

**City of Albany
Citizens' Police Review Board
Albany Public Library
161 Washington Avenue- Large Auditorium
June 24, 2010
6:00 p.m. – 8:00 p.m.**

Present: Jason Allen, Marilyn Hammond, Andrew Phelan, Jr., Anthony Potenza, Reverend Edward Smart, and Akosua Yeboah.

Absent: Ronald Flagg and Jean Gannon.

I. Call to Order and Roll Call

Chairman Jason Allen called the meeting to order at 6:05 p.m.

II. Approval of the Agenda

The agenda was reviewed. Chairman Allen noted that CPRB No. 60-09/OPS No. CC 2009-128 was stricken from the agenda. Anthony Potenza moved to approve the revised agenda. Chairman Jason Allen seconded the motion. The motion carried unanimously.

III. Approval of the March 11, 2010 Meeting Minutes

The March 11, 2010 meeting minutes were reviewed. Chairman Jason Allen moved to approve the meeting minutes. Marilyn Hammond seconded the motion. The motion carried unanimously.

IV. New Business

A. *New Complaints*

1. New Complaints Received since June 10, 2010 Meeting

Chairman Jason Allen reported that three (3) new complaints were received by the Board since its June 10, 2010 meeting. Andrew Phelan read a summary of each new complaint.

CPRB 31-10

According to the complainant, on March 28, 2010, she was driving down Morton Avenue when she saw that a police car had stopped another car and the officer was looking inside the car. The complainant alleges that she thought she knew the person who was stopped so she stopped her car. The complainant alleges that the officer became enraged and told her to pull over. The complainant claims that when she asked the officer why he pulled her over, he did not respond. The complainant asked him for his name and badge

number. The complainant further claims that when she went to put the information into her phone, the officer became enraged, grabbed her arm, knocked the phone out of her hand, pulled on her seatbelt, coat, and scarf, and yelled at her to “get out of the car.” The complainant alleges that when she exited the car, the officer pushed her against the car, grabbed her wrists and handcuffed her. The complainant further alleges that she asked her cousin to call her mother and when the mother came, the officer told her to get back in the car. The complainant alleges that her uncle also came to the scene, and when he attempted to get out of his truck one officer pulled his gun out and another pushed the truck door closed. The complainant also alleges that an officer pulled out his flashlight, and she thought he was going to hit her with it.

A monitor was assigned to review this complaint.

CPRB 32-10

According to the complainant, she called 911 after she and her sister got into an argument. Police officers arrived, mediated the situation and then left. The complainant alleges that she called the police back because she was still arguing with her sister. The complainant further alleges that when the officers came back, they asked her if she was going to commit murder or suicide. She alleges that the officers handcuffed her, and when she asked for the handcuffs to be loosened, she was ignored. The complainant further alleges that she was taken outside, and an officer picked her up, pushed her down, and kicked her feet from under her. The complainant alleges that she sustained multiple injuries. She further alleges that the officer held her face to the ground and put his feet on her neck.

A monitor was assigned to review this complaint.

CPRB 33-10

According to the complainant, she called the police after her car was destroyed on Watervliet Avenue. The complainant alleges that she waited two hours, and no officer came to the scene so that she could file a complaint. She further alleges that she called the police again, and a female officer told the complainant to “do what [you] have to do.” The complainant alleges while officers would not come to her on Watervliet Avenue, she saw two officers “chilling” by Colby Street and Manning Boulevard.

A monitor was not assigned to review this complaint.

2. New Complaints for Review

CPRB No. 70-08/OPS No. C08-672 (Presented by Anthony Potenza)

Anthony Potenza summarized the complaint. Mr. Potenza reported that the complainant alleged conduct standards misconduct, and a monitor had been assigned to the complaint. Mr. Potenza reported that he reviewed the following documents: Monitor’s Report;

Citizen Complaint Form; Albany Police Department (APD) Civilian Complaint Report; OPS Confidential Report; Police Arrest Reports dated Sept 30, 2008 and December 4, 2008; a call ticket for the location of Quail and Second Street dated September 16, 2008; a call ticket for the location of Second Street dated September 30, 2008; Inter-Departmental Correspondences (IDC) dated September 9, 2009, September 10, 2009, September 17, 2009, and December 2, 2009; an APD incident report; a city court document where the victim accused the defendant of assault in the third degree; an order of protection dated January 26, 2009; and a bailer receipt from Albany City Court.

Mr. Potenza summarized the complaint. The complainant alleged that her daughter was arrested for assault; the Sergeant would not allow her daughter to use the bathroom and told her "If he lets her, she would have to stay overnight." The complainant further alleged that when another person asked to use the bathroom, the Sergeant let him. The complainant alleged that even the arresting officer asked the Sergeant to let her daughter use the bathroom, and her daughter told him that she had a bladder problem, and he still refused. Mr. Potenza reported that included with some of the documents was the Albany Police Confidential Report, which included a report on the video which took place at central booking. Numerous attempts were made to contact the complainant. On the fourth attempt, on May 19, 2009, the complainant was contacted in person by the investigating detective. The detective stated that it was necessary to talk to the defendant, since the complainant was not present at the time of the incident which caused the complaint. The complainant stated that the defendant was sick, but would it be okay for the defendant to talk to the Office of Professional Standards (OPS). Mr. Potenza noted that this was a mother and daughter case where the mother was the complainant on behalf of the daughter, who was the defendant. Mr. Potenza further reported that the detective left a card with the OPS phone number in order for the complainant's daughter, the defendant, to call the OPS to speak with the investigator.

Mr. Potenza read the synopsis of the preliminary findings of the OPS. Mr. Potenza reported that the OPS recommended that the conduct standards allegation be closed as *no finding*, where the complainant failed to produce information to further the investigation. Mr. Potenza reported that based on the investigation, the complainant's daughter failed to clarify the complaint, despite repeated attempts to contact her via listed phone numbers, which were disconnected in some form or another. The OPS went to the residence and personally spoke with the complainant, to further attempt to interview her daughter. The daughter was home at the time of the visit; however the OPS was informed by the complainant that her daughter was sick. An interview was not conducted at this time and the complainant was advised that the OPS needed to interview her daughter, to which she agreed. The complainant indicated that when her daughter felt better, she would have her contact the OPS. Mr. Potenza reported that as of December 14, 2009, the daughter had offered no cooperation in reference to addressing the complaint; therefore, a full and

complete investigation could not be conducted. Mr. Potenza further reported that the complainant had no direct knowledge as to what occurred in booking because she was not present at the time of the incident and could offer no assistance in reference to the investigation.

Mr. Potenza reported that monitor Joel Pierre-Louis agreed with the OPS finding of *no finding*. He further stated that since the complainant's daughter never contacted the OPS, a finding of *no finding* on the allegation of conduct standards was the result. Mr. Potenza moved to concur with the finding of *no finding*. Mr. Potenza stated that based on the documents reviewed, the OPS report, and the monitors report, as thorough an investigation as possible was conducted by OPS.

Chairman Jason Allen asked if the monitor had anything to add. Monitor Joel Pierre-Louis stated he had nothing further to add.

Chairman Allen asked if there were any questions from the Board. It was noted that there were no questions from the Board.

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

Chairman Allen asked Monitor Joel Pierre-Louis if he was able to view the booking video. Mr. Pierre-Louis reported he saw the booking video. He further stated that on page five (5) of his report, under section N, there was a summary of the booking video. Chairman Allen stated that he just wanted to confirm that Mr. Pierre-Louis viewed the video.

Anthony Potenza moved to concur with the OPS findings on the allegation of conduct standards as *no finding*. Chairman Jason Allen seconded the motion. The motion carried unanimously.

CPRB No. 30-09/OPS No. CC2009-061 (Presented by Reverend Edward Smart)

Reverend Edward Smart summarized the complaint. Reverend Smart stated that the complainant alleged that officers responded because the complainant felt he was being targeted by an unknown person who was going to harm him. The complainant felt that the officers were not going to help him, so he began to walk away, and allegedly the officers saw the unknown person that was going to attack the complainant and allowed that person to walk away. The complainant alleged that the officer "laser tagged" him for no reason, placed the complainant on the stretcher, and transported him to the hospital where he was sedated.

Reverend Smart reported that he reviewed the following documents: Citizen's Complaint Report, Citizen's Complaint, Monitor's Report, Confidential Report, Mental Hygiene

Law page 874 Section 9.41, IDC dated April 21, 22, 2010, NYS Incident Report #2 dated Sept 22, 2007, Subject Resistance Report dated Sept 22, 2007, Taser Use Report dated Sept 22, 2010, three call logs dated Sept 22, 2007, APD Property Report dated Sept 22, 2007, and Chapter 42 Board of Commissions Part 33 Article XLIV 42-342C.

Reverend Smart summarized the finding of the OPS on the use of force allegation as *exonerated*, where the acts which provided the basis for the complaint occurred, but the review showed that such acts were proper. Reverend Smart reported that based on the OPS investigation, the officers responded to a police wanted unknown call, and upon arrival met with the complainant whom they determined was a person in need of a mental health evaluation. Reverend Smart stated that the person who made the call locked himself in a bathroom. Reverend Smart further reported that the Mobile Crisis unit was requested to respond to the scene, which they did, and upon evaluating the complainant they recommended he be transported to Capital District Psychiatric Center (CDPC) for further evaluation. The officers acted in accordance with the law in directing that the complainant be transported to CDPC for evaluation. The complainant became combative and resisted, and he had to be tasered in order to gain compliance.

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

Reverend Smart stated that although he agreed with the OPS finding of *exonerated*, he read Legislation Chapter 42 Board of Commissions Part 33 Article XLIV42-342C which states “complaints must be filed within six months of the incident of misconduct.” Reverend Smart further stated that it must be noted that the APD police officers cannot contractually be disciplined a year after an alleged incident. Reverend Smart stated that the complaint took place September 22, 2007, and the complaint was filed and/or received June 25, 2009, some 21 months later. Reverend Smart stated that he believed the complaint did not pass the threshold of timely filing of complaints, and did not serve the public well-being. He further stated that the complaint violated the Board’s legislative guidelines and subjects officers to untimely scrutiny and accountability.

Chairman Allen asked the OPS Commander Ron Matos if the OPS would have investigated the complaint regardless of the time the complaint was filed. Commander Matos replied that the OPS would still investigate. He further stated that Reverend Smart was correct regarding the contractual obligation that officers cannot be disciplined outside of the one year time period. He stated that while the officer could not be disciplined, the OPS would still investigate the incident.

Chairman Allen asked Board Counsel Patrick Jordan for clarification regarding untimely complaints. Chairman Allen stated that it was his understanding that even if a complaint

is outside of the six month filing time period, the Board could vote on whether or not the complaint would be reviewed. Mr. Jordan stated that this understanding was correct.

Reverend Smart stated that the Board had not voted on this complaint. Reverend Smart further stated that he was adamant about the six month time frame and the protection of police officers. He stated that it was unreasonable to subject witnesses and officers to remember something that happened almost two years ago. Chairman Allen reiterated that the OPS would have conducted the same investigation regardless of when the complaint was filed. Reverend Smart asked if it was true that if an officer was found to be in violation of an incident and the complaint was outside the time frame, the officer would not be subject to discipline. Commander Matos responded that this was true. Reverend Smart asked Commander Matos why OPS still had to investigate complaints that were past the filing time period. Commander Matos stated that the OPS could not turn anyone away as a matter of public service. He further stated that if someone has a grievance, the OPS has to look into the grievance because there might be a couple of problems. He stated that by looking into grievances, even if they cannot discipline officers, it might reveal training deficiencies that can be corrected with more training or a change in policies. Commander Matos stated that even if there is no discipline, investigating complaints can still be a great value to the department. Reverend Smart stated that if he was a complainant, and he has been contacted by an officer, and he believed that his complaint is correct, that he had been abused or mistreated by an officer, that he would expect the officer would be disciplined. Reverend Smart stated that in his opinion, it seems that it is not being made clear to complainants that since it has been two years since the incident, contractually the officers cannot be disciplined.

Reverend Smart stated that if this was the kind of case that required a monitor, that it would have been a waste of time and money to investigate the complaint, knowing that whatever the officer did, whether right or wrong, nothing can be done. Chairman Allen stated he agreed with Reverend Smart's comment on monitors being assigned to cases outside the filing time period. Chairman Allen stated that the Board did not have the authority to tell OPS not to investigate a complaint. Chairman Allen asked if the Board had previously discussed this issue. Coordinator for the Board Sharmaine Moseley stated that the Board votes to review a case when the summaries of new complaints are read at the beginning of the meetings.

Chairman Allen proposed that there were two ways that the Board could handle complaints that fall outside the filing time period. He stated that the Board could vote on complaints during an open meeting or vote when the Board members get phone calls asking if a monitor should be assigned. Chairman Allen asked Board Counsel if there was a problem with either method. Board Counsel responded that he did not see a problem with either proposal. Chairman Allen stated that if the Board receives a complaint which is more than six months old, the filing date on the complaint should be

given to Board members, and then members should be asked whether a monitor should be assigned. Marilyn Hammond asked whether the time limit should be six months or a year. Chairman Allen asked Board members for their thoughts regarding the time limit.

Reverend Smart stated that he was recently read a complaint and the person reading the complaint told him that they had no idea when the incident took place and/or when the complaint was filed. Coordinator for the Board Sharmaine Moseley asked whether the call had been from the Government Law Center (GLC). Reverend Smart replied that the call had been from the GLC. Ms. Moseley asked if the complaints were read verbatim. Reverend Smart replied that they were not. Ms. Moseley stated that she would look into the issue. Marilyn Hammond stated that sometimes she is given dates for the complaints and sometimes she is not, that it was sporadic.

Reverend Smart stated that he understood a six month to a year filing was appropriate, but anything more than that was not fair to officers. He stated that if he was an officer and he was told to report to the OPS for a statement it would be nerve-wracking. He further stated that it was not a normal everyday occurrence for officers to report to the OPS. Commander Matos stated that OPS was not a normal place for officers to go, but officers understand their contractual obligations.

Chairman Allen asked if Monitor George Kleinmeier had anything to add. Mr. Kleinmeier stated that he had nothing to add.

Reverend Edward Smart moved to concur with the OPS finding on the allegation of use of force as *exonerated*. Chairman Jason Allen seconded the motion. The motion carried unanimously.

CPRB No. 15-09/OPS No. CC2009-027 (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint. The complainant alleged that officers put his son in handcuffs. A witness stated that when the complainant was handcuffed, his 17 year old son, who is 6'2" and 170 pounds, stood up really fast, and moved towards his father yelling in French. The complaint alleged that officers asked him to leave, and he stated that he would not bring his children back to an unsafe place due to his concerns of lead paint in their apartment. It was further alleged that officers forced the complainant into handcuffs. The complainant did not resist. The complainant claimed that his right shoulder was displaced in the process, and he remains injured. The complainant further alleged that the officers also handcuffed his son. When they were brought downstairs, there were many police officers waiting. The complainant alleged that the Police Chief ordered the family to be released. The complainant further alleged that unnecessary force was used against him resulting in his shoulder injury, and trauma and shame was inflicted on him and his family.

Ms. Hammond reported that she reviewed the following documents: five (5) IDCs, Standard Incident Report of the injured officer dated March 3, 2009, Subject Resistance Report of the incident #09-080441 dated March 6, 2009, a call ticket that was made by the service agency and the Confidential Report.

Ms. Hammond reported that based on the OPS investigation, the family arrived at the residence very upset and the job developer asked them to leave when they became unruly. The job developer called the police. When the police arrived, things became heated, and the complainant became combative because he did not want to leave. Ms. Hammond further reported that in the process the young boy, the complainant's son, jumped on one of the officer's back. There were several officers that had arrived and tried to get everything under control, but the complainant's wife began swinging her pocketbook and there was a lot of confusion. Ms. Hammond stated that all the problems the family was having were unfortunate, but the witnesses pointed out that the complainant was completely out of line and that the family was aggressive.

Ms. Hammond summarized the finding of the OPS on the conduct standards allegation as *exonerated*, where the acts which provided the basis for the complaint occurred, but the review showed that such acts were proper. Ms. Hammond further reported that the complainant alleged that officers asked him to leave, and he stated that he would not bring his children back to an unsafe place. Based on the OPS investigation, the officers' response was the direct result of the United States Committee Refugee Information (USCRI)'s staff request for assistance in having the complainant removed from the building. The USCRI staff made repeated requests to the complainant to leave with his family. He complainant refused to do so, which resulted in the police being summoned. The officers then made repeated requests for the complainant to leave the building, but he refused. The sole purpose of the officers' presence was to assist the USCRI.

Ms. Hammond summarized the finding of the OPS on the use of force allegation as *unfounded*, where the review showed that the act or acts complained of were misconstrued. The complainant alleged that officers forced him into handcuffs, he did not resist, and his right shoulder was displaced in the process and he remains injured. The complainant feels undue force was used against him resulting in his shoulder injury and that undue trauma and shame was inflicted on him and his family. Based on the OPS investigation, the Subject Resistance Report (SRR), completed immediately after the incident, stated that the officers did respond to the address for a party refusing to leave the building. Upon arrival, the officers advised the complainant repeatedly to leave. He refused, and the staff informed the officers that they wanted to pursue charges. Upon placing handcuffs on the complainant, the complainant pulled away and struggled with the officer. Ms. Hammond further reported that at this time the complainant threw himself to the floor, and the officer had to drag him to the exit. Ms. Hammond stated that the officers are required to document any instances where force is utilized on a citizen.

Ms. Hammond further stated that were it not for the complainant's actions of non-compliance, as well as throwing himself onto the floor to further prevent being physically removed from the building, his alleged injury may not have occurred. The officers indicated that the complainant was very agitated, combative, irate, yelling and was animated as he began to wave his hands in the air, refusing to leave. Again, despite repeated requests made by the officers with the assistance of a translator, the complainant would not leave the premises. Ms. Hammond reported that that officers spent well over an hour speaking with the complainant in an attempt to explain to him that his apartment was in fact safe, but the staff wanted him to leave the premises. A witness substantiated this fact, which is further supported via the CAD system, which timestamps the officers' arrival on scene and clearance from the scene. Ms. Hammond stated that the officers exhibited great patience and understanding when dealing with the complainant; however they still had a duty to perform, which forced them in a position to physically remove the complainant from the building. The officers had no choice but to place him under arrest, as he continued to refuse the requests to leave. Ms. Hammond further reported that the complainant's actions may not have been considered aggressive resistance, but he was clearly passively resisting the officers by not complying with their orders. This passive resistance was displayed when he threw himself to the floor, forcing the officers to drag him out of the office. Ms. Hammond stated that by all accounts, if the complainant did sustain an injury to his shoulder, he could have sustained the injuries by his own actions of failing to leave the building like a responsible adult. There is no evidence of excessive force on the part of the officers. Finally, the officers stated the complainant did not make any complaint of pain and injury while in their presence. Ms. Hammond reported that the witness stated he and his staff remained with the complainant thirty minutes after the incident, and he did not complain of any pain or injury. The physical contact would not have been necessary had he complied with the numerous requests of the USCRI and the officers to simply leave the building.

Ms. Hammond asked if the monitor had anything to add. Monitor Richard Lenihan stated that the family suspected that the apartment that they were living in had high levels of lead. This turned out not to be true, because they were told by the Department of Health (DOH) that it did not contained excessive levels. Mr. Lenihan further stated that the translator told them that people coming into the country sometimes have higher levels of lead than what would be accepted in this country. He stated that he believed their frustration transferred from the committee of refugees to the police. Mr. Lenihan further stated that he could not see how the police acted inappropriately during the situation.

Akosua Yeboah stated that the complainant was present. She further stated that English was not the complainant's first language, and his native language is French. Ms. Yeboah asked if anyone present was fluent in French and could act as a translator. She further stated that she knew some French and could try to translate if no one else could because

she has some knowledge of the language. She stated that the complainant had documentation with him, including medical x-rays that he wished to present.

The complainant thanked the Board. The complainant stated that he was from Africa, from the French speaking Ivory Coast. He agreed with what Mr. Lenihan said. The complainant stated that he feels that he was excessively brutalized by the police, and he has proof of it, including an x-ray. The complainant gave the x-ray to the Board so that they could look at it. He also stated that he had pictures from the hospital. Akosua Yeboah stated that the pictures were of the complainant wearing a brace. The complainant stated that he was just trying to show that he did sustain a significant injury during his encounter with the police officers. The complainant stated that he was simply trying to protect himself. He was afraid to go back to his house, and he was injured as a result. He further stated that the woman in the office called the police. He felt that the OPS were excusing the police, and that was not right. The complainant stated that he would at least like an apology from the police for his injury. Marilyn Hammond stated that this is a case where mediation would have been helpful. Akosua Yeboah told the complainant that she did not know how to tell him in French that the Board is not a judge or a jury, so while the Board is happy to hear his side of things, all the Board could do was examine the evidence to make sure the investigation was done properly. Ms. Yeboah stated to the complainant that the Board could not make a judgment whether the police were right or wrong in what they did, only whether the investigation was done properly. She asked the complainant if he understood what she was saying. The complainant stated that he understood. Chairman Allen stated that the x-ray was dated March 24 and the incident occurred March 6. He asked the complainant why there were eighteen (18) days between the injury and the hospital visit. The complainant stated that he went to the hospital on March 7. Chairman Allen stated that the x-ray was dated March 24. Marilyn Hammond asked if the complainant had any other medical records.

Chairman Allen asked if anyone was arrested. Marilyn Hammond replied that no one was arrested. She stated that they went to the hotel, and the job developer waited with them while they got settled in. Ms. Hammond further stated that they transported the whole family to the hotel. Reverend Smart asked why they were not arrested. Reverend Smart stated that he thought that if someone jumped on a police officer's back, they would surely be arrested. Ms. Hammond read the OPS report, which stated that the complainant alleged that the Police Chief ordered the family to be released. Ms. Hammond further reported that the officers stated they released the complainant and his family after they used officer discretion and consulted with a sergeant. The sergeant added that the APD would document the event through an SIR, and the agency was advised that charges for criminal trespass could be followed up at a later time if they felt it necessary. Ms. Hammond reported that with respect to the witnesses' accounts the Director stated to the officers that she "didn't know there were charges." A reasonable

person would have known that the complainant did violate the law in refusing to leave. This violation occurred in the officer's presence, subsequently requiring a level of physical force to be used by officers. Ms. Hammond further reported that officers cannot be placed in difficult situations where they are forced to handcuff a person, physically remove them, and then have the complainant say "I don't want any further prosecution." As previously stated, discretion was used by the officers; however the officers could have arrested the complainant upon their "direct knowledge."

Chairman Allen asked if the complainant asked for medical assistance. Ms. Hammond replied that the complainant did not ask for assistance, and he did not complain of an injury. Ms. Yeboah stated that the complainant went to the hospital the day after the incident.

Reverend Smart stated that he did not think that the complainant could have his cake and eat it too. He further stated that he did not understand how these people could jump on an officer's back, engage in aggressive behavior, try to strike the officers with their hands, and not be arrested.

Chairman Allen asked if the witnesses at the agency stated that the family was acting aggressively or if it was just the officers who made the statements. Marilyn Hammond stated that the witnesses made statements about aggression, including the job developer and staff members. She reported that there were three (3) witnesses who were questioned.

Marilyn Hammond stated that it was hard to tell how the injuries were caused because they did not know how hard the complainant hit his shoulder when he threw himself on the ground. She noted that there was a language barrier problem that prevents the Board from asking questions.

Chairman Allen stated that he had a translator who was on her way to the Board meeting in five (5) minutes. He stated that the Board should table the complaint and move on to another complaint while they waited for the translator because the Board had many questions. He also wanted the complainant to understand the final outcome after the Board was done reviewing the complaint.

It was noted that translator Lauren Mondie arrived. Chairman Allen stated the incident happened on March 6, but the x-ray was dated March 24, so he had two questions. His first question was why the complainant did not identify that he had a broken shoulder when it happened and why did he wait. Chairman Allen also asked if the x-ray was actually taken three weeks later. The complainant replied that the incident happened the night of March 6, so the immigrant's office told them to go to sleep and wait until morning to go to the hospital. Chairman Allen asked why the complainant had not complained when it happened. The complainant stated that it hurt when it happened, but

got worse overnight, so he went to the hospital. Chairman Allen asked if the complainant knew that his shoulder was broken the night of the incident. The complainant replied that he knew he had hurt his shoulder but thought it might be okay. It had gotten worse overnight. Akosua Yeboah pointed out that there was an eighteen-day difference.

Reverend Smart asked why, if the complainant was incorrect in his actions, why he was put up in a hotel after the incident. Akosua Yeboah asked if Reverend Smart was asking why the complainant had not been arrested. Chairman Allen stated that the police did not put the complainant up in a hotel. Reverend Smart asked why the police released the complainant. Reverend Smart stated that the complainant had refused to leave, fell on the floor, the son jumped on the back of an officer and he has seen people arrested for less than that. Board Counsel Patrick Jordan stated that the only easy answer to the question was that people have been let go who have done far more than the complainant. He further stated that from what he understood, the incident was mediated at the scene and the officers may have arrested him, but might have determined there was a language problem. If the social workers did not want to press charges, then they did not arrest the family. Reverend Smart stated that there was always a language problem in Albany. Chairman Allen stated that the witnesses and police officers claimed that the complainant's family attacked the police officers and his son jumped on an officer's back. He asked the complainant if he agreed with that characterization. The complainant stated that it was not true. The officers took him down in the elevator, then came back for the children and placed them in handcuffs. Akosua Yeboah asked the complainant what his purpose was in coming before the Board. The complainant responded that he came because he was sent a letter. Ms. Yeboah asked if the complainant thought he was required to come to the meeting because of the letter. Chairman Allen stated that the complainant was invited by the letter since his complaint was being heard at the meeting.

Marilyn Hammond noted that the complainant had stated that he wanted an apology. The complainant stated that the police made right what they did and apologized. Ms. Hammond asked the complainant for clarification if the police had apologized, or he wanted them to apologize. The complainant stated that the police had apologized. Ms. Hammond stated that she was confused. Chairman Allen asked the complainant if he had gotten an apology or if he wanted one. Ms. Hammond replied that he had gotten an apology. The complainant stated that he wanted the immigration office to tell him why they did that to him.

Chairman Allen told the complainant that the Board was there to ensure that his complaint was thoroughly investigated, they would have more discussion, and then make a decision. Chairman Allen asked the Board members what they wanted to do. Ms. Hammond stated that she had to agree with the OPS' findings because the complainant is saying it did not happen and now it is a "he said, she said," because the job developer and

another witness stated that the boy did jump on the officer. She further stated that the officer had an injury.

Reverend Smart asked Commander Matos for his thoughts on the matter. Commander Matos asked if Reverend Smart was referring to his previous comments regarding the lack of arrest. Reverend Smart asked if an officer had been injured. Marilyn Hammond responded that an officer had been injured. Commander Matos stated that the lack of arrest goes to the staff of the building because the staff did not want them arrested. He further stated that the root of the problem was that the staff explained to the family that there was no lead contamination within the building, and there was nothing more for the staff to do. He stated that the staff was unable to help them any further. The family desired a new apartment, and the staff was unable to give that to them. Commander Matos stated that the staff just wanted the family to leave the premises. He stated that they explained to the officers that the family would not leave, and it necessitated their removal from the building using physical means. He further stated that once they were removed the staff decided not to pursue the complaint because they had been satisfied with getting the family out of the building. Commander Matos stated that as to the injury, there was no complaint of the injury on the part of the complainant on that date, so the officers never documented it on their subject resistance form, which is something that they would normally do if there was an injury to a person that was the subject of force.

Ms. Yeboah asked if the complainant's immigration status was at risk at all as a result of the incident. Chairman Allen stated that the complainant was not arrested. Commander Matos stated that the documentation that the OPS received would not have gone to immigration.

Chairman Allen asked if the Board had any more questions or comments about the investigation. It was noted that there were no more questions from the Board.

Marilyn Hammond moved to concur with the OPS finding on the allegation of conduct standards as *exonerated*. Chairman Jason Allen seconded the motion. The motion carried unanimously.

Marilyn Hammond moved to concur with the OPS finding on the allegation of use of force as *unfounded*. Andrew Phelan seconded the motion. The motion carried unanimously.

Marilyn Hammond moved to concur with the OPS finding on the allegation of arrest authority and procedures as *unfounded*. Andrew Phelan seconded the motion. The motion carried unanimously.

Marilyn Hammond moved to concur with the OPS finding on the second allegation of arrest authority and procedures as *unfounded*. Chairman Jason Allen seconded the motion. The motion carried unanimously.

Reverend Smart asked that a letter be given to the complainant stating that he was not arrested, and that the CPRB reviewed the case and agreed with the conduct and the disposition of the case with the APD. Chairman Allen stated that the complainant would get the letter. A letter is written to every complainant. Reverend Smart stated the letter should be given so the complainant could carry it with him. Chairman Allen asked that special note be given to the fact that the complainant was not arrested. Reverend Smart asked to add that the complainant was not charged and he did not have a criminal record.

Chairman Allen told the complainant that the complaint was thoroughly investigated and the Board agreed with the investigation. He also stated that the Board noted that an officer was injured, and the complainant was not arrested, so he does not have a criminal record. He stated that the complainant would be getting a letter with this information.

Reverend Edward Smart moved to write a letter to the complainant. Chairman Jason Allen seconded the motion. The motion carried unanimously.

CPRB No. 28-09/OPS No. CC2009-045 (Presented by Anthony Potenza)

Anthony Potenza summarized the complaint. He stated that the complaint alleged two counts of misconduct; one of call handling and one of conduct standards. Mr. Potenza noted that a monitor had been assigned to the complaint and the incident occurred on June 3, 2009. Mr. Potenza reported that the complainant alleged that he and his cousin were stopped for a traffic infraction. The officer pulled the complainant out of the car immediately and began to search him with no probable cause. The complainant further alleged that the officer pulled his pants down, his underwear was cut open, and drugs were found. The driver was released with traffic violations and was threatened that if he did not shut up about his illegal process the complainant would be arrested for loitering. The first officer asked another officer for a knife and when questioned about doing that the first officer said "I don't give a f**k."

Mr. Potenza reported that he reviewed the following: Monitor's Report; the Civilian Complaint Form; the APD Civilian Complaint Report; the OPS Confidential Report; a signed statement by the complainant describing the incident in which permission was given by the complainant's friend who was with the complainant at the time of the incident to file the complaint; a description of the incident by the complainant; a statement by the complainant's friend describing the incident and getting permission to file the complaint on behalf of the complainant; an IDC dated February 9, 2010 in which the officer described the incident and his reasons for the use of a knife in order to obtain the evidence (it should be noted that according to the IDC the complainant stated that he

was in possession of crack and once evidence was secured by the officer, the complainant began to cooperate); an IDC dated October 6, 2009; a second IDC dated October 6, 2009; an IDC dated February 11, 2010; an IDC dated February 5, 2010; an IDC dated February 12, 2010; an arrest report dated June 3, 2009; an APD citation report where the driver was cited for failure to use a signal; a field test affidavit for possession of crack cocaine; an APD admissions screening sheet filled out by central billing officer; a suicide preventions screening guidelines filled out and signed by screening officer; an APD property report describing the individually wrapped pieces of crack; and the APD call ticket for the incident.

Mr. Potenza summarized the finding of the OPS on the first count of call handling as *exonerated*, where the acts which provided the basis for complaint occurred but the review showed that such acts were proper. The complainant alleged that the officer searched him without probable cause and no legal authority to do so. Mr. Potenza reported that based on the OPS investigation, the officer testified under oath at a suppression hearing that in his IDCs, there were several factors that led to the officer's search of the complainant's person. First, the officer observed the complainant reaching to the small of his back and moving around, as though he were attempting to reach for something or hide something in a grabbable area. Second, the officer witnessed a hand to hand transaction, consistent with a drug dealing transaction. Third, the officer indicated that he could smell the burning marijuana from inside the vehicle when he approached said vehicle. Mr. Potenza further reported that the officer had the complainant exit the vehicle, which the officer had the right to do according to the New York State Court of Appeals and the US Supreme Court. Based on the observed actions of the complainant, by the officer, the officer felt that the complainant posed a threat to his safety and may be hiding or possessing a weapon. The officer indicated that he patted the complainant down for weapons for his safety and the safety of other officers on the scene. When the complainant was patted down, the officer indicated that he felt a big lump behind the complainant's knee. The officer asked the complainant what the lump was, and the complainant responded "crack." Mr. Potenza stated that it should also be noted that the officers on the scene indicated that during this time the complainant was uncooperative. Mr. Potenza reported that the complainant was also under the influence of alcohol, marijuana, and crack cocaine, as indicated by him in his written statement, as well as noted in the booking admission sheet and suicide prevention form. Mr. Potenza further reported that the affirmation facts were heard in a court of law during a suppression hearing, heard by Honorable Judge Herrick, where the complainant was represented by an attorney. Mr. Potenza explained that the OPS report defined a suppression hearing as a criminal defendant's motion to prohibit the introduction of evidence alleged to have been obtained in violation of the defendant's rights. The Judge in the case ruled in favor of the people, that the officer's actions were proper in the steps taken to establish probable cause for the arrest and in obtaining evidence and denied the defendant's

motion. Mr. Potenza reported that the case cited criminal procedure law in a NY court of appeals case, *People v. Houseman*. The Judge asserted that the search of the occupant in the vehicle was proper due to the circumstance and what the officer had observed and smelled. The Judge also indicated in his ruling that the defendant, stating that it was crack, enabled the officer to retrieve the item for officer safety, and the safety of the defendant. Mr. Potenza stated that based upon the documents reviewed, the OPS report, and the monitors report, he moved to concur with the OPS finding of *exonerated* as to the first allegation of call handling. Marilyn Hammond seconded the motion.

Chairman Allen noted that a monitor had been assigned to the complaint. He asked if the monitor had anything to add. Monitor Richard Lenihan stated that he concurred with the OPS finding regarding the first allegation of call handling, but disagreed with the other finding.

Anthony Potenza moved to concur with the OPS findings on the allegation of call handling as *exonerated*. Chairman Jason Allen seconded the motion. The motion carried unanimously.

Mr. Potenza stated the next allegation was more involved and Mr. Lenihan might like to discuss his findings. The second allegation was a violation of conduct standards. Mr. Potenza summarized the finding of the OPS for the conduct standards allegation as *exonerated*, where the acts which provided the basis for complaint occurred but the review showed that such acts were proper. The complainant alleged that the officer's conduct was not proper when the officer cut his boxer shorts to obtain the crack cocaine. Based on the OPS investigation, the officer testified that he indicated in his IDC that the complainant stated the lump which the officer felt was crack. The officer also testified and indicated in his IDC that based on his experience, crack cocaine is usually packaged with razor blades, so the pieces of crack can be cut up into smaller pieces to be sold. The officer indicated that he was concerned for the safety of the complainant. Mr. Potenza further reported that individuals in custody often tend to eat and ingest evidence so as to destroy the evidence. Clearly this puts the person who ingests the evidence in serious risk of health or death. Based on the possibility that the complainant could also ingest the evidence and harm himself, the officer indicated the need to collect the evidence immediately. Mr. Potenza reported that the officer testified and indicated in his IDC that the complainant had several layers of clothing on, to include at least a couple of pairs of boxer shorts. The officer, per standard operating procedure, is authorized to conduct a strip search on defendants when appropriate and this is to be conducted in the privacy of the central booking unit. Mr. Potenza further reported that the alleged incident took place in the street, whereas the officer was not able to conduct a strip search of the defendant. The officers on the scene, including the target officer, in his testimony, indicated that the target officer did not pull the complainant's pants down, but only reached into his layers of clothing to obtain the evidence. The officer attempted to obtain the evidence in several

different manners, but was unable to do so. Mr. Potenza reported that, in addition, several officers indicated during this time frame the complainant was not cooperative, was aggressively pulling away and was struggling with officers. Even though he was in handcuffs, which is a temporary restraining device, it should be noted that many suspects are able to access different areas of their body while in handcuffs. He further reported that transporting the complainant in the wagon would have possibly afforded him an opportunity to access the crack to destroy or ingest the evidence and also to gain access to weapons or other dangerous instruments, such as razors which could have been packaged with the crack. This posed a safety risk to the complainant, who was under the control of the APD, as well as a safety risk to members of the APD including the wagon driver, booking personnel, and other officers. Mr. Potenza reported that based on the aforementioned facts, the officer used a pocket knife to cut a hole in the complainant's boxers to obtain the cocaine. Only after attempts were made to obtain the crack in other manners cited in the officer's testimony with no success, was the decision made by the officer at the scene to cut the boxers. This decision may have caused some degree of damage to the boxers, however, the officer's decision outweighed the possibility of ramifications of not obtaining the twenty-six (26) pieces of crack cocaine, which was packaged for sale and hidden by the complainant in his boxers in such a manner as to prevent the officers from finding and obtaining the crack. Mr. Potenza stated that it should also be noted that neither the complainant's attorney nor the complainant ever expressed any fear or concern for personal safety in regards to using a knife in obtaining the twenty-six (26) pieces of crack cocaine located in the boxer shorts. The judge also ruled in favor of the people in regard to the suppression hearing of how the evidence was obtained.

Mr. Potenza moved to concur with the OPS finding of *exonerated* as to the allegation of conduct standards. He stated that a thorough and complete investigation was conducted by OPS. He further stated that he strongly agreed with the monitor's recommendation that the use of a knife to cut open the complainant's boxer shorts to obtain evidence was overzealous. Rather than using a knife to cut open the complainant's clothing it would have been more appropriate, as stated by the monitor, to either transport the complainant to a police station or to take the complainant out of public view and remove his garments to obtain the evidence, especially since it was stated in the OPS and monitor's report that the complainant admitted to possessing crack.

Chairman Allen asked if there was a danger to the complainant, who was handcuffed, of pulling the crack out and putting it in his mouth. Commander Matos stated that the police have seen people slip their hands in front of themselves, which happens a lot, and they are able to unbuckle themselves in the wagon. He further stated that the police have found people ruining evidence, even going into their shoes, so it is something that can be done. Commander Matos explained that the way in which the complainant was wearing

his pants, his pants were below his waist and his underwear was exposed. He stated that the complainant was fighting the entire time and the officers feared there might be some sort of cutting instrument packaged with the crack, which is why the officer believed it was necessary for him to retrieve the evidence in a quick manner without transporting the defendant to an area where he would have quick access to those items. Chairman Allen asked if using a knife was consistent with SOP best practice. Commander Matos replied that a knife was unorthodox, and he agreed with the monitor that it was unorthodox. A judge, however, reviewed it and because of the stated exigency of the officer, the judge agreed that it was not improper. He stated that there is nothing in the SOP regarding how the police retrieve evidence, and there are no restrictions against utilizing a knife to cut something out. He further stated that it was going to be a matter of a training block in the future.

Chairman Allen asked Monitor Richard Lenihan to explain how the actions were inconsistent with the SOPs. Mr. Lenihan responded that evidently the law that pertains to stop and frisk and in his opinion the law of common sense did not prevail. He stated that the man admitted that he had drugs, he could not escape, and he could not destroy the evidence. Mr. Lenihan further stated that if the officer was concerned about the safety of the man, he should not have used a knife on him. He also stated that to conduct the search on Henry Johnson Boulevard, a predominately minority neighborhood, gives the perception of behavior that is not conducive to the community at large.

Chairman Allen stated to Mr. Potenza that he heard him agree with the monitor. Mr. Potenza stated that he did agree with the monitor. Chairman Allen stated that the Board was on the fence about the matter. Chairman Allen proposed that the Board send the complaint back to the OPS for clarification. Mr. Potenza stated he would like to withdraw his earlier motion. Mr. Potenza stated that he appreciated the input and guidance from the Board. Mr. Potenza moved to send back the complaint for further review and clarification with regard to the action taken by the police.

Chairman Allen asked if there were any other questions or comments from the Board. Reverend Smart asked what the motion was. Mr. Potenza stated that he withdrew his original motion. Reverend Smart stated he meant the new motion. Mr. Potenza stated that the new motion was to send back the complaint to the OPS for further review and clarification regarding its policies and procedures. Reverend Smart stated that Commander Matos was essentially stating that it should be classified as ineffective policy or training. Commander Matos clarified that what he was previously stating was that there was nothing in the SOPs or laws that would prohibit the use of a knife. It was unorthodox as far as the officer's methodology for obtaining the evidence. He further stated that the officer stated his fear of some kind of cutting instrument being packaged with the crack and he felt it necessary to obtain the evidence prior to transport and prior to transport to a facility where he could conduct a strip search. Commander Matos

further clarified that he had had discussions about the complaint with the Deputy Chiefs, and that some type of training should be delivered regarding the methods use in retrieving evidence on the street.

Chairman Allen stated that if the knife had slipped it would not have looked good to the public or the newspapers. Marilyn Hammond agreed with Chairman Allen and stated that she was on the fence about the complaint. She stated that she has seen this situation before. It could get out of hand, and someone could get seriously hurt. She stated that an officer could have gotten seriously hurt because people do package razor blades with drugs. Chairman Allen stated that he thought the Board was just going to send the complaint back with questions. Reverend Smart stated that he was confused, and asked if the officer took a knife and cut the complainant's underwear off. Commander Matos stated that he did not cut the underwear off, the officer cut a slit. Reverend Smart stated that he thought the crack was on the back of the complainant's leg. Commander Matos stated that was correct and stated that the complainant's pants were worn very low. Reverend Smart asked why the officer did not just cut the pants or jeans. Commander Matos replied that the complainant was wearing several layers.

Board Counsel Patrick Jordan stated that he had a problem with the way the Board was handling the recommendation because they were doing it differently than they have ever done previously. Mr. Potenza originally concurred with the finding. Chairman Allen stated that the monitors' report explicitly stated that the monitor did not concur with OPS finding. Mr. Jordan stated that the Board cannot find the outcome that they are looking for in the SOP. He stated that there is nothing there that says the action could not be done. He further stated that by sending it back they are reaching the same outcome, and they should be asking for policy/training. He stated that the Board was accepting OPS' report and if it is correct, then that's all they can do.

Chairman Allen stated that he understood. Mr. Jordan reiterated that if the Board sent the complaint back, they would get the same answer. Reverend Smart stated that the officer did not do anything wrong but did not use good judgment. He further stated that even though it was not wrong, this is where training should kick in and the officer should realize that his approach might not be the best way to deal with the situation. Mr. Potenza stated that these concerns were expressed in his original motion. Monitor Lenihan stated that the Board should defer to its Counsel, who would know more about the law pertaining to stop and frisk searches, but the current SOP does not draw a line.

Chairman Allen stated that Mr. Jordan's recommendation is to vote on the OPS findings if the facts were clear and the case thoroughly investigated, but the Board could still ask questions regarding training and whether this is how the APD is going to proceed moving forward. Mr. Potenza stated that it should be separated from the motion of concurrence.

Mr. Jordan asked if it would be two concurrences. Mr. Potenza stated that the first allegation was voted on.

Anthony Potenza moved to reinstate his motion to concur with the OPS finding on the allegation of conduct standards as *exonerated*. Chairman Jason Allen seconded the motion. The motion carried unanimously.

Reverend Edward Smart moved to send a letter to the Police Chief concerning training and the use of a knife. Anthony Potenza seconded the motion. The motion carried unanimously.

Chairman Allen thanked Mr. Jordan for his advice. Mr. Jordan stated that he did agree with the monitor, but he also agreed with Mr. Potenza that the Board had a very large placement for add-ons. He further stated that Judge Herrick ruled that all of this was acceptable. Reverend Smart stated that he agreed in total, but common sense should have prevailed.

CPRB No. 45-09/OPS No. CC2009-097 (Presented by Andrew Phelan)

Andrew Phelan summarized the complaint. Mr. Phelan stated that he went to OPS on June 21 and 23 to review the complaint. The incident occurred on October 11, 2009 in reference to a fight. The call came in as a 911 call and three police cars responded to the scene. The complaint alleged two counts of use of force and one count of conduct. Mr. Phelan reported that according to the complainant, she was leaving a party at her friend's house. The complainant alleged that as she was walking away from the party, everyone else ran when the police pulled up and pulled her by her arm and threw her to the ground. She further alleged that another officer assisted in helping the officer knee her in the side, back and her head, telling her that she was on private property. The complainant's friend who lives on the property was yelling, telling the officers that she knew the complainant and that she did nothing wrong. The complainant alleged that an officer took her index finger and twisted it backwards stating to her "it was because she wanted to play hardball." She believed that she also had \$17.00 missing from her wallet when the officers took it out of her back pocket for her ID. The complainant alleged that she did not get arrested.

Mr. Phelan reported that based on the OPS investigation, officers are allowed under the NYS Court of Appeals in *People v. DeBour*, to initiate street encounters. The officers were at level three (3) when they encountered the complainant. NYS Court of Appeals in *People v. DeBour* states that, "an officer can have the right to stop an individual based upon a reasonable suspicion the individual is committing, has committed or is about to commit a felony or misdemeanor, but not have the right to frisk the individual. This seizure can be forcible with a frisk if the officer can articulate an independent and reasonable suspicion that the suspect is armed and dangerous." Mr. Phelan further

reported that upon arrival to the call, which was dispatched as a fight call, where the caller specifically stated, “can you send the police, there are kids outside making noise and fighting.” Upon police arrival, the complainant stated that people started running away when they saw the police. She then kept walking away and refused to stop despite the request to do so. She further refused to remove her hands from her pockets despite repeated requests from officers. Mr. Phelan reported that the officers at the time of contact would not have known if weapons may have been involved during this fight, and the complainant’s refusal to remove her hands from her pockets, coupled with the nature of the incident, presented a reasonable suspicion to officers that she may have had some involvement, hence her ultimate seizure. Mr. Phelan further reported that as the officers attempted to interview the complainant, they indicated that she was not cooperative. She refused to answer any of their questions, she was angry and irate, and during this time, she had both hands in her sweatshirt pockets in a manner as if she was concealing a weapon. Mr. Phelan reported that the officers stated the complainant was instructed several times to take her hand out of her pockets and that she refused to follow their orders. She was then advised she was going to be checked for weapons, and she continuously pulled her hands and arms away, preventing the officers from performing a search. Mr. Phelan further reported that the complainant was repeatedly given verbal commands by the officers to stop resisting and put her hands behind her back. Officers attempted to detain her for officer safety purposes. Both officers and the complainant fell to the ground/lawn due to her combative resistance. The complainant was held down on the ground for the purposes of placing her in handcuffs. She further resisted officers by grabbing onto the handcuffs and pulling them away in an effort to avoid being restrained. Mr. Phelan reported that witnesses stated the officers slammed the complainant to the ground and had their knee in her back and on the back of her head. The accounts of the officers and witnesses differ with falling and slamming the complainant to the ground. He further reported that what is clear is the complainant was highly uncooperative with officers despite their attempts to conduct a preliminary investigation into the fight call. A witness indicated that upon approach the officers initially stated, “Don’t run, don’t go anywhere” and that he complied with their orders. The witness added the complainant was pulling her arms away from officers preventing them from arresting her. Mr. Phelan stated that it should be noted that the witness, too, was stopped and detained by officers. He, however, was cooperative during their investigation, and he was later released without incident. Mr. Phelan reported that photographs taken of the complainant’s knee are consistent with the emergency room report of a very minor abrasion, a minor abrasion to the left eye area and a small bump behind left ear. He further reported that x-rays were taken and there was “no evidence of a fracture or dislocation” and the x-ray taken of her spine/cervical revealed a “normal cervical spine.” There was no evidence that the force utilized by the officers was excessive, because the “provisional diagnosis” was contusions and knee pain.

Mr. Phelan asked if the Board had any questions. It was noted that the Board did not have any questions.

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

Mr. Phelan noted that there was a monitor appointed to the case. He further stated that he read the monitors report.

Mr. Phelan reported that the complainant also alleged that she was not certain that she had any money in her wallet. Based on the OPS investigation, an officer stated that he located the wallet in her back jeans pocket and removed her identification and at no time did he remove \$17.00 or any money or any other property from the wallet or pockets. Mr. Phelan further reported that based on her demeanor, her refusal to cooperate by removing her hands from her pockets, coupled with the fact that she refused to provide the officers with her pedigree information, they were justified in retrieving the wallet from her.

Mr. Phelan asked if the Board had any questions. It was noted that the Board did not have any questions.

Mr. Phelan reported that the complainant made a second use of force allegation in her complaint. Based on the OPS investigation, at no time did the officer twist the complainant's fingers and at no time did he state, "it was because she wanted to play hardball." Mr. Phelan reported that all statements made by the officer and other officers were lawful verbal commands to cooperate with them. By all accounts if she did sustain an injury to her finger, she could have sustained the injury by her own aggressive, combative and uncooperative actions by grabbing onto the handcuffs and pulling them away or by attempting to grab and scratch the officer's hands through the handcuffs, coupled with her failure to comply with lawful questioning during a police investigation.

Mr. Phelan asked if the Board had any questions. It was noted that the Board did not have any questions. It was noted that Monitor Richard Lenihan had nothing to add.

Andrew Phelan moved to concur with the OPS finding on the first allegation of use of force as *unfounded*. Marilyn Hammond seconded the motion. The motion carried unanimously.

Andrew Phelan moved to concur with the OPS finding on the allegation of conduct standards as *not sustained*. Marilyn Hammond seconded the motion. The motion carried unanimously.

Andrew Phelan moved to concur with the OPS finding on the second allegation of use of force as *not sustained*. Chairman Jason Allen seconded the motion. The motion carried unanimously.

B. *Appointment of New Members to the Committee on Complaint Review for September 2010.*

The following Board members were appointed to the Committee on Complaint Review for September 2010: Chairman Jason Allen, Marilyn Hammond, Reverend Edward Smart, Anthony Potenza, Andrew Phelan and Akosua Yeboah.

C. *Committee/Task Force Reports*

By-Laws and Rules

Committee Chairman Jason Allen reported that there had been a proposal for the Common Council to require the police department to put an officer's complaint history on a complaint form. The Common Council has agreed to table the recommendation pending implementation of the Early Warning System. He further reported that the Common Council decided not to go ahead with the two other proposals.

Community Outreach

Committee Chairman Reverend Smart reported that he had nothing new to report. Chairman Allen asked if any new Community Outreach meetings had been scheduled. Reverend Smart responded there were no meetings scheduled.

Mediation

Board member Anthony Potenza reported that the mediation meeting went well. Chairman Allen stated that the Board should have a sub-committee meeting to discuss the next steps for mediation. He stated that the next steps were not clear. Patrick Jordan stated that he was going to take comments from the Union and the Board and try to reformat the protocol. Chairman Allen stated that he would like to meet with Commander Matos in his office in middle or late July. Coordinator of the Board Sharmaine Moseley stated that the GLC was in the process of scheduling a follow-up meditation meeting for the last week in July. Chairman Allen stated that a week before that meeting he would like to schedule a meeting with Mr. Jordan at City Hall. Akosua Yeboah stated she would not be available for that meeting. Chairman Allen thanked Mr. Potenza for going to the meeting.

Police Department Liaison/ Policy Review/ Recommendations

Committee Chairman Andrew Phelan, Jr. stated that he had nothing new to report. Chairman Allen asked Commander Matos when he would like to meet for a discussion

regarding the Early Warning System. Commander Matos replied that June 11, 2010 was the last time it was discussed and they were looking at a thirty (30) day time turn around to meet. He further stated that he needed to look at his schedule and have an opportunity to meet with the Deputy Chiefs to get their schedules. Commander Matos stated that he would give available dates to the GLC so that a meeting could be scheduled. He stated he would have more comments when he gives his report later. Chairman Allen stated that he was unavailable from July 4-July 13, which was outside the thirty (30) day time frame, but if the meeting was held after July 13, then it might work.

Public Official Liaison

Chairman Jason Allen reported that he would like to schedule a meeting with the Mayor or Deputy Mayor. Patrick Jordan stated that he had not seen the Deputy Mayor in weeks because of a personal issue. Chairman Allen stated that the Board would table scheduling a meeting for the time being.

Task Force on Monitors

Chairman Allen reported that he noticed two (2) extremes on the monitors' reports. He stated that one monitor was able to go to all the interviews. Another monitor was unable to go to the interviews, and it was unclear why. Chairman Allen asked Commander Matos for his thoughts on the OPS reports when the monitor is called out and whether they could explicitly state whether a monitor is present for the interview or not, and if not, why not. Commander Matos responded that he did not want to get into a position of animosity with the monitors if they feel there is no offense taken from the OPS recording that they could not respond because of A, B, and C. Chairman Allen stated that there was no animosity that a monitor was present at the meeting. Chairman Allen further stated that he wanted to know if the monitor could not make it because there was five (5) minutes notice or whether a monitor could not make it with three (3) days notice. Commander Matos stated that monitor Theresa Balfe summarized that in one of her reports her inability to make an interview, and in her reports she specifically addressed that the witness was supposed to show up at a reasonably designated time and actually showed up 45 min early, so the OPS ended up taking a statement. Commander Matos further stated that the OPS could do the same on their end, and it was not a problem, as long as the monitors agree that it was not creating problems. Chairman Allen asked Monitor Richard Lenihan what he thought. Mr. Lenihan replied that it would not bother him. Chairman Allen stated that he wanted to make sure there is communication where the monitors give the OPS enough notice to get there, that they are afforded the opportunity within reason, and that monitors are there to represent Board members.

Chairman Allen stated that at the next meeting he would like to talk about this, and he would have two requests for the monitors. The first request would be for the monitors to

be more explicit if they are not able to attend interviews to report why not. The second request would be for the OPS to also report. Commander Matos agreed. Chairman Allen asked if there were any thoughts from the Board. Ms. Yeboah stated that she would find the information helpful when reviewing cases. She stated that in one of her recent cases she found it hard to determine if the monitor had the benefit of going to the interview. Chairman Allen asked if there were any other questions. It was noted that there were no questions.

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 as of today, there are currently seventy (70) active complaints before the Board for review. Of those seventy (70) active complaints, five (5) were reviewed at tonight's meeting, which leaves the Board with sixty-five (65) active complaints.

It was further reported that three hundred and eighty (380) 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 fifty-six (456).

It was reported that since the Board's last meeting, the GLC received one (1) grievance form. The total number of grievance forms received to date is one hundred and seventy-four (174). In response to the GLC's outreach to all one hundred and seventy-four (174) individuals, the GLC has received forty-seven (47) CPRB complaint forms.

Chairman Allen asked if there were any complaints that need to be reviewed. Ms. Moseley stated that there were no cases ready for review. Reverend Smart asked what about the other sixty-five (65) complaints. Ms. Moseley replied that before the Board can review those complaints, OPS has to send the GLC their reports. Reverend Smart asked if that meant that OPS had sixty-five (65) cases to review. Chairman Allen stated that there was a chart sheet included in the meeting packet materials. Reverend Smart asked if this meant that the Board had caught up in reviewing ready complaints. He stated that it was good that the Board has caught up.

Monitors

It was reported that the Common Council's Public Safety Committee approved the five (5) new CPRB monitors. It was further reported that the new monitors underwent training at the GLC. The training also served as a refresher course for the Board's current monitors. The Board now has ten (10) monitors.

Board Vacancies/Re-appointments

It was reported that the Board still has one (1) vacancy which would have to be filled by the Mayor. Chairman Allen asked if the GLC has heard from Board member Ronald Flagg, since his term expires in October. Chairman Allen asked if the GLC could notify the Common Council that Mr. Flagg's term is about to expire. Chairman Allen asked if any other member terms were going to expire. Ms. Moseley stated that she would let him know.

Upcoming Meetings

It was reported that the GLC is in the process of scheduling a follow-up meeting regarding the mediation program for the last week in July. Ms. Moseley asked the Board to send their availability for that week.

It was reported that the next Board meeting is scheduled for September 9, 2010 at the Albany Public Library on Washington Avenue.

F. *Report from the Office of Professional Standards*

Commander Ron Matos reported that the APD was looking to move away from including the history of complainants in case files when the Board would come in to review them. He stated that these files would include criminal histories, that are seen from time to time and the department was looking at pulling that information out so that they could review cases a little bit more objectively and look at the complaint instead of the complainant's history. Commander Matos further reported that the Chiefs were both in agreement with the change, and it was being brought up just in case Board members see a change in what they are being presented. It was a collective decision to allow more objectivity when looking at a complaint. Reverend Smart asked if the OPS would still run a background check on complainants. Commander Matos stated that the OPS did not run DCJS criminal histories, but does look at Albany Police Department histories to see where a person is living, where they are staying, who they may be associated with, and those types of things. Commander Matos further stated that by knowing these things it may lead to more witnesses, and it was just an investigative step. He stated that they would still be looking at these types of things, but not at complete criminal histories. Reverend Smart asked Commander Matos if he thought it was fair for the Board members to see what the OPS sees when they look at a report. He stated that if the OPS can see something that the Board cannot see, then the Board may not have the full picture. Reverend Smart further stated that these types of documents can impact a person's credibility. Commander Matos responded that when the OPS reaches a decision it is based on a summary of the facts and the facts are presented to the Board. He further stated that the OPS just wanted to remove the criminal history to prevent a biased review of the complainant. Chairman Allen stated that he agreed with the new approach. He

asked why the Board should see the history of the complainant if they cannot see the history of the officer. Akosua Yeboah stated that she tried to disregard the criminal histories in the complaints or pretend they are not presented because she believes they are not relevant.

Commander Matos reported that there was a meeting on June 11, 2010 to discuss the new Early Warning System, the new component blue team that is coming online, as well as the forthcoming policy. He stated that they are looking at a recording method to get some of the data to the Board and looking at the possibility of a public recording method as well. Commander Matos further reported that they were looking at a few different models and they were looking at scheduling another meeting to discuss how they would deliver the data.

Commander Matos stated it was moving forward quite nicely. He further stated that mediation had already been discussed and he had already sent an email to the GLC about what dates he was available. He stated that if it was not clear, the GLC could email him again.

Commander Matos further reported that on June 15, 2010 he met with Assistant Chief Bruno, Lieutenant Benson and Sergeant Dermot Whelan, who are involved with training and they discussed a new employee evaluation system that is coming on-line. He explained this would help them improve performance and spot deficiencies. Commander Matos stated they were also going to try to utilize some of the data that has been coming into the OPS in helping the Sergeants' complete their evaluations. He further stated that there are going to be some changes with the evaluations, but they were hoping to deliver a better type of mentoring. He added that it would be done on an annual basis.

Chairman Allen stated that one of the follow-up actions regarding cameras was to look at the SOPs that other boards and police departments in the state of NY have regarding cameras and how they share information. He stated that the GLC was going to start work on that and asked if they have any feedback. Coordinator of the Board Sharmaine Moseley stated that a student assistant was working on it. Chairman Allen stated that he did not want to wait until September to hand the information over. He further stated that in the next couple of weeks hopefully they could have some input on that.

Chairman Allen asked Mr. Jordan about the SOPs for the monitors. He asked if monitors can have copies of the SOPs. He further asked Mr. Jordan, since he had not been to meetings in a while, if he had any thoughts on the matter. Mr. Jordan replied that he did not see why the monitors could not have a copy of the SOPs. He further stated that he knew that there were three or four monitors who were steady, but he did not think they should give a copy to anyone who was leaving. Mr. Jordan stated that the Board was specifically appointed by an elected body. Chairman Allen stated that the monitors were

as well. Mr. Jordan agreed, but stated that the Board was held to a different standard. He further stated that he would run it by his boss and get back to the board. Chairman Allen stated it had been a while, but he thought he had to sign a piece of paper when he got the SOP. Mr. Jordan stated that a paper does need to be signed. He further stated that the SOP was at the OPS, and the GLC has an un-redacted copy which it can view and they are not taking documents home. Chairman Allen stated that it might help them with their reports.

G. *Report from the Chair*

Chairman Jason Allen stated that he had nothing new to report.

V. **Public Comment**

Chairman Jason Allen opened the floor for public comment. A citizen stated that the language problem the Board had at tonight's meeting was likely to happen again. He stated that the library building was equipped with laptops that can translate English into other languages.

Patrick Jordan stated that as the Board may have noticed, Bill Kelly was coming to the meetings more. He further stated that tonight was probably his last official meeting. He stated it has been seven years and he has been to almost every single meeting. He stated that his boss thinks a new set of eyes might be good. He also stated he would continue working with the monitors. Chairman Allen thanked Mr. Jordan for his help.

VI. **Adjournment**

Chairman Jason Allen moved to adjourn the meeting. Andrew Phelan, Jr. seconded the motion. The motion carried unanimously. The meeting adjourned at 7:55 p.m.

Respectfully submitted,

Andrew Phelan, Jr.
Secretary