

City of Albany
Citizens' Police Review Board
GWU the Center
274 Washington Avenue- Teen Center Conference Room
October 11, 2012
6:00 p.m. - 8:00 p.m.

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

Absent: Akosua Yeboah

I. Call to Order and Roll Call

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

II. Approval of the Agenda

The agenda was reviewed. Mickey Bradley moved to approve the agenda. Marilyn Hammond seconded the motion. The motion carried unanimously.

III. Approval of the June 12, 2012 Meeting Minutes

The June 12, 2012 meeting minutes were reviewed. Eugene Sarfoh moved to approve the June 12, 2012 meeting minutes. Andrew Phelan Jr. seconded the motion. The motion carried unanimously.

IV. New Business

A. *New Complaints*

1. New Complaints Received since the September 13, 2012 Meeting

Chairman Edward Smart reported that the Board received four (4) new complaints since its September 13, 2012 meeting. Board Secretary Andrew Phelan, Jr. read the new complaints.

CPRB No. 43-12/OPS No. CC2012-098

According to the complainant, he was pulled over to the side of the road to allow a police vehicle, with its lights activated, to pass by. The complainant alleges that two officers jumped out of their vehicles with their guns drawn and yelled at the complainant to get out of the car with his hands up. The complainant could not do as requested because his car was still in drive. A couple of individuals yelled at the officers that the complainant's car was still in "drive." The officers allowed the complainant to put his car in "park."

The complainant did as instructed and got out of his car. The officers allegedly handcuffed the complainant, placed him against the police vehicle and asked the complainant for his ID. The officers wrote the complainant's information down and told him to leave.

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

CPRB No. 44-12/OPS No. CC2012-101

According to the complainant, criminal trespassing charges were filed against her landlord, so an officer was assigned to keep her informed of the case. On September 13, 2013, an officer and a fire department investigator came to her house. They allegedly informed the complainant that unless she had smoke detectors she could not stay there. The complainant alleges that she was bullied into agreeing to stay at her home for 10 days if she purchased smoke detectors. The officer allegedly changed his mind and wanted the complainant out that night. After some further discussion, someone who lived in the building came outside. When questioned by this individual, the officer got defensive and acted unprofessional. The complainant further alleges that the officer threatened to arrest her for pleading with him. Since there were no available beds at the homeless shelters, the investigator told the complainant that it was okay for her to remain in her apartment.

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

CPRB No. 45-12/OPS No. CC2012-100

According to the complainant, her minor son told her that four (4) police officers allegedly tackled him to the ground, got on top of him, and repeatedly punched him in his head because he robbed a man.

*A monitor **was** appointed to investigate this complaint.*

CPRB No. 46-12/OPS No. CC2012-102

According to the complainant, on September 15, 2012, the complainant and her boyfriend were pulled over on I-787 by two (2) police vehicles. The complainant alleges that the officers told her that they failed to come to a full stop at a red light which was untrue. The complainant further alleges that the officers asked them both for ID. The complainant claims that the officers pulled them over because she was a Black female with a White man. The complainant alleges that they were racially discriminated against.

*A monitor **was** appointed to investigate this complaint.*

2. Complaint(s) for Board Review

CPRB No. 3-12/ OPS No. CC2012-010 (Presented by Eugene Sarfoh)

Eugene Sarfoh summarized the complaint. Mr. Sarfoh reports on August 6, 2011, the complainant alleged that during his interactions with the members of the Albany Police Department, he was subjected to excessive force and unwanted statements were made to him. The complainant was walking in the area of New Scotland Ave. and Dana Ave. where the incident occurred. Mr. Sarfoh further reported that the complainant was passing a bar that was nearby in the area, and officers were responding to a call of a fight outside the bar. The fight spilled out into the streets and the officers were able to end the fight. The parties traveled up a few blocks and continued to fight, which caused the officers to subsequently stop the disturbance. According to the complainant, he was not involved with the fight. The complainant came across a bottle on the ground and he proceeded to kick the bottle. The complainant did not know the bottle he kicked was a glass bottle instead of a plastic bottle and it shattered in the street. An unmarked police vehicle pulled up, officers confronted the complainant and asked for him to stop. At this point, the complainant alleged that the officer used excessive force by pushing him and escorting him to go back to the location where the glass was shattered.

Mr. Sarfoh reported that the complainant did not report the incident right away and some time has elapsed. Mr. Sarfoh further reported that the complainant stated the incident has been bothering him for a long time and that is when he decided to file a complaint. Mr. Sarfoh further reported as a result of the time delay, there was no opportunity for the officers to interview any other witnesses.

Mr. Sarfoh reported that he reviewed the following documents: OPS Confidential Report; Inter-Departmental Report regarding a fight related to the incident; Officer Notes; Civilian Complaint Form; Citizens Complaint Form; Arrest Report for Disorderly Conduct; Booking Report; two (2) Call Tickets; and Detective Notes.

Mr. Sarfoh summarized the OPS finding for the use of force allegation as *not sustained*, where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that an officer used excessive force against him by pushing him and then forcibly escorting him back to the location where he broke the bottle. Based on the OPS investigation, the officer believed that the complainant was intoxicated and acknowledged it may have been a factor in the incident. Mr. Sarfoh further reported the officer involved denied using any physical contact with the complainant. Another officer on the scene indicated he did not recall any physical contact or altercation with the complainant. There were attempts to locate two (2) other witnesses who were participants in the fight that the officers were responding to. Mr.

Sarfoh further reported that one of the witnesses stated that her intentions were elsewhere and she had no recollection or any dealings with the complainant. The second witness (a male) was sent correspondence in the mail, but there was no response.

Eugene Sarfoh moved to concur with the OPS finding for the use of force allegation as *not sustained*, where the review showed there was insufficient evidence to prove or disprove the facts made in the complaint. Marilyn Hammond seconded the motion. The motion carried unanimously.

Chairman Edward Smart asked if the complainant was present. It was noted that the complainant was not present. Mr. Sarfoh reported that monitor Frank White was assigned to this case. Mr. White stated that he had nothing to add.

Mr. Sarfoh summarized the OPS finding for the conduct standards allegation as *not sustained*, where the review showed there was insufficient evidence to prove or disprove the facts made in the complaint. The complainant alleged that the officer was unprofessional and made unwarranted remarks regarding his actions. Mr. Sarfoh reported that the complainant alleged the officer made unwanted comments by asking him "Are you employed?" and stated "Then you will be able to pay the ticket for \$200 I'm about to write you." Mr. Sarfoh reported that the ticket was never written and issued to the complainant. Based on the OPS investigation, the officer admitted to making a similar statement as claimed by the complainant (referring to having a job to pay for a ticket being issued); however this statement in and of itself does not constitute a violation of the rules of conduct pursuant to the SOP.

Eugene Sarfoh moved to concur with the OPS finding for the conduct standards allegation as *not sustained*, where the review showed there was insufficient evidence to prove or disprove the facts made in the complaint. Marilyn Hammond seconded the motion. The motion carried unanimously.

CPRB No. 10-12/OPS No. CC2012-012 (Presented by Andrew Phelan Jr.)

Andrew Phelan Jr. summarized the complaint. Mr. Phelan stated that this complaint involved conduct standards and arrest authority and procedures. He reported that the incident occurred on January 24, 2012.

Mr. Phelan summarized the OPS finding for the conduct standards allegation as *not sustained*. The complainant alleged that an officer yelled at him and stated "Are you off your (expletive) meds? You're crazy." Based on the OPS investigation, the complainant admitted using profanity towards the officers. Mr. Phelan further reported that the officers denied using profanity. The officers stated that the complainant was uncooperative. There was no audio of the incident in question to listen to, so it is impossible to ascertain exactly what was said during the verbal exchange.

Mr. Phelan summarized the OPS finding for the arrest, authority, and procedures allegation as ***unfounded***, where the act complained of did not occur or was misconstrued. The complainant alleged that he was pulled over for no reason. Based on the OPS investigation, the mobile DVR recording clearly showed a "For Sale" sign posted in the rear window of the complainant's vehicle partially blocking the driver's view. The officer did not see the complainant wearing a seatbelt when he initially passed him, which got his attention. The officer issued the complainant a ticket only for the obstructive view violation.

Mr. Phelan noted that monitor Al Lawrence was assigned to this case. He stated that Mr. Lawrence's report was thorough. Mr. Phelan asked Mr. Lawrence if he had anything further to add. Mr. Lawrence responded in the negative. Mr. Phelan asked if the complainant was present. The complainant was acknowledged as being present.

The complainant stated that he was not aware of the investigator or the monitor assigned to his case. The complainant further stated that the reason the officer pulled him over was initially for the seatbelt and not for the sign. The incident got out of control after that.

Chairman Smart asked if there was a recording of the incident from the patrol car's DVR unit. Mr. Phelan replied in the affirmative. He stated that in the first part there was no recording, but in the second part there was. Mr. Phelan further stated that upon review of the second allegation to this case of the initial stop of the complainant, the microphone was in the "Off" position, which indicated that the officer was in violation of the Standard Operating Procedure (SOP) policy. The complainant stated that to his understanding, once the officer puts his lights on it activates the audio and visual recording. Chairman Smart stated to the complainant that he is correct and since the officer violated the policy, Mr. Phelan was unable to determine the facts of what took place.

Mr. Phelan reported that he reviewed the following documents: OPS Complaint Forms; CPRB Complaint Form; and the DVR Recording.

Andrew Phelan Jr. moved to concur with the OPS finding for the conduct standards allegation as ***not sustained***, where the review showed insufficient facts to prove or disprove the facts made by the complainant. Marilyn Hammond seconded the motion. The motion passed unanimously.

Andrew Phelan Jr. moved to concur with the OPS finding for the arrest authority and procedure allegation as ***unfounded***, where the act complained of did not occur or was misconstrued.

Bradley seconded the motion. The motion passed unanimously.

CPRB No. 12-12/OPS No. CC2012-024 (Presented by Chairman Edward Smart)

Chairman Edward Smart summarized the complaint. Chairman Smart stated that the complainant alleged the officer was extremely hostile and verbally assaulted him during the traffic stop. The complainant claimed the officer lost control of his emotions and did not show restraint. The complainant further alleged he was targeted to the presence of another officer, against whom he filed a previous complaint.

Chairman Smart noted that monitor Joel Pierre-Louis was assigned to this case. Mr. Pierre-Louis stated there were three (3) allegations that were raised by the complainant. Mr. Pierre-Louis stated with respect to the first conduct standards allegation (hostile behavior and verbal assault) against the officer that the allegation be closed as ***unfounded***. Mr. Pierre-Louis further stated with respect to the second conduct standards allegation (lost control of emotions and no restraint) against the officer, the OPS finding was ***sustained***. Mr. Pierre-Louis further stated with respect to the call handling allegation that the complainant was targeted with the presence of the traffic safety officer at the scene, that the allegation be closed as ***unfounded***.

Mr. Pierre-Louis reported that he reviewed the following documents: Citizen's Complaint Form; Confidential Report; DVR Audio & Video Recording of the Incident; and Detective Notes. Mr. Pierre-Louis stated that he agreed with the OPS findings on all three (3) allegations.

Chairman Smart asked if the complainant was present. It was noted that the complainant was present. The complainant stated that he had no further information to give towards his complaint.

Chairman Smart summarized the OPS finding for the first conduct standards allegation as ***unfounded***, where the review shows there was insufficient evidence to prove or disprove the facts made by the complainant. The complainant alleged that the officer was extremely hostile and verbally assaulted him during a traffic stop. Chairman Smart reported that based on the OPS investigation, the audio and video recorder was not turned on, so they had no evidence to say what went on or what did not take place. Chairman Smart further stated it was a clear violation of the standard operations procedure for the police officer. Mr. Pierre-Louis clarified that the audio was turned on. Chairman Smart states that the officer that the complainant had dealings with in the past had stopped and the OPS agreed that the officer should not have stopped, which in turned escalated the situation. Chairman Smart stated that the officer in question with the investigation of the complaint is no longer an officer with the Albany Police Department. Chairman Edward Smart moved to concur with the OPS finding of ***unfounded*** for the first conduct standards allegation. Andrew Phelan Jr. seconded the motion. The motion carried unanimously.

Chairman Smart stated that he concurred with the OPS finding for the second conduct standards allegation as *sustained*. Marilyn Hammond seconded the motion. The motion carried unanimously.

Mr. Pierre-Louis referenced a comment made by Chairman Smart that the OPS founded that the Traffic Safety officer had done something that was improper and that was not the finding or the case. Mr. Pierre-Louis reported that the review showed the justification for the finding was based upon the incident captured on the DVR, where the officer denied targeting the complainant with any bias intent and the stop was based solely on the traffic offense he witnessed the complainant commit. Mr. Pierre-Louis further reported the Traffic Safety officer stated that he was aware of the previous unrelated complaint filed against him; however, he had no knowledge of the complainant's identity. Mr. Pierre-Louis reported that the Traffic officer stated he had no contact with the officer in question prior to or during the traffic stop and his sole reason for pulling up was because the complainant's car was in violation of the Scaffolding Law.

Mr. Pierre-Louis reported there was a legitimate reason for the traffic stop because the reading of the complainant's license plates showed that the complainant committed a traffic offense and the complainant was not being targeted by any bias intent. Mr. Pierre-Louis further reported that there was no correlation to this incident from the previous incident involving the Traffic officer and the complainant. Another person, related to the complainant, also stopped and observed the incident. Mr. Pierre-Louis further reported when the Traffic officer arrived on the scene, he noticed the other person's car was also in violation of the Scaffolding Law. Mr. Pierre-Louis further reported that the Traffic officer allowed the complainant and the other person to return to City Hall to pay their fines rather than have their vehicles impounded. The Traffic officer immediately left the scene (or left in minutes) after having to stop to observe what was going on.

Chairman Edward Smart stated that if the Traffic officer stopped at any point and interferes in any way while the police officer was handling the situation, they are as much in violation as anyone else for hindering the officer from his job. Chairman Smart stated the Traffic officer should not at any time interfere with the police officer's job. Chairman Smart further stated if there was a scaffold violation and people have not paid their tickets, the Traffic officer should have waited until the car was parked someplace else to either have it impounded or pay the fines rather than interfering in the police officer's matter with the complainant. Chairman Smart further stated he believes that particular person escalated the situation.

Chairman Smart stated he is sure that there are many other cars in the City of Albany that could have been pulled over. The Traffic officer could have found the car at a later time if there was a violation. Chairman Smart stated that police officers need to have a clear mind rather than have an audience of other people surrounding them. When another

vehicle is pulled over, it hinders traffic and it also draws a larger crowd. Chairman Smart further stated it is bad enough that officers are put under the constraint of trying to do their job with someone who is not badged gets involved and potentially hinders matters? Chairman Smart further stated these are the finest citizens who are engaging and assisting us to keep order in the City of Albany. Chairman Smart tells the complainant that the Traffic officer should have not stopped and he should have parked in another area to follow his car and pull him over for the violations.

Chairman Edward Smart moved to concur with the OPS finding for the call handling allegation as ***unfounded***. Anthony Potenza seconded the motion. The motion carried unanimously.

Chairman Smart stated that he agreed with the OPS finding for the call handling allegation as ***unfounded***. Mr. Pierre-Louis reported there was a legitimate reason for the traffic stop because the complainant committed a traffic offense based on the reading of the complainant's license plates. The complainant was in violation of the Scaffolding Law. A relative of the complainant stopped and observed the incident. The relative's car was also in violation of the Scaffolding Law. The traffic officer allowed the complainant and the other person to return to City Hall to pay their fines rather than have their vehicles impounded. Chairman Smart stated that if the traffic safety officer stopped at any point while the police officer was handling the situation, then he should be held in violation for hindering the officer from doing his job. Chairman Smart further stated if there was a scaffold violation, the traffic officer should have waited until the car was parked someplace else to either have it impounded or pay the fines rather than interfering in the police officer's matter with the complainant.

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

CPRB No. 14-12/OPS No. CC2012-033 (Presented by Maritza Martinez)

Maritza Martinez summarized the complaint. Ms. Martinez stated that the complainant alleged that he was unlawfully detained and searched for criminal trespassing. The complainant alleged that at approximately 9:50 p.m. in March he was exiting from his friend's place of residence. At that exact moment, the complainant stated that an Albany police vehicle drove by and was heading towards Central Avenue. The complainant alleged the officer quickly looked at him as he was crossing the street to go to the Stewart's Shop. The officer proceeded to make an immediate U-turn and pulled into the Stewart's parking lot in a hurry along with another APD vehicle. The officer allegedly jumped out of his car and asked the complainant where he was coming from, asked him for his ID; and searched him.

When the officer asked him where he was coming from, the complainant responded "My friend Pops house." The complainant stated that the officer asked for the friend's full name, to which the complainant responded that he only knew him as "Pops." The officer asked the complainant what room Pops lived in in the building he had just come out of, to which the complainant responded he did not know the room because he did not pay attention to the room number. According to the complainant, the officer threatened to take him downtown, so he guessed an apartment number. The complainant asked the officer if he would call his friend. He asked if he could take them to his apartment if they were willing to follow him. The officer allegedly replied "No," searched the complainant, and had him take off his boots in the cold weather. The complainant asked the officer if he could leave and the officer replied "No." The complainant stated he told the officer that his fiancé had to be at work at 11 p.m. and he needed to go home to take care of the children. The officer allegedly asked the complainant "How many times have you been arrested and what was the Federal supervision charge for?" The complainant stated that he complied and answered their questions and the officer placed handcuffs on him and arrested him.

Ms. Martinez reported that the complainant believes that as a civilian, he was not given a fair chance to prove that he was in his friend's house in a building that had a "no trespassing" sign. The complainant further believes that he was unlawfully arrested, fingerprinted and had his mug shots taken, only to be released 2 ½ hours later and left to walk back to his car from the precinct in the cold weather. The complainant further alleged that his mug shot was posted on Facebook and Twitter. The complainant appeared in court with a witness two times and had his charges reduced. The complainant stated that he is seeking his rights for justice as a law abiding citizen.

It was noted that a monitor was not assigned to this case. Ms. Martinez reported that she reviewed the following documents: Citizen's Complaint Form; Confidential Report; Booking and Arrest Report; Two (2) Inter-Departmental Correspondence; Call Ticket No. 12038789; A Copy of the City of Albany's Affidavit; TAP Listing; and Detective Notes.

Ms. Martinez summarized the OPS finding for the arrest authority and procedures allegation as *exonerated*, where the acts which prove the basis for the complaint occurred, but the review shows that such acts were proper. Ms. Martinez reported that based on the OPS investigation, the dwelling from which the complainant was exiting is registered in the Albany County Trespass Affidavit Program, only persons who live at this residence or others having verifiable business can enter or exit this building. It is clearly marked with a no trespassing sign (which the complainant admitted to seeing) and is locked as to exclude intruders. Several attempts were made by OPS to locate the complainant's witness with no success. The officers knew the house was registered in the Trespass Program, knew the tenants and have had numerous arrests in the area for

drug sales, robberies, and other crimes. The officers knew that the complainant did not live in that building. According to police of any property registered, these facts alone gave officers a founded suspicion of possible criminal activity and the right to inquire into the complainant's actions. Ms. Martinez further reported that when the complainant was stopped and questioned, the complainant could not give them the full name of the person he was visiting. After asking him numerous times, the complainant gave them an apartment number which upon their investigation happened to be incorrect. The officer asked specific questions of the complainant as to his reason for being there and he could not give a name or the apartment number of his friend he was allegedly visiting only that he knows his friend as "Pops." After continued questioning, the complainant gave them an apartment number which was not the apartment in which his friend lived. Ms. Martinez further reported that the OPS investigation showed that the officer asked for permission to search the complainant, and the complainant gave him permission. The officers also found four (4) iPods with scratched serial numbers and an unidentifiable pill in the complainant's possession. According to the investigation, the New York State of Appeals states that if an officer can articulate that he/she has reasonable suspicion a person is, has, or is about to commit a crime, this person may be detained by the police and is not free to walk away. Ms. Martinez further reported that a second officer on the scene went to the apartment and asked other neighbors in the building if the complainant's friend "Pops" lives there. The officer could not find anyone who could verify the complainant's story. At this point, the complainant was then placed under arrest for further investigation and taken to the South St. precinct where he was booked. Ms. Martinez further reported that the OPS Detective met with the Assistant DA, who handled the complainant's case. He asked the Assistant DA if the complainant came to court with any witnesses. The Assistant DA replied that the complainant had no prior arrests and as such the case was an ACOD and no witnesses were interviewed. Ms. Martinez further reported that the OPS detective stated the complainant's friend "Pops" lived in a different apartment number in the building. Unsuccessful attempts were made to contact this individual through the mail and visits to the home. Chairman Edward Smart asked if the complainant was present. It was noted that the complainant was not present.

Maritza Martinez moved to concur with the OPS finding for the arrest authority and procedures allegation as *exonerated*. Chairman Edward Smart seconded the motion. The motion carried unanimously.

CPRB No. 26-12/OPS No. CC2012-063 (Presented by Mickey Bradley)

Mickey Bradley summarized the complaint. Mr. Bradley reported that on June 14, 2012 at around 1:50 p.m., the complainant alleged a police vehicle made a U-turn at the Times Union Center, went around, stopped traffic in their lanes, clipped the complainant's vehicle and did not stop. The complainant further alleged that the police officer only

activated the siren after passing the intersection of the accident. Mr. Bradley asked if the complainant was present. The complainant was acknowledged as being present. The complainant stated that she always pays attention on the road and she never heard any sirens or saw the lights on the police vehicle.

Mr. Bradley reported that he reviewed the following documents: Citizen's Complaint Form; Confidential Report; DVR Recording and Street Camera of the incident; Inter-Departmental Correspondence; and Detective Notes.

Mr. Bradley summarized the OPS finding for the department vehicles operation as **sustained**, where the review disclosed sufficient facts to prove the allegations made in the complaint. Based on the OPS investigation, the in-car video and street camera indicated that contact was made to the complainant's car. Mr. Bradley further reported that the radio transmission did not support the officer's version of events where he claimed he was responding to an emergency situation. The officer was in violation of the SOP Article 43.3-Emergency Response, where he failed to activate his emergency equipment. Mr. Bradley further reported that the officer was also in violation of SOP Article 41.2, failing to properly listen to his radio where it clearly stated there was no need for an emergency. The officer has been recommended for training and proper driving procedures. Mickey Bradley moved to concur with the OPS finding for the department vehicles operation as **sustained**. Andrew Phelan Jr. seconded the motion. The motion carried unanimously.

Mickey Bradley summarized the OPS finding for the conduct standards allegation as **not sustained**, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that when she called the South Station days after to report the incident, the officer she spoke with was rude and not helpful. Based on the OPS investigation, the officer stated the complainant was hostile on the phone. Mr. Bradley further reported the phone recording system at the South Station was inoperable at the time of this call and therefore there is no substantial evidence to prove one way or the other. The failure of the recording system was due to power fluctuations. Mr. Bradley further reported the system was on a back-up generator as a contingency for such interruptions but the hook-up was offline. The system showed that it was active but it was not. Mr. Bradley further reported that the system is now attached to the back-up generator so this problem will not happen again. Mickey Bradley moved to concur with the OPS finding for the conduct standards allegation as **not sustained**. Andrew Phelan Jr. seconded the motion. The motion carried unanimously.

CPRB No. 28-12/OPS No. CC2012-060 (Presented by Anthony Potenza)

Anthony Potenza summarized the complaint. Mr. Potenza stated that the complaint is about an improper call handling allegation. Mr. Potenza noted that no monitor was assigned to this case.

Mr. Potenza reported that on June 16, 2012 at 9:47 p.m., the complainant alleged he was stopped for not activating his turn signal. The complainant further alleged that his car was searched for ½ hour and damage was caused to his vehicle.

Mr. Potenza reported that he reviewed the following documents: Citizen's Complaint Form; Civilian Complaint Report; OPS Confidential Report; APD Incident Report; APD Booking & Arrest Record for Criminal Possession of a Controlled Substance; APD Citation Report to the complainant for signaling a turn less than 100 ft. prior to the turn; Call Details; and Inter-Departmental Correspondence (IDC) dated 7/6/2012 from the back-up officer on the scene.

Mr. Potenza reported that based on the OPS investigation, the officer stated he/she was not directly involved in the vehicle search. The back-up officer also stated he/she did not observe the officer causing damage to the complainant's vehicle. During the vehicle search, a quantity of heroin was located within the vehicle. The second IDC showed the officer's call to transport the complainant to central booking. The officer stated that he/she was not present at the time during the vehicle search. When the complainant was properly secured, the officer turned the camera around and activated the recorder. The complainant was transported to central booking without incident. The officer did not recall having any conversation with the complainant nor the partner having a conversation with the complainant. The officer also did not recall any officers making fun of the complainant at the scene. The officer stated the complainant was brought inside the South Station Central Booking, placed on the bench, and then processed by another officer.

Mr. Potenza reported that according to the last IDC dated July 6, 2012, an officer driving a mounted supervisor unit stated the vehicle was stopped for Vehicle and Traffic Violation Section 1163-B - not signaling 100 ft. prior to the turn. The officer spoke with the complainant regarding this stop and other officers were also on the scene. The officer stated the complainant's vehicle was searched for suspicions of criminal drug possession. Part of the center console was removed during the search, needles, and a baggie of heroin were found under part of the removed console. The complainant was placed under arrest for violation of the Penal Law Section 200.03.

Mr. Potenza summarized the OPS finding for the call handling allegation as *exonerated*, where the acts which prove the basis for the complaint occurred, but the review shows that such acts were proper. The complainant alleged that he was stopped for failing to signal, his vehicle was searched, and damages were caused. Based on the OPS

investigation, the supervisor stated that after stopping the complainant and approaching his vehicle, the occupants were reaching down by the center console.

Mr. Potenza reported that the occupants all had different accounts of what they were doing. The driver had fresh needle marks on his arm and exhibited physical signs of drug use. Mr. Potenza further reported that one of the passengers showed the officers on the scene that he had some Oxycodone. Oxycodone is a prescribed pill that helps ease the pain from drug withdrawals. Mr. Potenza stated that with all the facts and circumstances surrounding the incident, the supervising sergeant had probable cause to believe the vehicle may contain drugs. According to the NYS Supreme Court, once probable cause is established everything in the vehicle that could contain the object of a search can be lawfully searched. The sergeant had reason to believe that the complainant may have been hiding drugs in the area of the center console. The sergeant checked the area and indeed found a needle. Being mindful of the dangers of being stuck by any further needles, the sergeant pulled back the panel and broke it in an effort to locate the heroin that was ultimately found. A portion of the rug was ripped so that the sergeant did not have to reach his hand between the floor and the carpet to retrieve the needle. The damage to the complainant's vehicle was reported on a standard report as per policy.

Mr. Potenza asked if the complainant was present. It was noted that the complainant was present. The complainant stated that he and two (2) of his friends were in the car and the police officer followed them through five (5) stop signs and pulled him over for not signaling 100 ft. prior to turning. The complainant further stated they searched his car for about an hour and eventually they found a baggie and syringe in the crack of the center console on the right side of the front seat. The complainant stated that the officer began to pull out a knife, cut the carpet up, snapped two panels off, and proceeded to go to the other side (the driver side) and do the same thing. The complainant further stated there was hundreds to thousands of dollars in damages which included the breaking off the panel. The officer could have just taken his hand and just ran up on the one side where the baggie and the syringe were. The complainant stated that when he began to cry at all the damage done to his car, the officer made fun of him by belittling him. The complainant further stated that he is a former Marine and he is usually very respectful to the officers, so he was saying "Yes sir" and "No sir." However, the officers were calling him names like a "heroin addict," "You're a baby" and "Why are you crying?" The complainant claims they did hundreds to thousands of dollars in damages to his car.

The complainant's father stated that he has pictures of the damages the officers made to the complainant's car. The complainant stated that he showed them to the lawyer at the police court and he said "We are not taking anything!" He further stated they got it down to a disorderly conduct charge on the account of the illegal search. The complainant's father stated the lawyer claimed that this was totally illegally done. The complainant's

father further stated he don't even have a witness and none of the cameras worked out of six vehicles as they were beating the living crap out of his son.

Mr. Potenza told the complainant that he understood how he felt in regards to the damage done to his vehicle, but if the officer has probable cause to conduct the search, then the Courts have upheld all the way to the NYS Supreme Court that an officer can do what he has to do to be able to locate that evidence. Mr. Potenza stated in a case like this the police have the right to do whatever is necessary.

The complainant stated the baggie and syringe was not near any of the areas that they broke off and ripped up. The complainant asked "So you're saying that if they found let's say a bag of marijuana and the cop doesn't like you, he can just tear up the car and say it was reasonable cause?"

The complainant's father asked "Why did the Public Defender say basically that works for the City of Albany?" and "We're not taking anything and that was done illegal. They can't just tear up your car like an animal!"

Anthony Potenza asked the complainant "How did the case end up being disposed of?"

The complainant's father replied they simply threw it out because of the way the vehicle was searched and everything else. The complainant added that he paid the court surcharge.

OPS Detective Kathy Hendrick stated that Eugene Sarfoh may be able to answer this better than she can but she is assuming that a plea deal was offered through court, which may be in regards to the charges, but she might be incorrect. Detective Hendrick further added that it could be based on a prior criminal history.

Eugene Sarfoh stated it sounds like the initial charge of the misdemeanor for the baggie of heroin got resolved by the complainant pleading disorderly conduct. Mr. Sarfoh asked the complainant "Did you plead guilty to something else?" The complainant replied that he did not plead and they just made him pay court surcharges. Mr. Sarfoh stated there could have been a number of reasons why they would have done that. He added that it was unfortunate that for the charge and ultimately what was uncovered that the complainant's vehicle was damaged. Mr. Sarfoh further stated if he was a prosecutor and he came upon this case and there was no other significant criminal history, he would not be looking for a severe penalty. Mr. Sarfoh stated he understood the disposition the complainant ultimately reached but the issue in front of the Board is whether the officers violated any procedure in doing what they did and the answer to that is not necessarily satisfied to whether or not there might have been some other discretion used. The complainant's father asked "Why weren't the cameras in the vehicles activated?" Mr. Sarfoh replied to the complainant's father that he can't answer that question. It is

something that the Board would need to look into. The complainant stated that he understood breaking a panel off to get to one side but they broke both sides and he did not understand why they had to take a knife.

Mr. Sarfoh explained that they did it with the expectation that they were going to find something. They did not do it just to do it and it was not personal. They did it because they had reason to believe that there was some drug activity going on. Mr. Sarfoh further stated that when they confronted the complainant, there was some further indication there may have been some heroin activity or something related. Mr. Sarfoh asked if you step back at the point when they started the search, was there some reason to believe that there may be more. They can fairly say they have reason to believe there might be additional drugs there? Mr. Sarfoh further stated that the officers have had situations where they have done that and uncovered significant amounts and on this particular occasion there was only a little bit of it. It was unfortunate that the complainant's car was subjected to that, but there is not much more that can be said.

The complainant's father asked "Is that a Small Claims court matter to get someone to pay for the damages?"

Mr. Sarfoh told the complainant's father that he is obviously free and have every right to seek an attorney and get some legal advice about any civil remedies he might have in this matter. Mr. Sarfoh further stated to the complainant's father the difficulty at the end of the day is they thought they would find some heroin and they did even though it was just a little bit. Mr. Sarfoh further stated that the question is if they were justified in the vehicle search. They will have some grounds to support what they did.

Mr. Sarfoh stated to the complainant's father that the camera issue was mentioned. Mr. Sarfoh explained that when there are no cameras, all the Board can do is address the facts. Mr. Sarfoh further stated the Board heard many cases where that has been the case and the officer has been confronted with that fact and been subject to some kind of discipline.

Chairman Smart asked Detective Crist if he watched the video and audio. Detective Crist states the mounted unit pulled the vehicle over. The mounted unit does not have a camera because normally the mounted unit is not used for patrol but it does not preclude it from stopping something if they see a violation. Chairman Smart explained to the complainant that there are some units that do not carry the video and audio equipment because they are not normally pulling people over. Mr. Potenza mentioned that was in the Confidential Report. Detective Crist further stated that the officer who conducted the search came seconds later to the scene. That officer was wearing a recording device and pretty much 99 percent of the conversation was audio which was indicated in the reports.

Mr. Potenza stated that the reason why some of the video was incomplete was because of the flashing of the lights in the recording. It blinded the video. Detective Crist stated that the car did not have video but the car in front of it blinded the video with the emergency lights.

Chairman Smart asked Detective Crist about the audio. Detective Crist replied that Chairman Smart would have to refer to the report. He stated that he did mention a few things about the audio that were against some of the allegations. Detective Crist stated as far as the (*inaudible*), he can't explain the facts because he did not have the report in front of him.

Chairman Smart asked Mr. Potenza "Was there evidence that the officer used inappropriate language in the case?" Mr. Potenza replied that he did not see anything in his review of the case file.

Maritza Martinez asked Mr. Potenza if he heard the audio. Mr. Potenza replied in the negative.

Chairman Smart asked Detective Crist if he recalled the officer mocking the complainant or laughing at him. Detective Crist stated that in one (1) report, it summarized in the finding summary for the allegation that the officer told the complainant "Don't cry. Don't cry." Mr. Potenza stated that in one of the IDC's, the officer stated that he did not recall any of the officers making fun of the complainant at the scene. That was testimony from the officer who brought the complainant to central booking and the audio supported that statement.

Anthony Potenza moved to concur with the OPS finding for the improper call handling allegation as *exonerated*, where the acts which prove the basis for the complaint occurred, but the review shows that such acts were proper. Mr. Potenza states in light of the review of the entire case and all the documentation, the OPS finding was very thorough and a professional investigation was conducted. Andrew Phelan Jr. seconded the motion. The motion carried unanimously.

CPRB No. 29-12/OPS No. CC2012-066 (Presented by Chairman Edward Smart)

Chairman Edward Smart summarized the complaint. Chairman Smart reported that on June 27, 2012 at 10:46 a.m., the complainant alleged that he was targeted by an officer after being stopped and questioned on two separate occasions. The complainant further alleged that an officer along with a plain clothes officer interviewed him in regard to parking illegally in the rear of the City Mission on Trinity Place. The second incident involved the complainant being stopped at Western Ave. and Quail St. for operating a motor vehicle while talking on a cell phone, which he denied. Chairman Smart reported that based on the OPS investigation, the officer witnessed a NYS Vehicle and Traffic

Law violation which is supported by the patrol video camera. He further reported that a witness in the vehicle stated the officer did not explain why they were stopped until he received their identification, at which point the officer told them he saw the complainant on a cell phone. The officer refused to listen to the complainant's explanation that he did not have a phone.

Chairman Smart reported that he reviewed the following documents: Citizen's Complaint Form; OPS Confidential Report; and a Ticket. It was noted that no monitor was assigned to this case. Chairman Smart asked if the complainant was present. It was noted that the complainant was not present.

Chairman Smart summarized the OPS finding for the call handling allegation as ***unfounded***, where the review shows that the act or acts complained of did not occur or were misconstrued. Chairman Smart reported that based on the OPS investigation, the first (1st) incident involved a detective who was using his air horn to move a vehicle that was in violation of city parking regulations. The officer approached to assist the detective because the detective was in plain clothes. Chairman Smart further reported that the officer stated he did not remember if he took the complainant's identification but the complainant was not issued a citation and drove away yelling at both the detective and officer. Chairman Smart further reported when the officer returned with the ticket he again refused to listen to the complainant. There was no audio activated as required per policy. There is nothing based upon the witness testimony that would indicate the officer acted inappropriately during the traffic stop. Chairman Edward Smart moved to concur with the OPS finding for the call handling allegation as ***unfounded***. Marilyn Hammond seconded the motion. The motion carried unanimously.

B. Appointment of New Members to the Committee on Complaint Review for November 2012

The following Board members were appointed to the Committee on Complaint Review for November 2012: Mickey Bradley, Maritza Martinez, Andrew Phelan, Jr., Anthony Potenza, Eugene Sarfoh, and Chairman Edward Smart.

C. 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. He reported that Maritza Martinez is Program Director for the University at Albany's EOP Program. He further stated that he was given the opportunity to speak to the young

EOP students about the Board and what the Board does for police oversight in the City of Albany. They understand that they have a right to file a complaint if they have been unjustly stopped or mistreated. He acknowledged and thanked Maritza Martinez as a member of the Board for having him attend and present at her event.

Mediation

Committee Chairman Edward Smart reported that there was a meeting regarding mediation at the Police Headquarters. He further reported that he has asked the Mayor to intercede. Coordinator of the Board Sharmaine Moseley added that the GLC forwarded all requested forms to the Board's counsel, Patrick Jordan, and is waiting on feedback.

Police Department Liaison-Policy Review/ Recommendations

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

Public Official Liaison

Committee Chairman Edward Smart reported that they met with the Chairman of the Public Safety Committee today. He further reported that he met with Mayor Jennings yesterday. Committee Chairman Smart stated that the committee's next quarterly meeting will be scheduled after the NACOLE Conference.

Task Force on Monitors

Committee Chairman Edward Smart stated that Task Force Chair Akosua Yeboah left nothing for the Board to report on.

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 those thirty (30) active complaints, seven (7) were reviewed and closed by the Board at tonight's meeting. This leaves the Board with twenty-three (23) active complaints. The Board has six (6) cases ready to be placed on next month's meeting agenda.

It was reported that five hundred and twenty-eight (528) 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-seven (567).

It was further reported that since the Board's last meeting in September 2012, the GLC received ten (10) grievance forms, bringing the total number of forms received to three hundred and eighty-one (381). In response to the GLC's outreach to all individuals, the GLC has received one hundred (100) CPRB complaint forms, which is 26%.

Board Member Vacancies

It was reported that there is still one (1) vacancy on the Board, which is a Common Council position. There are also four (4) Board members (Chairman Smart, Martinez, Phelan and Yeboah) whose terms will expire at the end of October. Member Phelan will not be eligible for re-appointment at this time, since he has served two (2) full terms. It was further reported that correspondence has been sent to the Mayor and Common Council regarding the urgency of these items.

NACOLE Conference

It was reported that this weekend Chairman Smart, Potenza, Hammond and Moseley will be attending the NACOLE conference on behalf of the Board. They will report about the conference at the November 1st meeting.

Upcoming Meetings

It was reported that the next Board meeting is scheduled for Thursday, November 1, at 6 p.m.

E. Report from the Office of Professional Standards

APD OPS Detective Kathy Hendrick reported there will be some changes at the OPS and as of tomorrow morning, they will be losing one of their detectives. Detective Hendrick reported that Detective Anthony Battuelo received a promotion to become a sergeant. Detective Hendrick further reported that in reference to the complaint with the phone recording issues at South Station, she and the Chief had numerous meetings with the computer technology unit. As a result, the system is now up and running and it is hooked up to a back-up generator. Detective Hendrick further reported they are in the process of making the same changes at the Central Station and in the near future the issues will be resolved. Detective Hendrick further reported that she and the Chief had numerous meetings with their training unit in regards to recent complaints with traffic stops. They are reviewing their policy to see if changes can be made to their unit.

F. Report from the Chair

Chairman Edward Smart reported that Times Union reporter Alysia Santo has been attending the Board's meetings for the past two (2) months. She is working on a story

about the Albany Citizens' Police Review Board that will be published in the Sunday paper.

VI. Public Comment

Chairman Edward Smart opened the floor for public comment.

Melanie Trimble from the NYCLU stated that she wanted to recommend that the Board should have their own counsel and not share it with the police department. Ms. Trimble further stated that the Common Council has indicated they are willing to pursue that issue with the Board if they desire this request. Ms. Trimble stated the Board can also obtain subpoena power. The Common Council has the ability to subpoena the records but in a political climate where they may not be able to receive them, the Board should have the opportunity to obtain the records if it is necessary for their investigations.

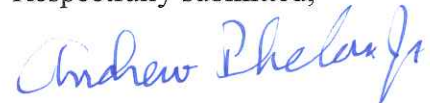
Ms. Trimble asked if the complainants are given the monitor's reports. She stated that she understood the monitor can filter the information that needs to be private in the OPS investigation but they can afford the complainant some assurance that all sides and all questions were asked. Ms. Trimble further stated that in tonight's meeting, there were four (4) out of seven (7) complaints related to sound & audio failures. This is an ongoing issue that needs to be addressed even further.

Cheryl Randall from the Center of Law & Justice stated she was very impressed with the work from the OPS and the Board. Ms. Randall further stated that she shared Melanie Trimble's concern with the audio & video issues and some changes need to be made with this matter.

VII. Adjournment

Chairman Edward Smart moved to adjourn the meeting. Marilyn Hammond seconded the motion. The motion carried unanimously. The meeting adjourned at 8:00 p.m.

Respectfully submitted,



Andrew Phelan, Jr.
Secretary