressed his right to file charges and signed the criminal information based upon personal knowledge. It also appeared the complainant was intoxicated and not cooperative with the on-scene officers. In addition, he never indicated to the officers that he had sustained other injuries except to his head.

Marilyn Hammond moved to agree with the OPS finding of *exonerated* as to the first call handling allegation. Akosua Yeboah seconded the motion. The motion carried unanimously.

Ms. Hammond reported that the OPS recommended that the finding as to the second 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 an officer did not take a report from him. Based on the OPS investigation, the officer could not remember ever having a conversation with the complainant, or denying him a report, due to the allegation having occurred over a year ago. The complainant was arrested for assault based on a preliminary investigation conducted by on-scene officers, a report and criminal information filed by the victim, and physical evidence and oral statements made by bystanders, the victim, and one independent witness. According to the complainant, the officer checked with a supervisor and was directed not to file a report. The complainant was a defendant of an active criminal case which was reviewed by the District Attorney's Office (DA). Completing a police report on behalf of the complainant, contradicting the aforementioned investigation, would not be prudent for the people's case. If the DA's office, after their investigation, felt that the case was not presentable, they could have dismissed the charges, or go forward with the case. The DA elected to go forward with this case. In addition, after a review of the case, the DA can submit their own accusatory instrument, known as a prosecutor's information, against the victim in this case, if they felt that the victim was the one who committed a crime. This was not done in this case.

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

Ms. Hammond reported that the OPS recommended that the finding as to 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 unknown supervisor stated to the officer, "We have to take care of our own." Based on the OPS investigation, the supervisor who allegedly made the comment was not identified. The comment may not have even been made in reference to the complainant's case, as the alleged comment was overheard in a conversation that took place between the unidentified supervisor and the officer in a side office. The officer could not remember ever having a conversation with the complainant, due to the allegation having occurred over a year ago.

Marilyn Hammond moved to concur with the OPS finding of ***not sustained*** as to the conduct standards allegation. Chairman Edward Smart seconded the motion. The motion carried unanimously.

CPRB No. 18-10/OPS No. CC2010-029 (Presented by Eugene Sarfoh)

Eugene Sarfoh stated the incident occurred on September 5, 2009. He summarized the complaint. The complainant alleged that she was walking from the Family Dollar when she was stopped by an officer. The officer allegedly took the complainant by the arm and told her to "f**king listen" or to "shut the f**k up." The complainant alleged that the two initial officers involved were rude to her, roughly handcuffed her and spun her around, laughed at her and called her a spider. She also alleged the officers pushed her against a police car, pulled her jacket hood over her face, and touched her inappropriately.

in the chest area. When the complainant protested, a female officer was summoned and the complainant alleged that this officer lifted up her t-shirt and felt inside her bra, rubbed her chest, and inappropriately felt between her legs. The incident commenced, with some dispute, inside the Family Dollar Store. The complainant indicated that she returned to the store to retrieve a belt that she had left there on a prior visit. While there, a dispute arose between the complainant and one of the employees. A manager intervened at a point where it was alleged that the complainant was about to strike the employee.

Mr. Sarfoh reported that he reviewed the following documents: Citizens' Complaint Form; Monitors Report; OPS file, which included the Confidential Report; Citizen Complaint Form; Call Ticket; Sworn Statement from the employee witness from the Family Dollar Store; Two (2) Incident Reports; Arrest Report; Booking and Arrest Report; Admissions Screening Sheet; Suicide Prevention Form; and a second incident report regarding a second subsequent similar incident.

Mr. Sarfoh reported that the OPS interviewed the two officers who initially were called upon the scene, as well as the officer who conducted the search of the complainant. He reported that there was also a sworn statement of the employee of the Family Dollar Store. There was videotape footage which also contradicted the allegations of the complainant. Mr. Sarfoh stated that the videotape prefaced the behavior of the officers relative to the complainant and it did not support the complainant's allegations. He further stated that the complainant alleged both verbal abuse by the officers and that they were combative in their dealings with her. The video showed that the complainant kicked at the officers and was combative towards them. The complainant also threatened the officers' families with some reference towards 9/11. The video showed that the search of the complainant lasted about one minute and there was nothing inappropriate about the search. The officers responded to a call from the employees at the Family Dollar Store, where they alleged the complainant entered the store and was making threats against the employees, including threatening to cut an employee with a box cutter. The employees of the store requested that the complainant leave numerous times and eventually she did. The officers arrived and based on a description of the complainant and the fact that the employees wished to press charges, what ensued is what is captured on the video. The first officer who was interviewed indicated that based on information that the complainant came into the store and threatened to cut the employees, they found that the complainant fit the description. At no point did the officer use profanity. The complainant was upset, uncooperative, yelled vague threats and at no point did they tell her to "F**king listen." The officers did not laugh at the complainant or call her a spider. At some point the complainant was handcuffed and placed on the curb, and there was some issue about whether ankle shackles were used. There was confirmation on the video that the complainant attempted to kick at the officers. The video also confirmed that the complainant was pushed up against the car. Mr. Sarfoh reported that a female officer was eventually called to the scene and was interviewed by the OPS. The officer recollected that she conducted the search of the complainant in line with her training. The officer denied lifting the complainant's shirt or touching her inappropriately. The video confirmed that the search was conducted in a proper manner. The video also showed the complainant using profanity and insisting that she had done nothing wrong and the officers were polite in responding to her behavior and conduct. The complainant

was also interviewed, and in light of the video, her allegations undermined her credibility. Her allegations were contradicted by the video footage.

Mr. Sarfoh reported that the OPS recommended that the finding as to the 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 an officer told her to shut the f**k up and listen to him. Based on the OPS investigation, all of the officers on the scene denied the allegation and the incident was also captured on the in-car video system, which did not support the allegations.

Eugene Sarfoh moved to concur with the OPS finding of ***unfounded*** as to the first conduct standards allegation. Chairman Edward Smart seconded the motion. The motion carried unanimously.

Mr. Sarfoh reported that the OPS recommended that the finding as to 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 an officer called her a "spider." Based on the OPS investigation, all of the officers on the scene denied the allegation and the incident was also captured on the in-car video system, which did not support the allegation.

Eugene Sarfoh moved to concur with the OPS finding of ***unfounded*** as to the second conduct standards allegation. Andrew Phelan Jr. seconded the motion. The motion carried unanimously.

Mr. Sarfoh reported that the OPS recommended that the finding as to the third 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 an officer pushed her hard against the police car and slid her back and forth. Based on the OPS investigation, all of the officers on the scene denied the allegation. The incident was also captured on the in-car video system, which did not support the allegation.

Eugene Sarfoh moved to concur with the OPS finding of ***unfounded*** as to the third conduct standards allegation. Chairman Edward Smart seconded the motion. The motion carried unanimously.

Mr. Sarfoh reported that the OPS recommended that the finding as to 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 an officer pulled her hood over her face all the way down to her chin. Based on the OPS investigation, officers admitted to pulling the complainant's hood up, however, it was cold and snowy. According to the officers, the complainant was also attempting to spit on the officers. The incident was also captured on the in-car video system, which did not support the allegation.

Eugene Sarfoh moved to concur with the OPS finding of ***unfounded*** as to the fourth conduct standards allegation. Chairman Edward Smart seconded the motion. The motion carried unanimously.

Mr. Sarfoh reported that the OPS recommended the finding as to the fifth 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 a male officer grabbed her arm and another male officer began to search her by patting her chest. Based on the OPS investigation, all of the officers on the scene denied the allegation. The incident was also captured on the in-car video system, which did not support the allegations.

Eugene Sarfoh moved to concur with the OPS finding of ***unfounded*** as to the fifth conduct standards allegation. Marilyn Hammond seconded the motion. The motion carried unanimously.

Mr. Sarfoh reported that the OPS recommended that the finding as to the sixth 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 a female officer touched her inappropriately. Based on the OPS investigation, all of the officers on the scene denied the allegation and the incident was also captured on the in-car video system, which did not support the allegation.

Eugene Sarfoh moved to concur with the OPS finding of ***unfounded*** as to the sixth conduct standards allegation. Chairman Edward Smart seconded the motion. The motion carried unanimously.

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

The following Board members were appointed to the Committee on Complaint Review for May 2011: Marilyn Hammond, Lilian Kelly, Andrew Phelan, Jr., Anthony Potenza, Eugene Sarfoh, Reverend Edward Smart, and Akosua Yeboah.

C. *Approval of the 2010 Fourth Quarterly Report*

The 2010 Fourth Quarterly Report was reviewed. Chairman Edward Smart moved to approve the 2010 Fourth Quarterly Report. Akosua Yeboah seconded the motion. The motion carried unanimously.

D. *Amendments of 2010 First, Second, and Third Quarterly Reports*

The amendments of the 2010 First, Second, and Third Quarterly Reports were reviewed. Ms. Moseley explained that the amendments consisted of statistical revisions made to the reports due to changes that occurred during the finalization of the CPRB database system. Chairman Reverend Edward Smart moved to approve the amendments of the 2010 First, Second, and Third Quarterly Reports. Akosua Yeboah seconded the motion. The motion carried unanimously.

E. *Committee/Task Force Reports*

By-Laws and Rules

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

Community Outreach

Chairman Edward Smart reported that Committee Chairman James Frezzell was not present. He further stated that the Community Outreach Committee met last Friday. He stated that Mr. Frezzell would give an update at the next meeting.

Mediation

Chairman Edward Smart reported that the Board has not heard from the police department or its union regarding the mediation program.

Police Department Liaison- Policy Review/Recommendations

Committee Chairman Andrew Phelan Jr. stated that he had nothing new to report.

Public Official Liaison

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

Task Force on Monitors

Task Force Chairperson Akosua Yeboah stated that she had nothing new to report.

F. *Report from the Government Law Center*

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

Complaint Inventory as of Date of Meeting

It was reported that included in tonight's packets is the complaint database scorecard. It was further reported that as of today, there are currently fifty-nine (59) active complaints before the Board for review. Of those fifty-nine (59) active complaints, eight (8) were reviewed at tonight's meeting, which leaves the Board with fifty-one (51) active complaints. There are seventeen (17) cases ready for review.

It was reported that four hundred and thirty-six (436) complaints have been closed. The total number of complaints suspended from review is eleven (11). The total number of complaints filed to date is four hundred and ninety-eight (498).

It was further reported that since the Board's last meeting, the GLC received five (5) grievance forms. The total number of forms received to date is two hundred and forty-one (241). In response to the GLC's outreach to all individuals, the GLC received sixty-nine (69) CPRB complaint forms.

Upcoming Meetings

It was reported that the next Board meeting is scheduled for Wednesday, May 18, 2011, at GWU the Center.

G. *Report from the Office of Professional Standards*

Commander Ron Matos reported that Chief Steven Krokoff was able to disseminate the SNUB program trading bulletin to all department members. SNUB is an evidence based program that is based upon the Chicago City Fire Project where the Chicago police department and community organizations reach out to at risk youth. This project was adopted at the recommendation of the Government Violence Task Force. He further reported that the five core components of the SNUB are street level outreach, public education, community mobilization, faith leader involvement, and criminal justice participation. Commander Matos reported that what the department was trying to do was in incidents where there is a violent act, the department wants to lend a hand in the assistance of family members and ensuring that retaliation does not occur. He stated that if anyone is interested or wants to read more about it they can go to www.trinityalliancealbany.org. He reported that on the issue of gang prevention the Albany Gang Prevention Program in a coordinated effort with Xavier University was able to invite some students who are doing work with the Alternative Grace Program to come over and visit. This is the second year that they have done this. He further reported that they participated in the APD Ride-Along Program, which occurred on March 5-12, 2011 and they received a very positive feedback from the group. Commander Matos stated that he did have a note in his binder regarding the mobile DVR policy and he will look into that for the Board.

H. *Report from the Chair*

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

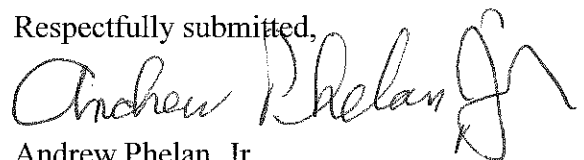
VI. **Public Comment**

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

VII. **Adjournment**

Lilian Kelly moved to adjourn the meeting. Chairman Edward Smart seconded the motion. The motion carried unanimously. The meeting adjourned at 8:45 p.m.

Respectfully submitted,



Andrew Phelan, Jr.
Secretary