

City of Albany
Citizens' Police Review Board
GWU the Center
274 Washington Avenue- Teen Center Conference Room
September 13, 2012
6:00 p.m. - 8:00 p.m.

Present: Mickey Bradley, Marilyn Hammond, Andrew Phelan Jr., Anthony Potenza, and Reverend Edward Smart.

Absent: Maritza Martinez, Eugene Sarfoh, and Akosua Yeboah.

I. Call to Order and Roll Call

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

II. Approval of the March 8, 2012 Meeting Minutes

Marilyn Hammond moved to approve the March 8, 2012 meeting minutes. Anthony Potenza seconded the motion. The motion carried unanimously.

Approval of the April 12, 2012 Meeting Minutes

Anthony Potenza moved to approve the April 12, 2012 meeting minutes. Marilyn Hammond seconded the motion. The motion carried unanimously.

Approval of the May 17, 2012 Meeting Minutes

Marilyn Hammond moved to approve the May 17, 2012 meeting minutes. Anthony Potenza seconded the motion. The motion carried unanimously.

III. New Business

A. New Complaint(s)

1. New Complaints Received since the June 12, 2012 Meeting

Chairman Edward Smart reported that the Board received seventeen (17) new complaints since its June 12, 2012 meeting. Board Secretary Andrew Phelan, Jr. moved to forego the reading of all of the new complaints in an effort for efficiency. Chairman Edward Smart seconded the motion. Chairman Smart then stated that he wished to amend the motion to allow for the reading of CPRB No. 40-12/OPS No. CC2012-089. Mr. Phelan agreed to the amendment. The amended motion carried unanimously.

CPRB No. 26-12/OPS No. CC2012-063

According to the complainant, her vehicle was struck by a police vehicle and the officer never stopped. The complainant further alleged that when she called the police station, an officer was rude and not helpful.

*It was noted that a monitor **was not** assigned to investigate this complaint.*

CPRB No. 27-12/OPS No. CC2012-053

The complainant alleged that on the night of June 12, 2012, an officer tasered him with three different taser guns and pushed him to the ground face first while continuing to taser him. The complainant further alleged that the officer kicked him in the back and ribs and told him to "Shut the f**k up."

*It was noted that a monitor **was** appointed to investigate this complaint.*

CPRB No. 28-12/OPS No. CC2012-060

According to the complainant, an officer followed him for three (3) blocks before allegedly pulling him over for failure to signal. The complainant further alleged that the officer searched him and his car for half an hour. The complainant claimed that because the Sergeant did not initially find anything, the Sergeant broke the side panels off his car and ripped up the carpet using a knife.

*It was noted that a monitor **was not** assigned to investigate this complaint.*

CPRB No. 29-12/OPS No. CC2012-066

According to the complainant, on two (2) separate occasions, an officer allegedly targeted, stopped, and questioned him.

*It was noted that a monitor **was not** appointed to investigate this complaint.*

CPRB No. 30-12/OPS No. CC2012-071

The complainant alleged that an officer was taking up the entire sidewalk and when she asked him to move, he was nasty and abusive towards her. The complainant further alleged that the officer threw her against the door causing her to injure her already broken elbows. The complainant claimed that the officer said something that was insulting to her.

*It was noted that a monitor **was** assigned to investigate this complaint.*

CPRB No. 31-12/OPS No. CC2012-073

According to the complainant, on July 3, 2012 the complainant's fiancé called the police regarding a matter of trespassing and assault. The officers arrived and were able to calm everyone down. The complainant alleged that the officer went and talked to the suspects instead of him and his fiancé.

*It was noted that a monitor **was not** appointed to investigate this complaint.*

CPRB No. 32-12/OPS No. CC2012-071

According to the complainant, she witnessed a Black male trying to flee from an officer. The complainant alleged that the officer handcuffed the individual and threw the individual back over the fence. The complainant further alleged that the individual was on the ground when an officer began to stomp the man in his mid-section. When the officer saw the complainant outside, he allegedly asked her to sign a false statement, which she refused to do. The complainant alleged that the officer became agitated and threatened her with losing her job. According to the complainant, she dialed her boss's number for the officer and the officer allegedly told the complainant's boss that she was rude and disrespectful.

*It was noted that a monitor **was** appointed to investigate this complaint.*

CPRB No. 33-12/OPS No. CC2012-080

According to the complainant, an officer allegedly approached the complainant wanting to search her. When the complainant refused to be searched, the officer allegedly pepper sprayed the complainant in her face, handcuffed her tightly, and continued to beat her. The complainant further alleged that the officer smashed her head into the ground four (4) times which caused her to temporarily lose her memory.

*It was noted that a monitor **was** appointed to investigate this complaint.*

CPRB No. 34-12/OPS No. CC2012-082

According to the complainant, a detective allegedly stopped and detained him by asking him several questions which included inquiring as to the contents of his bag and what he was selling. Another officer arrived on the scene and allegedly accused the complainant of causing problems. The complainant alleged that the detective and the officer harassed him. The complainant further alleged that according to his neighbor, the individual the officers were looking for was Caucasian and not Black like the complainant. The complainant alleged that his rights were violated and he was racially profiled.

*It was noted that a monitor **was** appointed to investigate this complaint.*

CPRB No. 35-12/OPS No. CC2012-081

According to the complainant, officers pulled him over and failed to ask him for his license and registration. The complainant further alleged that he was pulled out of his driver side window and taken down to the ground. The complainant claimed that the state trooper who was present repeatedly punched him in the face and tasered him.

*It was noted that a monitor **was** appointed to investigate this complaint.*

CPRB No. 36-12/OPS No. CC2012-087

According to the complainant, two (2) officers allegedly approached him, his wife, and brother-in-law, shined their flashlights into the vehicle and asked what the problem was. When they questioned the officers about the reason for the stop, the officers allegedly responded with profane language and accused them of being "crack heads." The complainant further alleged that the officer threatened him. The complainant claimed that the officer failed to give him his badge number and name when requested. According to the complainant, he was ticketed and as he drove around the corner another officer pulled him over and gave him two (2) more tickets.

*It was noted that a monitor **was** appointed to investigate this complaint.*

CPRB No. 37-12/OPS No. CC2012-075

According to the complainant, an officer allegedly contacted her by calling her several times on her home phone. The complainant further alleged that the officer was verbally abusive and unprofessional by trying not to respond to the call for assistance that she placed to the Center Station. The complainant claimed that when the officer showed up to her home, he was rude and aggressive in his line of questioning.

*It was noted that a monitor **was not** appointed to investigate this complaint.*

CPRB No. 38-12/OPS No. CC2012-079

According to the complainant, while driving home he was allegedly tailgated and yelled at by an officer who was driving a white Dodge Durango. When the complainant asked the reason for the stop, the officer allegedly became aggressive and denied that he pulled the complainant over. The officer allegedly falsely ticketed the complainant for speeding and crumbled the ticket up and threw it at the complainant.

*It was noted that a monitor **was** appointed to investigate this complaint.*

CPRB No. 39-12/OPS No. CC2012-090

According to the complainant, an officer pulled the complainant's friend over during a traffic stop. When the complainant's friend told the officers there was a weapon in the car, the officers yanked the complainant from the car, slammed him onto the ground, and kicked him in his face until he was knocked out. The complainant alleged that while he was at the Albany County Correctional Facility, the police raided his home and stole some of his personal belongings. The complainant further alleged that the officers broke his earring when they booked him.

*It was noted that a monitor **was** appointed to investigate this complaint.*

CPRB No. 40-12/OPS No. CC2012-089

According to the complainant, while waiting on a corner for a taxi, an officer pulled up next to him and roughly handcuffed him. When the complainant asked why he was handcuffed, he got into an argument with the officer. The officer allegedly refused to explain to the complainant why he was being handled so roughly. The complainant alleged that the officer took his belongings and threw them onto the ground. The complainant further alleged that the officer slammed him onto the steps, pressed his knee into his back, un-cuffed him, and let him go.

*It was noted that a monitor **was not** originally appointed to investigate this complaint. However, after the inclusion of additional information by the complainant, the Board voted to **assign** a monitor.*

CPRB No. 41-12/OPS No. CC2012-093

According to the complainant, as he and a friend were sitting eating pizza at a restaurant, officers came in and allegedly told him to put his hands on his head. When the complainant asked the officer why he was being detained, the officer allegedly told the complainant to "shut up." The officer allegedly pushed the complainant and his friend while continuing to ask where the BB gun was.

*It was noted that a monitor **was** appointed to investigate this complaint.*

CPRB No. 42-12/OPS No. CC2012-095

According to the complainant, on August 13, 2012, officers searched him and charged him with possession of a controlled substance. The complaint further alleged that the officers entered and searched his apartment without a warrant. The complainant claimed that when he was arrested he never received a property slip. The complainant further claimed that his money is missing.

*It was noted that a monitor **was not** appointed to investigate this complaint.*

2. Complaint(s) for Board Review

Chairman Edward Smart noted that Eugene Sarfoh was not able to attend this meeting and therefore, the Board would move onto the next complaint for Board review.

CPRB No. 13-12/OPS No. CC2012-032 (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint. Ms. Hammond stated that the complainant alleged that an officer came to the rear of the residence and commanded the front door be opened. As the door was opened, an officer allegedly jabbed the occupant in the neck, screamed at him, and shoved him. The officer then allegedly yelled at the complainant. Another officer allegedly approached the complainant and stated that the complainant was under arrest, handcuffed him, and threw him onto the couch. It is alleged that while being searched, an officer pushed the handcuffed complainant backward over an end table onto the couch. The complainant was allegedly grabbed by the throat and choked for about four (4) minutes and at one point while the complainant had his nose and mouth covered, the officer said, "You gonna bite?" Chairman Smart asked if the complainant was present. It was noted that the complainant was present.

Ms. Hammond stated that the following documents were reviewed: Office of Professional Standards (OPS) Confidential Report; Booking Arrest Report; the CAD Call; Two (2) IDC's dated 4/3/12; Four (4) IDC's dated 3/31/12; Subject Resistance Report; An oral statement by the complainant dated 1/22/12; and several Witness Statements, some of which were taken by phone.

Ms. Hammond reported that based on the OPS investigation, there were about 40 – 50 people in a single floor apartment. One witness stated that the complainant made a stupid comment and was running his mouth. The witness stated that he could understand why the officer was yelling at the complainant because the complainant was mouthing off. Ms. Hammond stated that on April 11, another witness stated that the complainant was calling the police names and the complainant stated, "Hit me, pig," and was inappropriate and disrespecting the officer. The complainant tried to grab an officer's uniform, and the officer used a straight arm technique to gain control of the complainant. The complainant then tried to bite the officer so the officer applied pressure to a pressure point located behind the complainant's ear. The complainant was then taken into custody without further incident. The complainant was under the influence of drugs and alcohol. Ms. Hammond further reported that on April 9, a phone interview was conducted with a witness who stated that he did not know the complainant, but that the complainant was giving the officer a hard time and he did not witness any abuse. The complainant had also recognized the officer from a prior incident arrest. The officer said that each time he has dealt with the complainant, the complainant was intoxicated and belligerent. The complainant used profanity in telling the police that they should leave, that he would not

allow them to take his friends to jail and that he did not have to respect them. The complainant also profanely told the police that he hated them. During the arrest, the complainant's change fell on the floor and the complainant profanely told the officer to pick up the money. The complainant told the officer that he would probably steal the money because he was a useless cop and he did not make any money. Ms. Hammond further reported that one of the witnesses had a fake identification and was under age. Four (4) other individuals that night were arrested and gave statements.

Ms. Hammond acknowledged that monitor William Van Valkenburg was assigned to this case and was present. She asked Mr. Van Valkenburg if he had anything that he wished to add. Mr. Van Valkenburg stated that Ms. Hammond did a good job of summarizing everything. He further stated that there was too little supportive testimony for the complainant. The testimony the complainant provided was conflicting. Mr. Van Valkenburg stated that the complainant made the initial allegations against the wrong officer. The complainant's allegations lack corroborating evidence.

Chairman Edward Smart acknowledged that the complainant was present. The complainant stated that he would like to add a few things to the statements that were filed. The complainant stated that he is a college student who was at a house party. The complainant was at the house for only a few minutes before the police arrived at the house. The complainant stated that as soon as his friend opened the door, an officer struck his friend, and immediately began yelling at the complainant. The complainant stated that he was just minding his own business and the officer was yelling in his face and acting like he was doing something wrong. The complainant stated that he was being peaceful and respectful and the officer was continuing to yell into his face. The complainant admitted that he became angry and said some things that he regrets, but that he in no way said anything that was threatening or potentially intimidating. The complainant stated that the officer then placed him under arrest and sat him down on the couch. After about five (5) minutes, another officer came over, stood him up and searched him, which caused the complainant's change to fall out on the floor. The complainant stated that his request that the officer pick up the change made the officer mad. The officer then threw the complainant onto the couch. The complainant stated that the officer attempted to choke him and incite him to try and bite and assault the officer. The complainant stated that this is really what happened and he wanted this account added to the record.

Chairman Smart asked the monitor, Mr. Van Valkenburg, what portion of the complainant's version was inconsistent with the version supplied by the OPS and his own investigation. The complainant interjected that he was not under the influence of drugs or alcohol at the time of the incident. The complainant also stated that he was never tested for being under the influence of alcohol or drugs. Mr. Van Valkenburg stated that a witness claimed that the complainant had more than a couple of drinks prior to arriving

at the house. Mr. Van Valkenburg further stated that the misidentification of the officer by the complainant is troublesome. He stated that he believed the allegation that an officer choked the complainant for three (3) or four (4) minutes was unrealistic. Mr. Van Valkenburg explained that an officer could choke an individual to unconsciousness in a matter of thirty (30) seconds. Mr. Van Valkenburg also stated that the choking allegation is not corroborated by any evidence and there are too many inconsistencies. The complainant's friend went to the OPS as a witness, and stated that the complainant was difficult throughout the ordeal. The complainant stated that he wished to make the point that even if an individual is being difficult, if an individual is handcuffed and seated, the officer should not be allowed to choke the individual. Ms. Hammond stated that this is where the complainant has no corroborating evidence. Ms. Hammond stated that there is no evidence that any physical abuse took place. The complainant stated that he believes he was abused while under arrest and the officer who arrested him abused his power. The complainant further stated that he would not have filed a complaint if he did not think he had a just cause. Ms. Hammond responded that none of the witnesses corroborate the complainant's story.

Mickey Bradley stated that he found the included material on pressure points found within the monitor's report interesting as an acceptable practice to gain control of an individual. Mr. Bradley stated that perhaps what the complainant perceived as choking was actually a permissible police practice. Chairman Smart asked the complainant if he stated at the time of the event, "I would rather go to jail than let you arrest my friends." The complainant replied that the statement was taken out of context. Chairman Smart told the complainant that one of the witnesses that the complainant had provided told the OPS detective that the complainant made this statement at the time of the incident. Chairman Smart reiterated that the witness was quoting the complainant. Chairman Smart stated that the Board can only weigh the available evidence.

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

Marilyn Hammond moved to concur with the OPS finding regarding the first use of force allegation as *unfounded*. Anthony Potenza seconded the motion. The motion carried unanimously.

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

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

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

CPRB No. 19-12/ OPS No. CC2012-040 (Presented by Chairman Edward Smart)

Chairman Edward Smart summarized the complaint. The complainant alleged that officers violated his civil rights by forcing entry into his home with their guns drawn and handcuffing him and his girlfriend while searching for weapons. It was noted that a monitor was assigned to investigate this complaint.

Chairman Smart reported that he reviewed the following documents: Citizen's Complaint Form; Confidential Report; Witness Statements; Call Log; Incident Report; IDC; Disciplinary Advise of Rights; Case Law; A Grievance Notification.

Chairman Smart asked if the complainant was present. It was noted that the complainant was present. Chairman Smart thanked the complainant for attending. Chairman Smart noted that monitor Thomas Neilen was assigned to the case and was present. Mr. Neilen stated that the events unfolded as they were described by the complainant, however case law shows that the actions of the police were proper. Mr. Neilen referred to the last page of his report which lists the relevant laws and emergency procedures. Mr. Neilen stated that he understood why the complainant was upset but noted that due to exigent circumstances, the officers behaved properly.

Chairman Smart asked the complainant if he wished to speak. The complainant stated that he has been a resident of Albany for over twelve (12) years now and that he owns the property where he lives. He further stated that he has always believed that if an individual follows the law and respects people, that the individual should not experience problems. The complainant stated that he has instilled this philosophy into his children. He was at home, asleep with his girlfriend, when he heard loud banging on his door. He got up from bed, looked outside and saw police officers. Initially, he was scared because he did not understand what was going on. The complainant stated that his fear caused him to make phone calls to friends and family to seek information and advice, but unfortunately, he was unable to reach anyone. The complainant further stated that he opened a window and asked an officer if he could help them. He later found out that the officer he spoke to was the sergeant in charge of the group of officers. The complainant stated that the sergeant told him that there was a report that there was a hostage in the house and that the police would need to enter the house to ensure that nothing was wrong. The complainant stated that he told the officers that he did not think that they were at the

right place and that he was alone with his girlfriend, who got out of bed, came to the window and affirmed that everything was alright. The complainant further stated that only a minute elapsed between when he first spoke to the officers and their subsequent actions. The complainant stated that the officers still insisted that they had to enter the complainant's residence. He told the officers that they could not enter his home and he reiterated that he was alone with his girlfriend and nobody else was with them. He also emphasized that his girlfriend told the police that she was fine and everything was alright. After this brief exchange, one of the officers began to count down from 5 seconds.

When this occurred, the complainant stated that he agreed to come downstairs, but before he could, the officer finished counting and kicked the downstairs door down, rushed into the house, came up the flight of stairs and demanded that the complainant open the upstairs door or they would break that door down as well. The complainant opened the door and the officers rushed in with their flashlights and guns drawn and detained him and his girlfriend inside of the apartment. The complainant stated that both he and his girlfriend were handcuffed and thrown on the couch. The officers searched the house for weapons, which he did not understand, as they had said they were responding to a potential hostage situation, which has nothing to do with weapons. The complainant stated that he was detained for roughly fifteen (15) minutes while they searched his entire house. The complainant further stated that he told the officers that what they were doing was wrong and it was a violation of his privacy. The sergeant responded that the complainant did not open his door. The complainant told him that he did not open his door because the officers did not have a warrant, and he is a law abiding citizen who did not understand why the police had to enter his residence when he had done nothing. The complainant stated that he told the officers that everything was fine within the house and that both he and his girlfriend had attested to that fact. The complainant wanted to know why the police had kicked down his door and whether they would repair it. The complainant stated that the police response was that if he went down to Albany City Hall, perhaps someone there would do something about it. The complainant further stated that this was condescending behavior. The complainant stated that he did not resist the officers at any point and he did not use any profane language.

According to the complainant, after the incident, he filed a Freedom of Information Law (FOIL) request so that he could see the officer's report regarding the incident. The report indicated that officers originally received a phone call that "pinged" near XXX Second Street which is on a completely different part of the street than where the complainant's residence is. The second "ping" from where the phone call came from was from somewhere around Second Street. At that point, the police were chasing a moving target, which was proven by the fact that the location kept changing. The complainant believes that the officers involved in this incident decided to stop by his residence and harass whoever happened to be the resident. There was no reason for the treatment that he

received and the door repair was going to cost over five hundred (500) dollars. The complainant also stated that he has pictures of the damage that was caused which includes a screen that was broken by the police.

The complainant stated that he remembered a shooting that occurred in his neighborhood, when the police were searching for one of the suspects and helicopters were circling around. He remembered being in his driveway and seeing how low the helicopter was flying. The complainant stated that he mentions this because he is trying to make sense of what happened to him. The complainant further stated that the experience traumatized him and really affected him for the days after. The actions of the police were tantamount to calling him a liar and they should have believed what he initially said. The complainant reiterated that he was very upset by the actions of the police and that he is a law abiding citizen who did not deserve the treatment that he received. This experience has changed the way he views the police and questions why this occurrence had to happen.

Chairman Smart thanked the complainant for sharing his story with the Board and encouraged the complainant to file a claim with the city for any property that was damaged. He further stated that he was certain the city will consider the circumstances by which all of this occurred. Chairman Smart stated that he looked into the case and the Albany Police Department assured him that, in this instance, protocol was followed. Chairman Smart further stated that anything the Board says to the complainant tonight will not comfort him. The Albany Police Department (APD) and the Office of Professional Standards (OPS) took this case very seriously in reviewing what happened. Chairman Smart explained that the last "ping" off of the phone call came from right outside of the complainant's house. The police had been to three (3) or four (4) different locations while pursuing the call and by law the police were required to investigate. The police are obligated by law to ensure that life is preserved. Unfortunately, when the police arrived at the complainant's residence, they were not required to have a warrant to gain entry due to the circumstances. The police are compelled to see for themselves that the complainant was telling the truth and that is why the police took the actions that they did. Chairman Smart stated that he wanted the complainant to know that the events that transpired bothered him, and everyone else who reviewed this case recognized that the complainant is a law-abiding fine citizen of Albany. Chairman Smart stated that from one citizen to another, he empathizes with the complainant and he hopes that the complainant will submit a claim to the city for all of the damages that the complainant's property sustained. Chairman Smart reiterated that when such a distressing call comes into the police, they are required to act as they did in this instance. Chairman Smart stated that he reviewed all of the actions that took place and that the police actions were not flawed.

The complainant asked Chairman Smart if he believed that the complainant was at fault in this instance. Chairman Smart replied "No." The complainant asked Chairman Smart who was going to take care of his property. Chairman Smart replied that he was sure that the city will take care of it. Chairman Smart introduced the complainant to the Board's Counsel, Patrick Jordan. He asked Mr. Jordan if the city would take care of the property damage. Mr. Jordan replied that he would have to check into it. Chairman Smart stated that he believes the city will want to reimburse the complainant.

The complainant asked what would happen if he had not been at home when the police arrived. Chairman Smart stated that the police would have kicked the door into the house to gain entry regardless of whether or not the complainant had responded to them. The complainant asked why doors had not been kicked in at the other addresses. Chairman Smart replied that one of the addresses was a vacant lot, and the other was an abandoned boarded up house, where the police were able to check without breaking down a door. The complainant stated that if the police had bothered to check again after they arrived at his residence, they would have seen that the "ping" had moved again. The complainant stated that he believes the police work in this instance was sloppy.

OPS Detective Hendrick stated that a specific address was given when the caller called the police. Detective Hendrick explained that the officers went to the address that was given, but the address did not exist. The police then did a search on the caller's name to find a last known address, which did not return any results, at which point the state police were contacted to see where the "ping" came from. It was not as if the APD were driving all around the city looking for the cell phone. Chairman Smart stated that in this instance, the officers acted in accordance with the APD's Standard Operating Procedures (SOP). Chairman Smart stated that the person at fault is the person who fraudulently made the call. The complainant stated that he was still affected by the actions of the police. The complainant asked why he was placed under arrest and why his residence was searched for fifteen (15) minutes. The complainant stated that he still wanted to know why the officers were looking for weapons. Chairman Smart stated that if someone's life is in danger, the police must control the situation, and their method of controlling the situation involves handcuffing everyone to minimize the chance that something can happen. The complainant stated that the police were just waiting for an opportunity to act the way they did.

Chairman Edward Smart moved to concur with the OPS finding regarding the forced entry allegation as *exonerated*. Marilyn Hammond seconded the motion. The motion carried unanimously.

CPRB No. 15-12/OPS No. CC2012-036 (Presented by Chairman Edward Smart)

Chairman Edward Smart summarized the complaint. The complainant alleged that officers responded to the complainant's residence and about eight (8) officers stood outside with their guns drawn. The complainant stated that he felt like an "Al-Qaeda terrorist." This incident occurred as a result of what the complainant posted on Facebook. It was noted that a monitor was not assigned to this complaint.

Chairman Smart reported that he reviewed the following documents: Citizen's Complaint Form; OPS Report; Confidential Report; Property Report; Call Report; Detective Report; Facebook Posting; Facebook Remarks; Facebook Photo; Response to postings; All Departmental reports.

Chairman Smart summarized the OPS finding for the call handling allegation as *exonerated*, where the acts which provided the basis of the complaint occurred, but the review showed that the acts were proper. Based on the OPS investigation, the complainant's mother called the police department and other citizens stated that the complainant had posted pictures of a shotgun to Facebook and was threatening to harm himself. Chairman Smart stated that the police received the call from the complainant's mother, with whom, the complainant lives. The officers contacted the mobile crisis unit to have the complainant evaluated. Chairman Smart further stated that the complainant was brought outside and the intentions of the police were to save the life of the complainant.

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

Chairman Smart stated that he agreed with the OPS finding of *exonerated*, and that the police acted in accordance with the SOP. Chairman Edward Smart moved to concur with the OPS finding of *exonerated* for the call handling allegation. Anthony Potenza seconded the motion. The motion carried unanimously.

CPRB No. 18-12/ OPS No. CC2012-038 (Presented by Anthony Potenza)

Anthony Potenza summarized the complaint. The complainant alleged improper conduct when officers allegedly stopped the complainant as the result of a felony vehicle stop, handcuffed her and her daughter, and told the complainant to shut up. The stop was the result of a call to police from a probation officer who reported seeing an unknown subject hand a rifle to the complainant, several blocks away from where the stop was conducted. Based on the information that they had received, the officers responded to the area of the vehicle and conducted a felony traffic stop in accordance with department SOP. Mr. Potenza stated that upon review of the patrol video of the incident, no unprofessional conduct was witnessed. All of the officers involved in the incident stated that they did not witness the officer in question being disrespectful to the complainant at any time, and nobody heard anyone tell the complainant to "shut up." Mr. Potenza stated that the video

contained audio of the officer attempting to explain the reason for the stop. He further stated that there was audio of the officer explaining the traffic stop that was recorded on the complainant's cell phone. Mr. Potenza stated that none of this evidence shows the officer behaving in a rude or disrespectful manner. The felony traffic stop was predicated on the information supplied by the probation officer. The police stopped the complainant's vehicle, handcuffed the complainant and her daughter and then ascertained that the object was not a rifle. The object was in fact an umbrella, handed to the complainant by the complainant's brother. Mr. Potenza stated that the complainant contends that the officer was rude and disrespectful and did not apologize for the stop and the placement of herself and her daughter into handcuffs. The complainant's daughter had a non-verbal learning disability and was traumatized by the incident. Mr. Potenza stated that he reviewed the audio and video that was given to the OPS. Mr. Potenza further stated that the conduct of the officer, while less than cordial, did not rise to the level of rude or disrespectful. Mr. Potenza stated that although it would be more desirable for the officer to be more friendly and to provide more of an explanation, he agreed with the OPS finding of *exonerated*, where the act which provides the basis for the complaint occur, but the review shows such acts were proper.

Mr. Potenza reported that he reviewed the following documents: Citizen Complaint Form; Civilian Complaint Report; Confidential Report; Memo from the Probation Officer, in which the reason for the call to the police was stated; Call Ticket Dealing with Felony Stop; and 9 IDC's. It was noted that a monitor was not assigned to this case.

Mr. Potenza asked if the complainant was present. It was noted that the complainant was present. The complainant stated that she does not know what Mr. Potenza saw or what he read, but he was not present at the scene. She then showed Mr. Potenza the "rifle" that was actually an umbrella. The complainant stated that she was stopped at Albany Medical Center (AMC). The complainant further stated that the officer told her that he did not have to apologize to her because he was going home to his daughter. The complainant stated that she saw all of the video and that the police video did not contain audio of the event. Mr. Potenza stated that he saw the complainant's video and because it contained audio, he believed it was more accurate. The complainant stated that her daughter was there with her as well. The complainant further stated that the police offered to help her daughter because they knew that what they had done was wrong. The complainant stated that she did not know about the Civilian Review Board, but saw that the Board exonerated the police and allowed them to speak to citizens any way that they want to. The complainant stated that she was in attendance to tell the Board that is not true. The complainant further stated that the probation officer was wrong for putting her in a predicament that she should not have been in. The complainant stated that the only person who was of any help was OPS Detective Andrew Montalvo. The complainant stated that she is quite sure that if this situation happened to the daughter of a Board

member, the Board would not be exonerating anyone. She stated that she did not care if the Board exonerated the officer or not, this was not over because the officer was disrespectful and rude. The complainant stated that she has called the County Commissioner, Mayor Jennings, and Carolyn McLaughlin. The Board is acting like everything is ok, and everything is not ok. The complainant stated that the Board is not going to forget her name and the Board is not going to get away with it. All of this happened because a reliable probation officer reported it. The complainant stated that her brother did not give her the umbrella it was her son. She parked her car and then was immediately surrounded by police officers. The complainant stated that she told police to be careful with her daughter and that her daughter had never been in any trouble before.

Chairman Smart stated to the complainant that the Board had not voted yet. Chairman Smart asked Detective Hendrick if there was audio of the event. Detective Hendrick responded in the affirmative and added that Mr. Potenza had listened to it. Mr. Potenza explained that although the complainant might have found the officer's conduct reprehensible, and although it bothered him, the officer's conduct never rose to the level of a conduct standards violation. The complainant stated that the problem is she was put in the position of being involved in a felony stop, which she did not understand, and that after the police realized they made a mistake, nobody apologized. Mr. Potenza told the complainant that she is correct. The complainant stated that now her family has a trust issue with the police. The complainant asked how issues like this can be avoided in the future. The complainant stated that the police did not care about the well being of her child. Mr. Potenza told the complainant that she can rest assured that the officer is being dealt with by the APD. The complainant stated that she is not sure of anything because nobody reached out to communicate with her. She did all of the communicating in regards to this event. The complainant asked how she could contact the probation officer who initially called in. The complainant also stated that when she asked an officer what a felony stop was, she was told that the officer could not tell her that. The complainant stated that APD Chief Steven Krokoff and Detective Montalvo helped her. Chairman Smart stated that he is upset that the complainant is upset. The conduct of an officer should be of the highest standards. If the officer's conduct did not adhere to those standards then it should be looked into. Chairman Smart stated that he would like to see a monitor assigned to this case.

OPS Detective Kathy Hendrick stated that the early warning system has identified the officer in question and the officer has been sent for further training with respect to this incident. Chairman Smart stated that he did not understand why it took so long for the officers to recognize that no illegal activity was taking place. Chairman Smart stated that if he was an officer he would have been apologetic and that there is nothing wrong with admitting to making a mistake. A certain amount of professionalism is required. Chairman Edward Smart moved that a monitor be assigned to this case to review the

video and audio. Marilyn Hammond seconded the motion. The motion carried unanimously.

Mickey Bradley asked Detective Hendrick why the officer was sent for additional training if the OPS finding was exonerated. Detective Hendrick stated that each case is looked at individually. This officer was identified as needing additional training, separate from this incident. Mr. Bradley asked if the training involves tactical issues or conduct standards. Detective Hendrick replied that the training would cover both topics.

An individual in the audience commented that the complainant and her daughter should not have been handcuffed and surrounded by guns. The complainant stated that she was told to "Shut up," by the officer in question while trying to calm her daughter.

Chairman Smart thanked the complainant and stated that a monitor will be investigating the matter. The complainant stated that she was not complaining about the felony stop, but about the conduct of the officer. The complainant asked Chairman Smart about the Early Warning System. Chairman Smart explained the Early Warning System to the complainant and explained that the Early Warning System identifies a pattern of behavior.

CPRB No. 21-12/OPS No. CC2012-043 (Presented by Mickey Bradley)

Mickey Bradley summarized the complaint. The complainant alleged that she told officers someone illegally entered her apartment with a key and stole her birth certificate. She alleged the officer filed a false police report and that her birth certificate was not lost, it was stolen.

Mr. Bradley summarized the OPS finding for the call handling allegation as *unfounded*, which is appropriate where the review shows that the act or acts complained of did not occur. The complainant alleged that the officers filed a false report by listing on a report that her birth certificate was lost and not stolen. Based upon the OPS investigation, it was determined that a burglary had not occurred and that the birth certificate was lost. Although the officers involved stated that the complainant did not appear to be harmful to herself or others or need professional assistance, she did exhibit signs of confusion. Several witnesses confirmed that the complainant's behavior was at times irrational.

Mickey Bradley reported that after review of the relevant paperwork, it was clear that the APD, upon a search of the complainant's residence, found no evidence that anyone had entered the apartment and the door was locked and secured. Additionally, nothing besides the birth certificate appeared to be missing. Mr. Bradley stated that based on the OPS investigation, the complainant told the officers that the certificate was kept in a closet and that the police reported that the closet was messy and unorganized. Mr. Bradley reported that the complainant's neighbors confirmed that the complainant

appeared to be very paranoid at times and will hide her own belongings in a parking lot and then complain that they have been stolen. Mickey Bradley further stated that the complainant takes all of her food with her when she leaves her apartment due to a fear that it will all be stolen. The property manager of the complainant's apartment stated that the complainant has complained that there are cameras in her smoke detectors. The complainant has also taken the property manager to small claims court after accusing him of putting bed bugs in her bed. That claim was dismissed. In response to repeated claims that someone had a key to her apartment, the property manager had the locks on the complainant's door changed. No other residents have reported any burglaries or other illegal activity. There are nine (9) other complaints on file where the complainant alleged burglaries or larcenies that allegedly took place in her apartment and no forced entry was found. Items which the complainant claimed were stolen include: a bus pass, a hair comb, a compact disc, a pair of jeans, a phone charger, a dvd, and laundry soap. The investigating OPS detective reported that the complainant had atypical responses to the questions that were asked and the complainant appeared nervous and confused. It appears that the complainant suffers from mental illness, but did not appear to be a threat to herself or others, so no course of action was taken. The complainant has since moved with no forwarding address.

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

Mr. Bradley stated that based upon all of the background information, he agreed with the OPS finding of ***unfounded*** for the call handling allegation. Mickey Bradley moved to concur with the OPS finding of ***unfounded***. Chairman Edward Smart seconded the motion. The motion carried unanimously.

Chairman Smart stated that he would like to commend Anthony Potenza for the great care he took in preparing the previous case. He further stated that he wanted to thank the OPS for their work. Chairman Smart stated that both the Board and the OPS wants to make sure that all of their bases are covered in all cases where there is some indication that there is a possibility that some error has occurred in terms of the SOP.

B. 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 Committee Chair Akosua Yeboah was not present to give her report due to the fact that she was recovering from surgery.

Mediation

Committee Chairman Edward Smart reported that the proposal for mediation had come back to the Board. Board Counsel Patrick Jordan stated that he and the Government Law Center (GLC) are still making recommendations concerning the proposed mediation process. Mr. Jordan noted that the Office of Professional Standards (OPS), Police Chief Krokoff's Office, and the Police Union are also involved in the process. Mr. Jordan noted that forms are being created for the mediation process. Mr. Jordan further stated that training curriculum for the mediators was being worked on and fine touches on mediation protocols were being applied. Mr. Jordan stated that he would send information to Chairman Smart concerning the progress being made with mediation.

Police Department Liaison with Policy Review/Recommendations

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

Public Official Liaison

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

Task Force on Monitors

Chairman Edward Smart reported that Committee Chair Akosua Yeboah was not present.

C. Appointment of New Members to the Committee on Complaint Review for October 2012

The following Board members were appointed to the Committee on Complaint Review for October 2012: Mickey Bradley, Marilyn Hammond, Andrew Phelan Jr., Anthony Potenza, and Chairman Edward Smart.

Chairman Smart also asked that the Board reschedule its November 8th meeting to the first Thursday in November.

D. Report from the Government Law Center

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

Complaint Inventory as of Date of Meeting

It was reported that included in tonight's packets is the complaint database scorecard. As of today, there are currently thirty (30) active complaints before the Board for review. Of

the thirty (30) active complaints, four (4) were reviewed and closed by the Board at tonight's meeting. This leaves the Board with twenty-six (26) active complaints. There are six (6) cases ready for the next meeting agenda.

It was reported that five hundred and twenty-one (521) complaints have been closed. The total number of complaints that remain suspended from review is sixteen (16). The total number of complaints filed to date is five hundred sixty-three (563).

It was further reported that since the Board's last meeting, the Government Law Center (GLC) received twenty-nine (29) grievance forms, bringing the total number of forms received to three hundred and seventy-one (371). In response to the GLC's outreach to all individuals, the GLC has received ninety-nine (99) Citizen Police Review Board (CPRB) complaint forms.

Board Member Vacancies

It was reported that there is still one (1) vacancy on the Board, which is a Common Council position. Board Chairman Edward Smart stated that he has not heard anything from the Common Council regarding the appointment of a new member. Additionally, it was reported that four (4) Board members (Chairman Edward Smart, Maritza Martinez, Andrew Phelan, Jr. and Akosua Yeboah) all have terms that will expire at the end of October. Andrew Phelan, Jr. will not be eligible for re-appointment at this time, since he has served two (2) full terms.

NACOLE Conference

It was reported that Maritza Martinez would be unable to attend the NACOLE conference so Chairman Edward Smart, Anthony Potenza and Marilyn Hammond would be the Board's representatives at the conference, which is scheduled for October 13-18. Coordinator of the Board Sharmaine Moseley confirmed that she will be attending the conference as well.

E. Report from the Office of Professional Standards

OPS Detective Kathy Hendrick reported that through the APD's Early Warning System, two officers had been identified. Detective Hendrick noted that both officers have been referred to training.

F. Report from the Chair

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

IV. Public Comment

Chairman Edward Smart opened the floor for public comment. A woman asked the Board if there is any sort of screening process for complaints before the Board reviews them. Chairman Smart replied that there is no screening process and that anyone who files a complaint will have his or her complaint reviewed. The Board's jurisdiction only applies to the Albany Police Department. If a complainant declines to pursue their complaint, the Board is required to inquire as to the reason the complaint was dropped. Chairman Smart stated that the Board wants to ensure that Albany police officers are operating in the right manner according to standards. The woman who asked the question responded that she believes Chairman Smart answered her question, but followed up with a hypothetical question inquiring as to if she was ticketed by an Albany police officer, how her complaint would come before the Board. She then clarified that she wanted to know how the Board decides if a matter is too trivial to be pursued by the Board. Chairman Smart reiterated that the Board hears every complaint submitted to the Board. The woman thanked the Board for answering her question.

Chairman Smart asked if there were any other questions or comments. A man asked the Board how much time an individual is allowed after an incident to file a complaint. Chairman Smart stated that individuals are allowed one hundred and twenty (120) days from the time of an incident to file a complaint. The complainant asked if it is impossible for a complaint to be filed after that one hundred and twenty (120) day period. Chairman Smart replied that if a complaint comes to the Board after that initial period, the Board could vote to still accept the complaint. Chairman Smart noted that the complainant needs to allege fairly egregious behavior for the complaint to be accepted after that initial time period. Chairman Smart stated that the Board has a high standard when accepting complaints that are submitted after the one hundred and twenty (120) day period because he believes it is unlikely that the details of the incident will be sufficiently recalled.

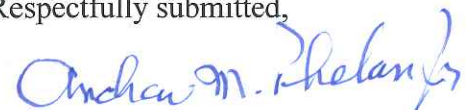
The man who asked the question acknowledged Chairman Smart's point and went on to state that he was arrested following an incident at his brother's house that involved his brother and his brother's girlfriend. The man stated that he received a phone call from his mother asking him to see what was going on at his brother's house and therefore went to check on his brother. The man stated that after arriving at his brother's house there were two officers who asked him to identify himself, which he did. The officers then told the man that he could not enter the house because they were conducting an investigation. The man stated that he cooperated with their instruction that he was not to enter the house. The man stated that he commented to the officers that every story has two sides and based off of that remark, the officers arrested him. The man further stated that the arresting officer claimed that he warned the man to leave multiple times and the man did not cooperate with his instruction. The man stated that he was originally charged with a crime, but that the crime was later changed to obstruction of justice. The man further stated that he has the report at home and further stated that no Black man goes into a

house and points angrily in a police officer's face because they are aware of the consequences of that action. The man questioned the practice of changing a charge based upon one set of facts. Chairman Smart asked the man what the state of the criminal case was and the man answered that the charge was again changed to disorderly conduct. Chairman Smart asked Detective Hendrick to define obstruction of justice for the man. Detective Hendrick explained that an obstruction of justice occurs when an officer is physically obstructed from performing their duties. The man stated that in this instance there was no physical obstruction. He never turned around and never physically obstructed anyone. The man stated that he commented to the officers that every story has two sides as he was exiting the house. Chairman Smart stated that the man's statement might not have been the right thing to say at that time. The man agreed with Chairman Smart but stated that it was not cause for arrest. Someone asked the man if his case was still pending in court, and the man answered that the case is not pending because he accepted the reduced charge of disorderly conduct. The man also stated that the whole thing was nonsense and that before this incident he had never been arrested in his life. The man said that the officers involved included one Albany Police officer and one trooper. He further stated that he is unsure of which one was the arresting officer. The man also stated that he asked the officer to retrieve his property that had fallen onto the ground. Chairman Smart noted that this portion of the meeting was designated for comments and thanked the man for sharing his story and concern.

V. **Adjournment**

Chairman Edward Smart moved to adjourn the meeting. Marilyn Hammond seconded the motion. The motion carried unanimously. The meeting adjourned at 7:45 p.m.

Respectfully submitted,

A handwritten signature in blue ink that reads "Andrew M. Phelan, Jr." with a stylized flourish at the end.

Andrew Phelan, Jr.
Secretary