

**City of Albany  
Citizens' Police Review Board  
GWU the Center  
274 Washington Avenue- Teen Center Conference Room  
October 13, 2011  
6:00 p.m. - 8:00 p.m.**

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

**I. Call to Order and Roll Call**

Chairman Edward Smart called the meeting to order at 6:10 p.m.

**II. Approval of the Agenda**

Chairman Edward Smart noted that monitor Richard Lenihan has to leave the meeting early. Mr. Lenihan requested that the Board move his case to the top of the agenda as the next item of business. Eugene Sarfoh moved to amend the agenda to move CPRB No. 23-10/OPS No. CC2010-035 to the top of the agenda. Anthony Potenza seconded the motion. The motion carried unanimously. Chairman Edward Smart asked if there was a motion to approve the agenda with that amendment. Marilyn Hammond moved to approve the agenda. Akosua Yeboah seconded the motion. The motion carried unanimously.

**III. New Business**

**CPRB No. 23-10/OPS No. CC2010-035** (Presented by Andrew Phelan, Jr.)

Andrew Phelan stated that the complaint involved two (2) call handling allegations. The incident occurred on March 29, 2009 and the complaint was filed April 20, 2010. The case involved two (2) males and three (3) females fighting outside Jillian's on North Pearl Street. Mr. Phelan summarized the complaint. The complainant alleged that he was tackled by the Albany police and was placed into the corner of the building and made to sit on the curb. The complainant further alleged that when he went to the station to obtain a copy of a police report, he was told there was no police report on file. The complainant alleged that he spoke with a supervisor and a report was taken and forwarded to the detective's office for follow-up. The complainant further alleged that he attempted to contact the detective on several occasions and when he finally spoke to the detective, he asked if the detective would provide the complainant with a letter for the Crime Victims Board (CVB). The complainant further alleged that the detective stated he would call the CVB and never did. The complainant further alleged that the lack of

police action was premeditated and may have been racially motivated because he is Hispanic.

Andrew Phelan summarized the OPS finding for the first call handling allegation as *not sustained*, where the review failed to prove or disprove the allegations made in the complaint. The complainant alleged that after being involved in a fight the officers on the scene tackled him and refused to take a report or provide him with medical attention. Based on the investigation by the OPS, the complainant's witness stated they had been drinking alcoholic beverages prior to the encounter with the group that had fought with them. A supervisor on the scene stated that the complainant and his friend appeared to be the most intoxicated subjects at the scene and they were difficult and uncooperative. Both officers were dressed in police uniforms and were easily identifiable as police officers. The supervisor did not recall anyone asking for a report to be taken or having any injury. He further stated that no one was tackled by the police on the scene. The supervisor also stated "neither male party wanted anything to do with the responding officers and only wanted to continue the fight." The other officer stated that he observed the complainant to be "very intoxicated and very belligerent." He acted in a violent manner towards others on the scene making it difficult for the officer to do his job. The officer recalled the complainant having a minor injury, but he refused medical attention on numerous occasions. While the officer was attempting to interview other people on the scene, the complainant called the officer a "f\*\*\*ing a\*\*hole," demanded his identification back, and stated that he did not want any further services from the Albany police.

Andrew Phelan moved to concur with the OPS finding of *not sustained*.

Andrew Phelan summarized the OPS finding for the second call handling allegation 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 when he went to obtain a copy of the incident report he was told none was filed. The complainant further alleged that when he was able to file a report at the SSTA and when he was finally able to contact a detective, he requested a letter be sent to the Crime Victims Board. The detective allegedly stated that he would contact the CVB and never did. The complainant further alleged that the detective was rude. Based on the investigation by the OPS, the detective stated that he made several unsuccessful attempts to contact the complainant. The detective also denied being rude or hanging up on the complainant. At no time during the seven (7) months immediately following the incident did the complainant make any effort to contact the detective or inquire about the status of his case. Mr. Phelan stated that upon review of all the facts associated with the investigation, it would appear that the complainant did not make a diligent effort to make himself available to the detective for the purpose of advancing the investigation and did not cooperate to the fullest of his ability. Mr. Phelan reported that monitor Richard Lenihan was assigned to this case.

Andrew Phelan asked if the complainant was present. It was noted that the complainant was present with his father.

Andrew Phelan asked if the monitor Richard Lenihan had anything else to add. Mr. Lenihan stated that there was a time lapse of seven (7) months from the date of the incident and when arrested to the filing of the complaint. A possible resolution could have been reached the day of the incident. He also stated that the complainant refused medical attention.

Chairman Smart asked the complainant if he would like to comment. The complainant stated that the officers told him and his friends to shut up or they were going to jail while the others involved in the fight were taunting him. The officers never offered him assistance. He also stated that he never talked to an officer for seven (7) months. The one time that he was able to reach the detective, the detective said he talked to his mother but his mother doesn't speak English. The detective also had the wrong number. The officers threatened to arrest him if he came back to Albany. CVB sent Albany letters because of the complainant's hospital bills.

Chairman Edward Smart asked if an incident report was completed by the officer. Mr. Lenihan replied in the negative. He stated that they were fighting. Chairman Edward Smart stated that based on the Standard Operating Procedures (SOP), if someone is injured a report is required to be filed by the officer manually or electronically. He stated that the problem is procedure was not followed by the officers.

OPS Detective Andrew Montalvo stated that the officer completed a contact card. When the complainant got home his face appeared injured, but not at the scene. Chairman Smart stated that a report should have been filed for clarity. Chairman Smart stated that the problem is the complaint must be filed within six (6) months. The incident occurred in March 2009 and the complaint was filed in April 2010. It is difficult for people to recall what happened months ago. He asked OPS Detective Kathy Hendrick if a report should have been filed. Detective Hendrick replied that a field interview card was filled out. She added that if individuals are not cooperative the officers cannot file a report. They are not mandated to file a report, but they are mandated to fill out a field interview card. Detective Montalvo stated that mutual combat was involved. The officers spoke to everyone at the scene and could not tell who the suspect or victim was.

Monitor Richard Lenihan stated that the injuries were not caused by the police. He had the option to have the other person arrested. The complainant did not cooperate with the officers on the scene.

Andrew Phelan stated that the complainant refused medical attention. The complainant stated that the officers put him and his friend on the floor. The assailants approached the complainant, asked him for a cigarette, and started hitting him and his friend. When

the officers arrived, the officers did not want to listen to their side of the story. The reason the complainant was late with filing the complaint was because he was not aware of the process. The complainant further stated that when he tried to get the incident report, he asked why there was no incident report and then called Paul Tonko's office. Complainant also stated that if he was highly intoxicated why would the officers let him get in his car and drive away.

Eugene Sarfoh stated that when the police got there they did not know who started the fight. The complainant stated that other guys were screaming and yelling. One of the guys broke a window on the car. He also stated he doesn't remember how he got home.

Akosua Yeboah asked the complainant when he became aware for the first time about filing a report. The complainant responded that it was five (5) months later.

Chairman Edward Smart asked if the complainant planned on suing the City of Albany to recover money. The complainant stated that he doesn't want any money. Board Counsel Patrick Jordan stated that the statute of limitations had passed.

Mr. Lenihan asked the complainant why not sue the assailant. The complainant replied that the officer did not collect the other person's information. Mr. Sarfoh asked the complainant whether he was seeking compensation from the Crime Victims Board. The complainant responded in the affirmative, that he needed a letter because he was hurt and lost his job.

Mr. Sarfoh stated that the Board's scope is limited because they can't tell the officers to go back and arrest the other individuals. Detective Hendrick stated that the allegation was closed as ***not sustained*** because the OPS does not have sufficient evidence. Detective Montalvo completed a thorough investigation. It's the complainant's word against the officer's that there is a report.

Akosua Yeboah asked why the complainant can't get a report from the police department regarding the incident. Detective Montalvo stated that a report is on file. Andrew Phelan moved to concur with the OPS finding of ***not sustained*** on the first allegation of call handling. Eugene Sarfoh seconded the motion. The motion failed by a vote of 4-0 with 2 members abstaining from voting. Marilyn Hammond and Akosua Yeboah both abstained from voting. Akosua Yeboah stated that she abstained from voting because an incident report was not created and that is a problem. Marilyn Hammond stated that she felt the same as Ms. Yeboah. It was noted that the motion failed to pass.

Andrew Phelan moved to concur with the OPS finding of ***not sustained*** on the second allegation of call handling.

Chairman Smart stated that the problem is determining if the incident report and field card are the same. Detective Montalvo stated that officers contacted witnesses after the incident and that it is not uncommon for officers to break up numerous fights at Jillian's.

Eugene Sarfoh seconded the motion. The motion failed to carry by a vote of 3-3. Marilyn Hammond, Akosua Yeboah, and Chairman Edward Smart voted against the motion.

Board Counsel Patrick Jordan asked for a re-vote of the first call handling allegation. Andrew Phelan moved to concur with the OPS finding. Anthony Potenza seconded the motion. The motion failed by a vote of 4-0 with 2 members abstaining from voting. Marilyn Hammond and Akosua Yeboah both abstained from voting. Akosua Yeboah and Marilyn Hammond explained that the witnesses are unreliable and that there was no police report.

#### **IV. Old Business**

##### **CPRB No. 26-11/OPS No. CC2011-075 (Presented by Chairman Edward Smart)**

Chairman Smart summarized the case. He reported that the case involves a dispatcher. The Board received an opinion from its attorney that the Albany Police Department dispatchers are not under the legislation that's been directed to the CPRB. General provision Section 42-332 of the City Ordinance defines for the City of Albany's police department what a police officer is. Chairman Smart further stated that an officer is a sworn police officer and a dispatcher is not a sworn police officer so there is no jurisdiction for the CPRB to hear this case. Chairman Edward Smart moved to close this case without review. Andrew Phelan seconded the motion. The motion passed unanimously.

##### **CPRB No. 35-11/OPS No. CC2011-096 (Presented by Chairman Edward Smart)**

Chairman Edward Smart stated that this was an investigation of a meter person regarding a handicap parking spot. He stated that for the same reason as stated in the previous case, the Board does not have jurisdiction to hear complaints about meter officers. Chairman Edward Smart moved to close the case. Marilyn Hammond seconded the motion. The motion carried unanimously.

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

Akosua Yeboah summarized the complaint. She stated that this was a case that was previously heard. The complainant alleged that while picking up her 3 year-old grandson, her car was pulled over by the Albany Police Department for issues pertaining to visibility due to the tinted windows of her vehicle. At that time the officer discovered that her license had expired and there was a parking ticket associated with the vehicle. The

complainant agreed with these findings. Because of these findings the officer had the complainant's car towed. The complainant alleged that this occurred on a chilly day in March in an unfamiliar area of town known to have drug-related crimes. The officer allegedly denied the complainant's request that the officer wait before calling the tow truck until the complainant and her grandson were picked up by a family member for safety. When the tow truck arrived the officer allegedly refused to allow them to wait inside the warmer tow truck even though the tow truck driver was willing to let them do so. The complainant believed that the officer showed a disregard for her safety and the safety for her grandson, had no right to tell the tow truck driver what to do, and that this would not have occurred if the complainant was a white woman instead of a black woman. Ms. Yeboah reported that originally a monitor was not assigned to this case. After hearing the case, Ms. Yeboah felt that a monitor should have been assigned and inquired about sending it back to have a monitor assigned. At the time, it was determined that since the investigation was completed, it would not be possible to have a monitor assigned. Corporation Counsel John Reilly approved assigning a monitor after the fact.

Ms. Yeboah further stated that she agreed with the monitor on the first count of call handling, where the officer told the complainant that she could not wait in the tow truck, as an over reach of police power. Even if the officer was concerned with the tow truck driver's safety, he should have also been concerned with the safety of the complainant and her grandson. Ms. Yeboah asked if the complainant was present. It was noted that the complainant was not present. Ms. Yeboah asked if the monitor had any comments. Monitor Joel Pierre-Louise replied in the negative unless there are specific questions from the Board.

Akosua Yeboah stated that she did not know what the remedy would be. She indicated that the first allegation related to the officer's ability to deny the complainant the right to sit in the tow truck. Mr. Pierre-Louis stated that there is no standard operating procedure to refuse the citizen the right to sit in a tow truck when their car is being towed with permission by the tow truck operator. There is no standard operating procedure to wait with a tow truck during the tow truck process. This was established by the officer on his own and not within his discretion. In this case it may be true that her family members showed up after a short time, but the officer is not obligated to stay there. The explanation is misplaced because officers have a responsibility to protect all their citizens. This should be addressed by the Albany Police Department.

Commander Matos stated that on the monitor's point that the officer is not required to wait for a tow truck, Article 4708 subsection 3 states that the officer is required to wait for the signature of the tow truck driver and any damage that may be there. Commander Matos asked that the monitors not summarize complaints as being the same in all situations. While the complainant and her grandson were not belligerent and aggressive, this is not true with all cases. The officer has been a part of a towing operating procedure,

where people being towed are belligerent towards the tow truck driver. The officer advised the complainant that a Stewarts Store was in close proximity and she could have waited there.

Mr. Pierre-Louis stated that the bottom line is that there is no standard operation procedure that allows a police officer to deny a citizen from sitting in a tow truck.

Chairman Smart stated that he was not totally convinced that this was a matter of racial bias. Commander Matos made a point about putting citizens in the tow truck who are not happy at having their car towed. He further stated that he did not believe that the complainant was a threat but the officer's offer to the complainant and the child to go to Stewarts showed that he had their safety in mind. Chairman Smart stated that this is a case where mediation would be perfect because the officer could explain the reasoning behind his decisions. Marilyn Hammond asked if there is a way to get this case referred to mediation.

Akosua Yeboah made a motion that this case be referred for mediation. Marilyn Hammond seconded the motion.

Coordinator of the Board Sharmaine Moseley stated that there is no mediation program in place and also pointed out that the complainant is not reachable. The Government Law Center has tried unsuccessfully to reach the complainant by phone and mail with no response.

Chairman Smart stated that the Board would reach out again for the purpose of mediation and it is up to Commander Matos to facilitate the mediation.

Eugene Sarfoh asked whether there was a mediation program in place. He stated that it is a remedy that the Board is seeking to establish and are recommending something that does not exist. He questioned whether if the Board was to make contact with the complainant and say that the case was recommended for mediation, the Board would be recommending something that does not currently exist.

Chairman Smart stated that, if the Board recommended mediation, it is up to the Commander and the Union to initiate the mediation.

Commander Matos stated that if the complainant is not reachable, then the matter is closed. The problem with mediation is getting around the Union.

The motion failed to carry by a vote of 4-2. Board members Eugene Sarfoh and Andrew Phelan voted in the negative. Akosua Yeboah asked to put this case on the agenda as old business.

**CPRB No. 3-11/OPS No. CC2011-003** (Presented by Andrew Phelan)

Andrew Phelan stated that he went to the OPS to review this complaint. He further stated that this complaint had allegations of conduct standards, call handling, and use of force. The incident happened on January 11, 2011 and the complaint was filed on January 18, 2011. It was noted that a monitor was assigned to the complaint. Mr. Phelan summarized the complaint. The complainant alleged that she was at the pharmacy when an officer approached her and stated that he needed to speak with her. According to the complainant, the officer asked for her identification because he was conducting an investigation and she looked like a person of interest. The complainant provided the identification and the officer allegedly stated that he needed to take a picture of her. The complainant further stated that she contested her picture being taken and she requested that the officer call a supervisor to respond. The officer allegedly pointed his cell phone camera at the complainant in an effort to capture her photograph, and she turned her head and walked away. The complainant stated that the officer then told her he would take a picture of her identification. As the complainant continued to slowly walk away, the officer allegedly grabbed her arm and turned her around. The complainant further alleged that the officer refused to contact a supervisor, and he told her that she was interfering in a police investigation. The complainant further alleged that the officer then spun her around, put her hand behind her back, and threw her into the greeting card rack. The complainant alleged that the officer then threw her down to the ground, placed his knees in her back, and proceeded to handcuff her. The complainant stated that she informed the officer that the handcuffs were hurting. The officer allegedly replied that the handcuffs are not supposed to be comfortable and she should be used to it. The complainant stated that the officers then stood her up and began to search her coat and pants pockets. The officers then released her.

Mr. Phelan asked whether the complainant was present. It was noted that the complainant was present. The complainant stated that when the officer approached her she gave him her I.D. He was supposed to check her identification but he did not. He wanted to take her picture. Mr. Phelan thanked the complainant for attending this meeting. He asked if monitor Joel Pierre-Louis had anything that he would like to add. Mr. Pierre-Louis stated that he had nothing new to add.

Andrew Phelan summarized the OPS finding for the allegation of use of force as **sustained**, where the review disclosed sufficient facts to prove the allegations made in the complaint. The complainant alleged that an officer used excessive force against her when he grabbed her arm, spun her around, threw her into a greeting card rack, and ultimately threw her down to the floor and placed his knees in her back. Based on the OPS investigation, there was video footage of the interaction between the officer and the complainant. The complainant did not make any threatening or overt movements with her arms as was stated by the officer. It did not appear that the complainant attempted to get away, and there were no indications that the officer's safety was at risk as suggested by



the officer. The complainant appeared to be fairly passive and did not actively resist the officer's attempt to detain her. The officer was found to be in violation of Article 14.1.48 of the APD's Standard Operating Procedure (SOP) as it relates to the Rules of Conduct and the Use of Force. Through evaluation of the video, it did appear that the officer used more than reasonably necessary force given the circumstances. The officer properly documented his actions by use of the APD Subject Resistance Report, as well as notified an immediate supervisor on the incident; however, the officer stated his actions were based upon the complainant becoming combative. These events are simply not clearly depicted on the video footage.

Andrew Phelan moved to concur with the OPS findings for the allegation of Use of Force as **sustained**. Chairman Edward Smart seconded the motion. The motion carried unanimously.

Mr. Phelan summarized the OPS finding for the second allegation of call handling, as **Ineffective Policy or Training**, where the matter does not involve guilt or lack thereof, but rather ineffective departmental policy or training to address the situation. The complainant alleged that the officer did not conduct himself accordingly by ultimately placing her in custody, and taking a photograph of her. Based on the OPS investigation, the officer stated that the reason he stopped the complainant was because he believed that she matched the description of a person that needed to be identified out of the Town of Colonie, for possessing and using stolen credit cards. The officer stated that he had reasonable suspicion that the complainant may be the individual looking to be identified; therefore, he did have the right to not only stop and question her, but also to secure her information and even detain her for investigative purposes. The APD Criminal Investigation Unit utilizes a departmental form when individuals consent to members of the APD to capture their photographs and/or fingerprints for investigative purposes. However, this information would be unknown to the officer because he not only works in a patrol capacity, but it is not the policy of the department; rather it is a common practice for the Detective's Division. The officer stated that once he verified that the complainant was not the person depicted, he deleted her photograph from his personal cell phone. The filing of an APD investigation report, after an encounter such as this, would be common practice in order to document not only the interaction with the civilian, but also the suspicion of the officer that she might be connected to an open criminal investigation. While the officer failed to submit such documentation, there is no policy that prohibits Department members from capturing photographs of potential suspects or persons of interest, and the actions of the officer in securing a photograph is not illegal because his intention was to compare her photograph with the person needing to be identified.

Chairman Smart stated that based on the officer's statement, the officer believed that the complainant was a suspect in a Colonie investigation but it was determined by the OPS that the officer had no information to base his conclusion on.

Commander Matos stated that the officer receive a bulletin and made an investigative stop, and to further the investigation wanted to have a photograph. There is a practice in place to secure the photo of a person and a form. A form was not filled out. The officer was informed but went astray in procedure. Chairman Smart asked if this relates to handcuffing as well. Commander Matos replied that investigation detention allowed for handcuffing if necessary. The complainant stated that she was searched also.

Chairman Smart asked the complainant if the officer apologized after the incident. The complainant stated that the officer was rude and searched her after she was handcuffed.

Mr. Phelan stated that he agreed with the complainant that the use of force was excessive. Andrew Phelan moved to concur with the OPS finding of *ineffective policy or training* regarding the call handling allegation. Akosua Yeboah seconded the motion. The motion carried unanimously.

Andrew Phelan summarized the OPS finding on the conduct standards allegation 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 she asked the officer to take the handcuffs off because they were hurting her wrists. The complainant further alleged that the officer responded by stating that the handcuffs are not suppose to be comfortable and she should be used to it. Based on the OPS investigation, the officer and the witness officer stated they did not recall the complainant making such statements. The officer stated that he may have advised the complaint that the handcuffs are not designed to cause pain, but they may if a person attempts to get out of them. The officer denied saying that the complainant should be used to the handcuffs. Therefore, there is no evidence to support or refute the complainant's allegation.

Andrew Phelan moved to concur with the OPS finding regarding the conduct standards allegation as *not sustained*. Anthony Potenza seconded the motion. The motion failed to carry by a vote of 3-1 with Andrew Phelan, Anthony Potenza and Eugene Sarfoh voting in favor and Chairman Edward Smart voting in opposition. Marilyn Hammond and Akosua Yeboah abstained from voting. Ms. Hammond explained that she abstained because she did not think it was necessary for the officer to say to the complainant that she should be used to it, especially if he was not sure that she was the person he was looking for.

Commander Matos stated that there was no evidence one way or the other because the officer stated he did not make those comments and the complainant stated that he did.

Chairman Edward Smart stated that he voted against the motion to concur because the Board already sustained the allegation of use of force, which would allow for the assumption that the officer used excessive force when putting the handcuffs on the complainant. He further stated that the officer may need additional training on how to treat people.

Akosua Yeboah stated that she had abstained because of the two previous counts reaching **sustained** findings regarding the officer's conduct.

Commander Matos reiterated that on this allegation there is no evidence.

Detective Anthony Battuello stated that during his investigation of this allegation he interviewed CVS employees who also could not substantiate whether or not the statements were made.

**CPRB No. 49-10/OPS No. CC2010-119** (Presented by Eugene Sarfoh)

Eugene Sarfoh summarized the complaint. He stated that this is an incident that arose from the APD execution of a warrant for the complainant's boyfriend. The arrest warrant was the result of a long term eavesdropping investigation that was conducted in conjunction with the New York State Attorney General's organized crime task force and the New York State Police Community Narcotics Enforcement team. The role of the APD was in executing the arrest warrant. The date of the incident was September 22, 2010 and the date the complaint was received by the Board was five days later on September 27, 2010. The complaint alleged that she heard banging on her door and when she answered the door, the men at the door said that they were police and that she should answer the door. The people inside the apartment, which included the complainant's boyfriend, asked the men to show their badges and according to the complainant this was refused and subsequently the police allegedly broke through the door by force. The officers allegedly handcuffed and assaulted the complainant's boyfriend as well as handcuffed the complainant and squeezed her fingers. The complainant further alleged that she asked for a warrant and was ignored and the officers began to search her apartment. The complainant claimed that she was handcuffed for two hours and for the first hour a machine gun was pointed at her. According to the complainant, her boyfriend was made to sign a consent form stating that he would be responsible for any drugs that were found in the apartment. The complainant further alleged that the police damaged furniture as well as the door frame as a result of the incident.

Mr. Sarfoh reported that the complaint had three allegations: arrest, authority, and procedure regarding the illegal search and the count unnecessary; use of force and evidence and property handling.

Mr. Sarfoh stated that he reviewed the OPS file which included a sixteen (16) page confidential report and numerous other investigation materials that included interviews with the eleven (11) detectives that were involved. He further stated that monitor Thomas Neilen was assigned to the case and provided an in-depth and well-written report.

Mr. Sarfoh summarized the OPS findings with regard to the arrest, authority, and procedure allegation regarding the illegal search, as **unfounded**. Based on the OPS

investigation, the search was conducted as a result of an arrest warrant. There was a warrant signed by a judge permitting the arrest of the boyfriend. While inside the apartment during the course of events there was some conversation with the boyfriend, the culmination of which his signature was on a consent search form. The complainant's position is that he had no authority to consent because it was not his apartment. The investigation revealed that there was a determination made between the boyfriend's relationship to the apartment that was sufficient to tie him to the location. In any event, the boyfriend consented, and a search was conducted. The complainant stated that he did not live there, however she admitted that he stayed there four times a week and had been doing so for the past several months prior to this incident. Long term surveillance was conducted and the boyfriend was seen going in and out on a regular basis, establishing grounds for his status as a legal resident of the address. The detectives were executing a warrant and the boyfriend refused to open the door. A verbal exchange occurred between the boyfriend and the detective at which time the boyfriend's voice was positively identified by the detective while they were outside the apartment trying to gain access by consent. The detectives received information as a result of the investigation that the boyfriend was armed with a hand gun and this along with the potential flight risk made it incumbent upon them to use force. Upon entry, they were placed into custody while the apartment was searched to confirm that there were no other occupants besides the complainant and her boyfriend. It was determined that there were not. This was done to ensure that there was no one else that could pose a risk to the safety of the detectives on the scene. The detectives observed in plain view marijuana in various locations in the apartment. At that time they had probable cause to believe the apartment contained additional contraband and were within their duties to request a full search of the apartment. The boyfriend was aware of his constitutional rights and gave consent to search on his own free will which listed this residence as his address. The consent form was part of the file.

Mr. Sarfoh asked if the complainant was present. It was noted that the complainant was not present. Mr. Sarfoh asked if the monitor had anything else to add. Mr. Neilen stated that he agreed with the OPS finding.

Chairman Smart asked whether the synopsis of the complaint that the officers were asked to show their badges and refused were true. Mr. Neilen replied in the negative. Mr. Neilen stated that the detectives, who were interviewed during the execution of the search warrant, clearly identified themselves as police officers. They wore vests that had "POLICE" written on them, their badges were visible and shown through the eyehole of the door several times, and they gave several verbal statements that they were the police.

Chairman Smart asked if they were asked to show their badges before or after they entered the apartment. Mr. Sarfoh replied that they were asked before.

Chairman Smart asked if a citizen asks for a police officer's badge number, the officer cannot refuse that request. Mr. Neilen replied in the affirmative.

Eugene Sarfoh explained that in review of the file, some identification was presented to the people through the door. According to their testimony the officers identified themselves as the police and the exchange happened while they were outside and the complainant and her boyfriend were inside the apartment. Based on the conversation back and forth and because some of the officers had overheard some of the eavesdropping communications, they were able to identify the voice of the boyfriend and confirm his presence in the apartment.

Chairman Smart explained that one of the conduct allegations was that they were asked to show their badges and they refused. This is clearly a part of the SOP. He stated that he wanted to bring that to the APD's attention.

Commander Matos explained that during the course of the investigation it did come up. The fact that the officers wore clothing that stated they were police, the fact that they showed their badge through the eyehole, and the fact that the boyfriend was believed to be carrying a firearm at which point the officers were obligated to present their name, the badge number request was reduced because the officer's safety increased. The officer's can breach the door without making an announcement and the SOP did not find deficiencies regarding that issue.

Eugene Sarfoh moved to concur with the OPS finding for the arrest, authority, and procedure allegation regarding the illegal search the OPS determination as *unfounded*. Chairman Edward Smart seconded the motion. The motion carried unanimously.

Mr. Sarfoh summarized the OPS finding for the use of force allegation as *not sustained*, where the review failed to prove or disprove the allegations made in the complaint. Based on the OPS investigation, the way the police entered the apartment was typical of a high risk warrant execution which had been executed by the detectives numerous times due to the possibility of being presented with deadly force. Once inside the apartment, the level of force employed was considered reasonable and necessary considering the conditions and was in accordance with departmental guidelines. One of the main issues here is the allegation made by the complainant that once the officers entered the complainant had a machine gun pointed at her head for a long period of time. The investigation revealed that the detectives were armed and one detective did have a shotgun but interviews with all the detectives showed that at no point was the shotgun pointed at the complainant. There was no allegation that it was difficult securing the complainant and no need for overwhelming force to have her handcuffed. No detectives recalled pointing weapons at the complainant's head nor did they see her boyfriend being assaulted. At a later conversation with the complainant she recalled that the officers yelled at her and told her to shut up.

Neither the complainant nor her boyfriend requested medical attention and did not make any reference to being injured. The boyfriend was interviewed and his statement confirmed what was in the file and he makes no allegation that he was assaulted.

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

Mr. Sarfoh summarized the OPS finding for the evidence and property handling allegation, relating to the damage of the property as a result of this incident, as ***not sustained***. Mr. Sarfoh stated that there is no question that breaching the door by force caused damage to the door, but the complainant's specific issue was damage to a bedroom set that she indicated had been purchased for \$3,000. Based on the OPS investigation, Detective Andrew Montalvo visited the complainant's residence and conducted a visual assessment of the damage which revealed it to be minor damage to the metal guide rails underneath the drawers. None of the detectives involved in executing this warrant recalled any damage to the property with exception of the front door. Besides the door and the reference to the bedroom there was no other damage to the apartment that anyone recalls. Based on what was observed when they returned to the apartment, pursuant to the OPS investigation, they found only minimal damage.

Eugene Sarfoh moved to concur with the OPS findings of ***not sustained***. Marilyn Hammond seconded the motion. The motion carried unanimously.

Akosua Yeboah made a motion to suspend the reading of the summaries of the new complaints received by the Board. The motion was seconded by Chairman Edward Smart. The motion carried unanimously.

**CPRB No. 57-10/OPS No. CC2010-1333** (Presented by Chairman Edward Smart)

Chairman Edward Smart summarized the complaint. The complainant alleged that she was sitting outside her residence with an infant, when she began to feel ill, so she left the baby inside the front door with the door slightly ajar. An officer knocked on her door and told her that the baby was taken by a good Samaritan who heard the baby crying and got no answer at her door when he knocked. The complainant told the officer that no one knocked on her door and no one had a right to take the baby from her home. The complainant alleged that the officer was not interested in her explanation as to why she was not attending to the baby and was "nasty" towards her. The complainant felt that the officer was prejudiced and needed some education on how to deal with people. On October 21, 2010, a member from the Center for Law and Justice called the police to get a report of the incident but no report was filed. On October 24, 2010 the complainant and her friend went to the Albany Police Precinct and asked about a report of the incident but no report was filed.

Chairman Smart explained that he had reviewed the following documents: Monitor's Report; Citizen's Complaint Form; OPS Confidential Report; Notes of contact and time-line; Two (2) Intra-Departmental Correspondences (IDC); Sworn testimony on January 15, 2011; CAPNET Incident Report; Investigation Report; Incident Report; and Two (2) Orders to Report.

Chairman Smart reported that monitor William Van Valkenburg was assigned to this complaint. Mr. Van Valkenburg stated that he agreed with the OPS findings. Chairman Smart asked whether the complainant was present. It was noted that the complainant was present.

The complaint stated she was sitting outside on her stoop. She has two entrances to her home. She got sick, so she left child across the steps in the vestibule because the room was freshly painted and she was in the bathroom with the second door ajar. When she came out of the bathroom, the officer came in and asked her where the baby was. The baby was on the vestibule. The officer accused her of not watching the baby. The officer allegedly started yelling. The officer kept her ID for more than a half hour and the blanket was taken off the baby. When he came back, he had the baby with him. According to the officer, a good Samaritan took the blanket off the baby and left it in the driveway. There was never a police report. The only thing the APD had was from a call from her address years ago.

Commander Matos stated that the report speaks for itself relative to the allegations made in the complaint.

Chairman Smart summarized the OPS finding for the conduct standards allegation as ***not sustained***, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that the officer was nasty towards her and terrorized and frightened the mother of the baby the complainant was babysitting. Based on the OPS investigation, the call was not initiated by the police but by a good Samaritan who left the blanket to remember the house. Various witnesses had conflicted stories on the language and the respect the officer had displayed. No clear message is given but all witnesses stated the officers never use profanity. Witnesses attest that the officers were stern and showed no bias at anytime. The baby's mother stated the officers were not bias or prejudicial. The OPS investigation shows no evidence of bias or racial discrimination.

The complainant stated that you cannot see the baby from the outside. The complainant stated that the officer said he could arrest her. The officer also told her two friends the same thing.

Mr. Van Valkenburg stated that he had no knowledge of what the complainant was saying.

Chairman Smart asked the complainant if the officer arrested her. The complainant stated that the officer called child protective services and said the same thing. Commander Matos stated that was proper protocol. Chairman Smart asked if the Board had any questions. It was noted that there were no questions.

Chairman Smart reported that after reviewing the OPS investigation, he concurred with the OPS finding of ***not sustained*** for the conduct standards allegation. A good Samaritan called the police and suggested that a baby was abandoned. The police arrived at the home and found the sitter who was the complainant. Witnesses attest that the officer never used profanity but was stern and showed no bias. From all the witnesses there is no evidence of bias. The baby's mother stated that the officer was not biased. The officer investigated a claim of an abandoned child. The officer responded to a call which was initiated by the good Samaritan and not the police. The officer acted in a professional manner, did what was reasonable, and never violated the SOP at any point. The complainant stated that the officer told her that he could arrest her. Chairman Smart stated that it is the complainant's word against the officer; the witnesses did not confirm that. Mr. Van Valkenburg agreed with Chairman Smart based on the audio that he reviewed. The complainant stated that he told child protective the same thing. Chairman Smart stated that the officer was following protocol.

Chairman Edward Smart moved to agree with the OPS finding of ***not sustained***. Marilyn Hammond seconded the motion. The motion carried unanimously.

**CPRB No. 41-10/OPS No. CC2010-091** (Presented by Chairman Edward Smart)

Chairman Edward Smart summarized the complaint. He stated that the complainant alleged that she refused to exit a taxi after getting into an argument with the taxi driver. The taxi driver then called the police. The complainant further alleged that the responding officer went to the taxi driver first and never talked to her to get her side of the story. The complainant alleged that when the officer came to talk to her he opened the taxi door and said, "Ma'am, get out of the car," and never asked her what happened. The complainant further alleged that the police took the word of the white driver, did not bother to ask her anything, and was discriminated against because of her race.

Chairman Edward Smart reported that he reviewed the following documents: Citizen's Complaint Form; OPS Confidential Report; Certified Receipt; Hand Written Report; CDTA Incident Report; Roll Call Shift; Call Report; five (5) IDC; Ride-Along Request; and Dispatch Report.

Chairman Smart summarized the OPS finding on the call handling allegation as ***unfounded***, where the review showed that the act or acts complained of did not occur or were misconstrued. The complainant alleged that she was discriminated against because of her race when the officers took the word of the white cab driver and did not ask her



anything. Based on the OPS investigation, the officers stated that they did not act biased towards the complainant due to race. The cab driver was the original caller of the incident. Therefore, it is common police practice and training to initially interview the person who called, which is what both officers stated they did in this incident. The officers stated that the complainant was rude towards them. The cab driver stated that he heard the officers ask the complainant to exit the cab and she refused. An independent witness heard the officers offer the complainant a ride home. The witness stated that the officers were not rude but courteous and professional. The officers noted that the complainant could have called the police for assistance.

Chairman Smart reported that there was not any proof that the officer acted or discriminated against the complainant. The officers are not responsible for the actions of the cab driver. It is noted that a cab company may refuse service to anyone. The officers asked the complainant to exit the cab numerous times and the complainant refused. The officers attempted to settle the disagreement by offering the complainant a ride home. The action of the officers seemed to be reasonable, the handling of the call was professional and no evidence was given that the officers acted in bias, or discriminated against the complainant.

Chairman Edward Smart moved to concur with the OPS finding on the call handling allegation as **unfounded**. Anthony Potenza seconded the motion. The motion carried 5-0. Akosua Yeboah abstained from the vote because no monitor was assigned to this complaint.

**CPRB No. 43-10/OPS No. CC2010-089** (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint. The complainant alleged that the officers observed her being assaulted by the bouncers at Bogies Bar and did not take action in the matter. The complainant was interviewed as well as officers and departmental paperwork was obtained. Ms. Hammond stated that she reviewed the confidential report dated September 16, 2010. Based on the report, the complainant told her great-grandmother that she was walking with her friends. One friend touched a motorcycle that was parked in front of the bar causing the bouncers from the bar to make racial slurs towards them. The great-grandmother stated that the complainant told her that the bouncer followed them and eventually assaulted her but then the complainant walked away only to return and confront the bouncer. The great-grandmother further stated that the complainant told her that she had punched one of the bouncers and a large fight broke out during which the complainant was jumped and fell to the ground. The great-grandmother stated that the complainant told her that was when she saw several officers getting off the ground. After the fight, the parties involved walked away from the officers stating "F\*\*k you." The sergeant told the officers that there was a black female with apparent minor injuries but the complainant refused to speak to the officer, refused EMS help, and walked away saying "F\*\*k you

all.” Several meetings were scheduled to take place and several calls were made and on September 10<sup>th</sup>, 20<sup>th</sup>, and 22<sup>nd</sup>, but no one showed up or answered the phone. One of the security officers from the bar stated that he did not see any of the officers act inappropriately or unprofessionally and that there was no officer in the area before or during the fight. On October 15<sup>th</sup>, witnesses of the complainant were very uncooperative.

Ms. Hammond reported that OPS Detective Anthony Battuello tried to follow-up a few times with the complainant and her witnesses but they decided that they were not going to deal with him. Ms. Hammond added that there were two separate fights. The first fight happened down the block and the second fight was in front of Bogies. It was noted that there was no monitor assigned to this case.

Ms. Hammond summarized the OPS finding for the conduct standards allegation 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 she observed officers giving high fives and bumping chests with her assailants. Based on the OPS investigation, the officers stated they acted appropriately and did not witness any officers giving high fives or hugs of any kind. The officers stated that they were unaware of any potential suspects that remained in the area, and they denied any knowledge of any sort of reported assault that had taken place. An officer stated that he witnessed the complainant fighting with an unknown female and he deemed it mutual aggression because he witnessed both parties actively fighting each other. He further stated that upon approach he witnessed the complainant shouting and arguing in the middle of the street just prior to the fight ensuing. A witness stated that he did not witness any of the officers acting inappropriately. The witness stated that he observed a black female pull a white female from a parked vehicle and they began to fight. The complainant’s witnesses were not cooperative during this investigation.

Marilyn Hammond moved to concur with the OPS finding of ***not sustained*** for the conduct standards allegation because the complaint’s great-grandmother stated that the complainant had returned to start a fight. Akosua Yeboah seconded the motion. The motion carried unanimously.

Marilyn Hammond summarized the OPS finding for the call handling allegation as ***unfounded***, where the review showed that the act or acts complained of did not occur. The complainant alleged that officers observed her being assaulted by the bouncers at Bogies Bar and did not take action in the matter. Based on the OPS investigation, an officer stated that he witnessed the complainant fighting and immediately broke up the fight. The officer stated that the scene was chaotic and he would not have been able to identify any of the people involved. An officer stated he offered the complainant assistance with filing a complaint and medical attention and she refused any and all police assistance stating obscenities while walking away. The mobile police vehicle DVR

captured what appears to be the complainant with her male friend walking past one of the officers twice without making an attempt to approach him. The complainant admitted that the officers offered her medical attention and she walked away. An officer later received a call to the hospital and obtained a report at that time.

Marilyn Hammond moved to concur with the OPS finding of **unfounded**. Akosua Yeboah seconded the motion. The motion carried unanimously.

**CPRB No. 4-11 /OPS No. CC2011-007** (Presented by Eugene Sarfoh)

Eugene Sarfoh summarized the complaint. The incident occurred on October 22, 2010 and the complaint was filed on January 24, 2011. Mr. Sarfoh asked if the complainant was present. It was noted that the complainant was present. He explained the review process to the complainant. Mr. Sarfoh reported that the complainant alleged that a detective came to the complainant's apartment and said he was under arrest, did not need probable cause, and pulled an ounce of marijuana out of his pocket. The complainant further alleged that he was under arrest for selling crack cocaine which he stated he did not. The complainant believes that his mother and a friend conspired with the detective to have the complainant falsely arrested. Mr. Sarfoh reported that the complainant, witnesses, as well as officers were interviewed and departmental paperwork was obtained. Mr. Sarfoh stated that he reviewed the following documents: Citizens' Complaint Form; Confidential Report; CAPS Inquiry; Call Tickets; Two (2) Page Handwritten File note; Photograph; and Arrest Reports.

Mr. Sarfoh summarized the OPS finding for the allegation of arrest, authority and procedures 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 was arrested for the sale of a quantity of crack cocaine, which was sold to a confidential informant. This sale was part of an ongoing investigation by members of the APD. The detectives stated they knocked on the complainant's door, announced who they were, and their clothing clearly identified them as detectives. When the complainant finally opened the door, he initially took an aggressive stance and appeared to be confrontational and aggressive. The complainant was known to have a violent past and represented a potential threat to the detectives. The complainant attempted to retreat into his apartment, at which time he was taken into custody. The detectives made a plain view observation, seized a bag of marijuana, and the complainant was charged with the additional possession charge. While at the detective's office, a strip search was conducted which produced two (2) additional bags of marijuana found secreted in the complainant's clothing. The complainant's friend was in no way associated with the investigation. They had a previous dispute regarding property. He was interviewed and denied any conspiracy with regards to the incident in question. A witness listed by the complainant stated that he had no knowledge of the alleged conspiracy. Attempts to interview the complainant's

mother were unsuccessful because she refused. The representative from the housing authority indicated no knowledge of any conspiracy.

Mr. Sarfoh asked the complainant if there was anything he wanted to add. The complainant stated that the officer never identified himself as the police. When the complainant opened the door, the officer barged in, so he pushed him. The officer came into the apartment, took the marijuana out of his pocket and put it on the table. The officer entered his apartment looking for crack. He did not find crack, but charged the complainant with the planted marijuana. The complainant stated that he was holding items for his friend for months, so he left the stuff in the hallway. The friend conspired with the friend's mother to get revenge. The complainant further stated that the officer tried to get him evicted.

Mr. Sarfoh stated that the officers were there based on a valid warrant relating to two (2) prior incidents regarding the sale of crack cocaine. The complainant stated that he does not sell crack or anything. Based on the OPS investigation, all of the involved officers denied any knowledge of planting marijuana in the complainant's apartment. The officers stated that they sent in a confidential informant to purchase drugs and that is what the prior arrest was for. The complainant stated that he has two (2) bags of marijuana on him. Chairman Smart stated that the complainant still had drugs on him. The complainant stated that they charged him with selling crack. Mr. Sarfoh explained that the Board is not in a position to address the criminal charges of the complaint.

Detective Montalvo stated that the interviewed person indicated refused to offer information on his mother.

Eugene Sarfoh moved to concur with the OPS finding of *not sustained* for the arrest, authority and procedures allegation. Chairman Edward Smart seconded the motion. The motion carried unanimously.

Chairman Smart stated that the Board would review cases CPRB No. 55-10/OPS No. CC2010-116 and CPRB No. 56-10/ OPS No. CC2010-131 at the Board's next meeting.

*B. Appointment of New Members to the Committee on Complaint Review for November 10, 2011*

The following Board members were appointed to the Committee on Complaint Review for November 2011: Marilyn Hammond, Anthony Potenza, Eugene Sarfoh, Chairman Edward Smart, and Akosua Yeboah.

*C. Approval of the First Quarterly Report 2011*

The 2011 First Quarter Report was reviewed. Andrew Phelan, Jr. moved to approve the first quarterly report for 2011. Akosua Yeboah seconded the motion. The motion carried unanimously.

*D. 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 stated that former Board member Lilian Kelly is no longer on the Board and she was the Chair of this committee. Akosua Yeboah stated that she agreed to chair this committee. Committee Chair Akosua Yeboah reported that a committee meeting was scheduled for October 21, at the law school. She further reported that the committee has two (2) outreach meetings scheduled. One is on November 17 with the Center Square Neighborhood Association. The second meeting is on January 25 with the New York Civil Liberties Union.

Mediation

Committee Chairman Edward Smart stated that the Board has asked Commander Matos to further look into mediation so that the Board can reach a resolution.

Police Department Liaison

Committee Chairman Andrew Phelan reported that the committee is scheduled to meet on October 26 with Chief Steven Krokoff.

Public Official Liaison

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

Task Force on Monitors

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

*E. 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. As of today, there are currently forty-one (41) active complaints before the Board for review.

Of the forty-one (41) active complaints, five (5) were reviewed and closed and two (2) were closed by the Board with no review at tonight's meeting. This leaves the Board with thirty-four (34) active complaints. There are nine (9) complaints ready to be reviewed at the next meeting.

It was reported that four hundred and seventy-one (471) complaints have been closed. The total number of complaints that remain suspended from review is thirteen (13). Two of those cases were suspended over the summer. The total number of complaints filed to date is five hundred and nineteen (519).

It was further reported that since the Board's last meeting, the Government Law Center (GLC) received nine (9) grievance forms, bringing the total number of forms received to two hundred and seventy-seven (277). In response to GLC's outreach to all individuals, the GLC has received seventy-nine (79) Citizen Police Review Board (CPRB) complaint forms.

#### NACOLE Conference

Board member Marilyn Hammond reported that she would want two (2) or more officers to go to the next conference because there is so much going on that it would be difficult for an officer to attend all of the conferences. It would benefit the police department if they would be able to send two (2) or more officers if possible. It's really important to see what everyone else is doing. Mediation is very popular in other departments. Chairman Smart stated that he, Detective Montalvo, and Ms. Moseley attended the conference as well. He further stated that he would like to see more Board members attend future NACOLE conferences because it is a great investment in seeing how other oversight Boards are dealing with these matters. Other agencies are looking at Albany as a model of how it should be done. The next conference is taking place in San Diego, CA.

#### Training

It was reported that the GLC was in the process of scheduling training for the Board but would like to hold off until the new Board members are appointed.

#### Upcoming Meetings

The next Board meeting is scheduled for Thursday, November 10, 2011 at 6 p.m.

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

Commander Matos stated that the 2011 evolution of department-wide range training started to run between September through October. The training consists in whole aspects of firearms, technical positioning, and tactical movements and are also receiving use of force updates and being quizzed on use of force application. The OPS has started

the hiring process for the police department. They have sent out nearly 150 canvas letters and expect to be moving forward with that process over the next couple of months. The Chief has initiated a strategic planning initiative that requires the command staff to meet four (4) times a week to get together on the actual strategic plan and the departments mission. It will guide the way the department operates for years to come. The plan should be in place in six (6) months. At the end of the last Board meeting, the Board requested a solution to enter the OPS. The Commander met with a Sergeant and a Lieutenant to discuss a solution that could either require an ID card or a phone call to be allowed entry.

*G. Report from the Chair*

Chairman Edward Smart stated that he had nothing to report.

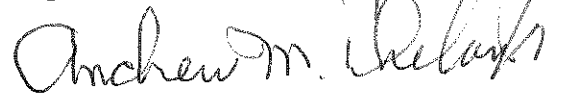
**V. Public Comment**

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

**VI. Adjournment**

Chairman Edward Smart moved to adjourn the meeting. Anthony Potenza seconded the motion. The motion carried unanimously. The meeting was adjourned at 9:10 p.m.

Respectfully submitted,



Andrew Phelan, Jr.  
Secretary