

**City of Albany**  
**Citizens' Police Review Board**  
**GWU the Center**  
**274 Washington Avenue- Teen Center Conference Room**  
**November 1, 2012**  
**6:00 p.m. - 8:00 p.m.**

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

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

Chairman Edward Smart called the meeting to order at 6:00 p.m. Chairman Smart welcomed David Rozen as the newest member of the Citizens' Police Review Board.

**II. Approval of the Agenda**

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

**III. Old Business**

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

Anthony Potenza stated that this complaint was originally reviewed on October 11, 2012. He further stated that at that meeting the Board agreed to assign a monitor to the case. Mr. Potenza asked that the monitor present his report.

Monitor Joel Pierre-Louis summarized his report for the Board. He reported that on September 19, 2012 he was assigned to this case, specifically for the cellular telephone video recording and several of the police patrol video recordings regarding the complaint filed on April 27, 2012. Mr. Pierre-Louis stated that he reviewed a one-page confidential report prepared by the detective assigned to the case, and the videos. Mr. Pierre-Louis further stated that he first reviewed the complainant's cell phone video recording of a conversation between the complainant and the subject officer in front of Albany Medical Center on New Scotland Avenue on April 24, 2012. Mr. Pierre-Louis stated that with respect to the allegations of the complaint and the conduct of the officer, the subject of the complaint involved a felony vehicle stop. The complainant and her daughter were allegedly directed to exit the vehicle, were subsequently handcuffed and told to shut up. The complainant does not contest the felony stop, but rather the conduct of the target officer. Mr. Pierre-Louis reported that in reviewing the cell phone recording, he found that the officer did not act inappropriately or unprofessionally, but that the officer

answered the questions posed by the complainant. Mr. Pierre-Louis stated that there was a lot of back and forth between the complainant and the subject officer. The complainant was seeking an apology from the officer, which the officer was not compelled to give. Mr. Pierre-Louis reported that he also reviewed video/audio from the patrol units present at the incident. One (1) patrol unit had a DVR recording including audio and the remaining three (3) only had video. Based on the DVR recording, the officer did not engage in any unprofessional behavior, and this was backed up by the recording from the cell phone. The patrol recording included more details of the stop, including the police vehicle arriving on the scene, the complainant and her daughter being asked to exit the vehicle, being handcuffed, and the police searching the vehicle. There were no weapons found and shortly thereafter the complainant was removed from the handcuffs and the conversation ensued involving the officer. The other three (3) videos reviewed did not have any audio recording. Those videos showed the respective patrol units arriving on the scene, and the complainant and her daughter being asked to exit the vehicle, being handcuffed, the vehicle being searched, no weapons found, the removal of the handcuffs, and there was some interaction between the complainant and the officer. Mr. Pierre-Louis stated that based upon his review of the videos in question, he agreed with the assigned detective's preliminary findings in his confidential report.

An individual who had accompanied the complainant to the Board meeting began to speak using inappropriate language. Chairman Smart asked the individual to leave the meeting. The individual left the meeting.

Chairman Smart asked if the complainant was present. It was noted that the complainant was present. Chairman Smart asked if the complainant had anything to add to the monitor's report.

The complainant stated that she did not understand how none of the officers had audio on their patrol vehicles except for one, and that the monitor found that the officer was not being rude, that it was alright for him to ask questions after he did not find any shotgun/rifle in her vehicle. Her car was also searched by the probation officer. The complainant stated that no one is willing to give her an apology. The complainant further stated that she has already met with the Times Union. The complainant stated that she felt that the CPRB was going to exonerate the officer no matter what. She further stated that the situation was not okay because her child was involved in this incident, and she wants to protect her child. In the future, if anything ever was to happen to her child, would her daughter call the Albany Police Department for assistance, knowing that the officer argued with the complainant after she didn't have a weapon in her vehicle? She did not understand how this is acceptable.

Chairman Smart thanked the complainant, and told the complainant that the Board had not yet determined anything regarding the complaint. The Board also had not yet agreed with the monitor's report.

The complainant stated that she has been going through this process since April, and spoke to the Board in September. The officer has been retrained and flagged, and she wants to know what is going to happen at this point.

Chairman Smart explained that most of the authority of the Board is legislatively related. The Board sent the complaint back to be reviewed. Chairman Smart stated he believed most of the board members agreed with the complainant and understands her argument and how she was feeling. Many of the board members feel that when a mistake is made, the least that the police officer can do is apologize.

The complainant asked when she and her daughter were going to get an apology. Chairman Smart replied that he could apologize. He added that he did not know how the Board could force an officer to apologize to the complainant.

The complainant stated that her apology needed to come from the officer who was disrespectful and rude. He was not even assigned to the call. The complainant stated that she could have gotten shot that day if she did not follow directions. She stated that the Board paid the monitor who found that there was nothing wrong with the incident and the officer did what he was supposed to do.

Mr. Potenza explained that the role of the Board was to see to it that the OPS investigation of the complaint was handled properly. Mr. Potenza further stated that this Board cannot tell the police department or the OPS that they are going to sanction or punish them. He added that he has often wondered about the bedside manner of the officers, and questions why the police officers do not simply apologize for the matter and explain the reason for the stop.

The complainant stated that the stop was based on a reliable probation officer, who stated that they saw someone give her a rifle/shotgun by the Department of Motor Vehicles (DMV). She parked her car at Albany Medical Center. If she had gotten out of her vehicle sooner, she would have been tackled and arrested. The report is incorrect, saying that it was her brother who handed her a gun, when it was really her son who gave her an umbrella.

Mr. Potenza stated that it was a misprint/misinterpretation and was not done deliberately. The complainant asked if it was the Board member's relative who was in the same predicament, what would they do.

Mr. Potenza stated that he would feel exactly the same as the complainant. However, the Board has to look at the investigative process, and the way the OPS went about the investigation. Mr. Potenza asked the OPS what the status of the officer was. The OPS Detective Hendrick replied that the officer has been sent for improvement training. The complainant stated that the training was not because of this incident, it was because of flags. She wanted to know what was being done with the officer because of this incident. The OPS Detective Hendrick stated that based on the OPS Standard Operating Procedures (SOP), they did not find that the officer did anything wrong. However, the OPS and Chief Krokoff are in agreement that the officer could have handled the situation better. The OPS is sending the officer back to training for improvement on how to talk and deal with people in a professional manner.

Eugene Sarfoh asked the complainant what she wanted. The complainant replied that she wanted an apology.

Chairman Smart stated that the Board agreed that this was inappropriate behavior from this officer, who has no standing in the Albany Police Department (APD). The Board can request that an apology be sent on behalf of the APD for its actions. Chairman Smart moved that the CPRB request from the Police Chief or the Albany Police Department that an apology is sent to the complainant on behalf of the department. Akosua Yeboah seconded the motion. The motion carried unanimously.

The complainant asked if she was going to get an apology from the officer, or if the apology was going to come from Chief Steven Krokoff, because he already apologized to her. The complainant stated that she wants an apology from the officer who put her through the incident, and was arguing with her.

Chairman Smart asked if the police officer was from Albany. The complainant replied in the affirmative. The complainant stated that she also wanted an apology from the probation officer who started the whole incident, and from the officer who was arguing with her during the incident, rather than diffusing the situation and apologizing.

Chairman Smart stated that the CPRB would do what they could do.

The complainant asked what would happen next. Chairman Smart replied that the Board would work on this immediately, and would contact the complainant within the next two or three weeks.

Chairman Edward Smart moved to table this complaint. Akosua Yeboah seconded the motion. The motion carried unanimously.

#### **IV. New Business**

##### **A. *New Complaints***

##### **1. New Complaints Received since the October 11, 2012 Meeting**

Chairman Edward Smart reported that the Board received five (5) new complaints since its October 11, 2012 meeting. Board Secretary Andrew Phelan, Jr. read the new complaints.

##### **CPRB No. 47-12/OPS No. CC2012-111**

According to the complainant, on October 1, 2012, officers forced the complainant to leave his current address even though there was a federal stay order in place to prevent his eviction. The complaint alleges that the officers came to his front door with their weapons drawn and handcuffed him.

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

##### **CPRB No. 48-12/OPS No. CC2012-121**

According to the complainant, on September 18, 2012, officers violated her Fourth Amendment right. The complainant alleges that eight to nine detectives entered her home and refused to give her a search warrant. The complainant further alleges that the detectives grabbed her, twisted her arms behind her back, told her to “shut up” and then handcuffed her. The complainant claims that the detectives illegally searched her home.

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

##### **CPRB No. 49-12/OPS No. CC2012-122**

The complainant alleges that on October 28, 2012, he was wrongly arrested for a crime that he did not commit. The complainant further alleges that a false statement was in the report. The complainant claims that four police officers pushed him to the ground, beat him, and called him derogatory names while using profane language.

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

##### **CPRB No. 50-12/OPS No. CC2012-124**

The complainant alleges that on October 26, 2012, his baby’s mother’s mother called the police and informed them that her daughter was being held against her will. When the officers arrived to the complainant’s home, the complainant opened the door but refused to step outside as requested. The officer allegedly informed the complainant that there was a warrant for his arrest in Guilderland and they entered his home. According to the complainant, he raised his arms and told the officer not to enter. The officer allegedly

drew his firearm, stuck it into the complainant's face, and commanded him to turn around using profanity. The complainant alleges that as the officer handcuffed him, the officer punched and elbowed him in the head.

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

#### **CPRB No. 51-12/OPS No. CC2012-123**

The complainant alleges that on October 27, 2012, four police vehicles surrounded him and stopped him to ask questions that included: where he was going, where he lived, and what he was doing. According to the complainant, he answered their questions and they still put him into the back of one of the patrol vehicles. The complainant alleges that one of the officers was unprofessional when he spoke to the complainant. The complainant further alleges that the officer grabbed him by his wrist and shoulder and slammed him into the concrete. The complainant claims that the officers purposefully took him to the back of the police vehicle instead of the front to avoid the vehicle's cameras.

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

#### **2. Complaint(s) for Board Review**

##### **CPRB No. 34-12/ OPS No. CC2012-082 (Presented by Akosua Yeboah)**

Akosua Yeboah summarized the complaint. She stated that the complainant was stopped by a detective from the Albany Police Department (APD). The complainant alleges that he was initially questioned about what he was selling out of his shoulder bag as he was stopped on the street. The complainant stated that during this stop he became fearful, particularly when the officer left his vehicle and approached him. Another Albany police officer arrived on the scene later. The detective asked the complainant for his driver's license, which the complainant produced. Following this, the complainant asked the detective why he was being stopped and questioned. The complainant felt that he was being profiled because he is a black male. Following this exchange, the detective released him and he went home.

When he arrived home, the complainant noticed the same detective and officer at his neighbor's home questioning them, so the complainant went to his neighbor's house to inquire about what the officers were asking them. The complainant later discovered that the officers were looking for a white male suspect in the area.

The information the complainant received further confirmed his perception that the officers were profiling him because he is a black male. The complainant questioned why the officers were targeting him if they were looking for a suspect that was white.

The complainant became agitated and went to a local Albany Police Department Station to file a complaint of the incident. While at the station, the complainant alleges that the desk officer handled his holster, adjusted the holster, and removed the safety from the holster to his firearm. During that time, the complainant felt that he was being intimidated. This made him unable to speak so he left the police station immediately.

Ms. Yeboah reported that based on the OPS investigation, the detective stated that at the time, he had reason to believe that a burglary suspect was in the area and that the complainant might be the suspect. He later questioned the complainant pursuant to his suspicion. Additionally, when the desk officer was questioned regarding the allegations from the complainant, he did not recall ever meeting the complainant, nor having ever adjusted his holster. During the OPS investigation, it was discovered that the telecommunications specialist did not adequately give a detailed description of the suspect. The ethnicity of the suspect was not communicated to the officers looking for the suspect. The complainant was not aware of this discovery during the investigation.

Ms. Yeboah stated that the telecommunications specialist committed a violation of rules for not giving the officers detailed information of the suspect, because that information would have helped the officers effectively and sufficiently look for the burglary suspect. Ms. Yeboah also stated that the call handler is out of the Board's jurisdiction but they would request and refer it to the OPS so they could handle the matter in an appropriate way.

Ms. Yeboah reported that monitor William Van Valkenburg was assigned to this case. She further reported that she reviewed the following documents: OPS Confidential Report; Departmental Call; Inter-Departmental Reports; Officer Notes; Citizens' Complaint Form; Call Details; Detective Notes; and the Personal Scope of the Detective.

Chairman Smart asked if the complainant was present. It was noted that the complainant was not present. Ms. Yeboah asked Mr. Van Valkenburg if he had anything to add. Mr. Van Valkenburg stated that Ms. Yeboah made a pretty good summary. He added that it seemed pretty clear cut to him that the particular area had about twenty-five (25) burglaries or break-ins within a seven (7) month period and the detective was cruising the area to see if anything was out of the ordinary. Mr. Van Valkenburg reported the detective received a radio call about a suspicious male a couple of blocks down the street so the detective proceeded to that area. Mr. Van Valkenburg further reported that the detective saw the complainant about two (2) blocks from where the call was. The call gave no other description other than a suspicious male.

Mr. Van Valkenburg reported that the detective stopped the complainant. The complainant stated that the officer did not identify himself but the officer stated that he

did. The complainant saw the gun on the officer's hip and a badge on the belt as he was getting out of the car.

Akosua Yeboah asked the monitor if this was a plain-clothes officer. Mr. Van Valkenburg replied in the affirmative. He stated that there was an issue but it was one person's word over another person's word. The officer asked the complainant for the complainant's driver's license and checked the address. When he found out he lived two (2) blocks down from the street, the officer told the complainant that he was clear to go. The complainant asked the officer why he was stopped. The officer told the complainant that there were numerous burglaries in the area and that's why he stopped him. Mr. Van Valkenburg reported that the OPS detective pointed this out to the complainant in the interview with the OPS but that did not mean much to the complainant. Mr. Van Valkenburg stated that the complainant was determined that he was stopped purely for racial motives and nothing could change his mind. The complainant says he is affiliated with PAL and knew certain officers. He also indicated he knew police officers that were in the military service. Mr. Van Valkenburg further reported that the complainant made some strange statements that he was fearful for his life when the officer stopped him and his first impulse was to run but he was glad he did not because he might be shot in the back. Mr. Van Valkenburg reported that the complainant made statements that he would more likely die in his neighborhood than he would in Iraq, where he served. Mr. Van Valkenburg stated that the complainant made a few contradictory statements that he pretended to film the incident with his cellphone before he knew the plain clothes male was a police officer. The complainant was asked about the recording during the interview and found out he did have the recording but he was filming himself and not the detective's face. Mr. Van Valkenburg reported it seemed funny to him that the complainant would film an incident and claim that he did not know the person that stopped him was a police officer. Mr. Van Valkenburg further reported that since the complainant stated he was fearful for his life, it would seem antagonizing for someone to pull out a camera to film an incident, and then not film the person who stopped you.

Chairman Smart asked Mr. Van Valkenburg what happened between the second stop or when the officers went to the neighbors. Mr. Van Valkenburg reported that after they let the complainant go, they went back down the street towards Western Avenue to check out other people. While the officers were going to do that, they heard another radio call that a suspect was being detained at the location of the original call, which is just around the corner from where the complainant lived. Mr. Van Valkenburg reported the officers turned around real fast and raced down there. When the complainant saw them, the officers were with a white male. The complainant immediately became upset because the male they were looking for was white and he is black. Mr. Van Valkenburg further reported that the complainant told his landlady about the incident and she let him use her car to go to Center Station. The complainant was so upset that he could not speak when



he approached the desk sergeant. The complainant was looking down at the floor when the desk sergeant unsnapped his holster. When the complainant noticed that, he claims that the officer stated "I'm just re-adjusting my belt." The complainant stated that he was fearful for his life and he left the station. The desk sergeant did not remember that incident.

Mr. Van Valkenburg stated that if the officer did do that, it was justified because the complainant was incoherent, unable to speak, was acting strange and looking down at the ground. Mr. Van Valkenburg further stated that he would not shoot the complainant, but police officers react yet do not initiate reaction all the time.

Akosua Yeboah stated what struck her about this case was the fact that there was information the detective and officers were acting on that the complainant would not have any knowledge of specifically and did not know the ethnicity of the suspect. Ms. Yeboah further stated that if the officers knew they were looking for a white male, they would have never stopped the complainant. Ms. Yeboah further stated that this is an issue for the OPS to handle since the Board does not have any jurisdiction over telecommunications specialists. She trusts they will address this matter appropriately. Ms. Yeboah further stated with respect to the desk sergeant adjusting his holster, it was explained to her when she asked the question, as well, that officers have a firearm in their holster with a safety and a safety on the holster. Ms. Yeboah explained how the desk officer could have handled his holster which may have been misconstrued. It would have been proper for a reasonably trained officer to release that safety in the event he would have to draw the firearm to save seconds on the matter of whether he lives or dies.

Ms. Yeboah summarized the OPS finding for the first conduct standards allegation as *exonerated*, which is appropriate where the review showed that it was determined that the detective had a reasonable belief that a burglary suspect could be in close proximity and given the information he had about the suspect, it was proper that he stop the complainant. Akosua Yeboah moved to concur with the OPS finding of *exonerated*. Marilyn Hammond seconded the motion. The motion carried unanimously.

Ms. Yeboah summarized the OPS finding for the call handling allegation as *not sustained*, which is appropriate where the review shows there is insufficient evidence or disclosure of facts to support the complainant's charge that the officer did not identify himself. In fact, in the video, the detective was heard to give his name and rank although it is not clear exactly when in the process this occurred. Akosua Yeboah moved to concur with the OPS finding of *not sustained*. Marilyn Hammond seconded the motion. The motion carried unanimously.

Ms. Yeboah summarized the OPS finding for the second conduct standards allegation (handling of the holster) as *exonerated*, which is appropriate where the review showed

that the investigation did not determine that the incident occurred but concluded that it had occurred. A reasonably trained officer would be justified in preparing himself for circumstances that he or she might perceive as possibly dangerous. Akosua Yeboah moved to concur with the OPS finding of *exonerated*. Marilyn Hammond seconded the motion. The motion carried unanimously.

**CPRB No. 33-12/OPS No. CC2012-080** (Presented by Chairman Edward Smart)

Chairman Edward Smart summarized the complaint. The complainant alleged that she was in the parking lot of the Lark Tavern with her friend when an officer approached her and wanted to search her for no reason. The complainant told the officer that he did not have probable cause to search her, at which time he allegedly handcuffed her, pepper sprayed her, and beat her. The incident took place on June 28, 2012.

Chairman Smart reported that he reviewed the following documents: OPS Confidential Report; Subject Resistance Report; two (2) Oral statements; Mug Shot; Safe Net Web; Property Report; Call Log; Administration Questions; five (5) Inter-Departmental Reports; Detective Notes; OPS Complaint Forms; CPRB Complaint Form; Albany Medical Center Records (24 pages including prescriptions and diagnosis); X-ray of Complainant's Wrist; X-ray of Complainant's Right Hand; and Discharge Papers.

Chairman Smart noted that a monitor, Richard Lenihan, was assigned to this case and he was present. Mr. Lenihan stated that the complainant's witness gave a statement to the investigative detective. Mr. Lenihan stated that he listened to the interview. The complainant was resisting arrest and the officer warned her that she would be pepper sprayed. Mr. Lenihan stated that he looked at the complainant's booking photo and the photo is inconsistent with the statement the complainant provided, which claims she received lacerations to her face when she was forced to the ground by the officer in question. Mr. Lenihan stated that there were no visible facial injuries.

Mr. Lenihan reported that the complainant alleged that she received injuries to her ribs from the incident which needed medical treatment. Based on the OPS investigation, the complainant was treated for rib injuries at Saratoga Hospital thirteen (13) days after the incident. Therefore, her injuries cannot be connected to the incident. Mr. Lenihan further stated that the complainant admitted to resisting arrest from the officer because she was facing a previous incident in Plattsburgh, NY, where she was arrested for drug possession. Mr. Lenihan further reported that the complainant was apologetic for her actions.

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 arrest authority and procedure allegation as *exonerated*, where the review showed that the acts complained of were proper. The complainant alleged that the officer had no reason to search her. Based on the OPS investigation, the complainant was observed with a glass pipe and a quantity of marijuana in a dark area of the parking lot. The officer stated that he observed the complainant walking in the parking lot area and the area is known for drug activity. The evidence clearly showed that the complainant had possession of illegal drugs so the officer was acting in a prudent manner and did not engage in an unlawful search and seizure.

Chairman Smart moved to concur with the OPS finding for the arrest authority and procedure allegation as *exonerated*. Anthony Potenza seconded the motion. The motion carried unanimously.

Chairman Smart summarized the OPS finding for the use of force allegation as *unfounded*, where the review showed that the act or acts complained of did not occur or was misconstrued. The complainant alleges that the officer did not have probable cause to search her, and that the officer, "proceeded to spray me in the face with pepper spray, put me in handcuffs so tight that they cut off my circulation and then continued to pepper spray and beat me. He smashed my head in the ground four times which caused me to lose memory." Chairman Smart further reported that based on the OPS investigation, the Albany Medical Center report confirmed that the complainant had injuries consistent with the injuries she describe in her complaint with the exception of the fractured rib, which was not mentioned until thirteen days later at Saratoga Hospital. The complainant resisted arrest and a witness stated that a warning was given before the pepper spray was deployed. There was no medical evidence of the fractured rib. The complainant's wrist and hand were x-rayed and the fractured rib was not mentioned until thirteen days later. The officer controlled the incident and used OC spray after giving a verbal warning, and the complainant continued to resist. The officer needed to seize the evidence and place the complainant into custody. The officer used reasonable force and no evidence was given that excessive force was used. This was not passive resistance but a warning had been issued and the officer's actions were reasonable. No medical evidence was given by Albany Medical Center or Saratoga Hospital of a fractured rib. Chairman Smart noted that there were 2 pages missing from the Saratoga medical report.

Chairman Smart moved to concur with the OPS finding regarding the use of force allegation as *unfounded*. Eugene Sarfoh seconded the motion. The motion carried unanimously.

Maritza Martinez summarized the complaint. The complainant alleges that an officer was walking on the same path as the complainant on Hudson Avenue and Willett Street. The complainant asked the officer to move in order to avoid having to walk in the street and possibly be hit by a vehicle. The complainant alleges that the officer was verbally abusive to her and threw her up against the door as hard as the officer could. The complainant told the officer that her elbows were broken and she had a bad back but the officer ignored her. The incident caused the complainant to sprain her wrist and she suffered multiple contusions on her upper arms. According to the complainant she did not have a bottle of beer in her possession as charged, and the knife/lighter in her purse was something that she had found in the street. When her ex-husband approached the officer at the court hearing about how he treated her, the officer allegedly stated that the complainant was going to engage in a sex act with a male companion she was with. The complainant further alleged that the officer smashed her wallet on the floor and damaged it. The complainant is looking for the officer to refund her \$22 dollars for the wallet he allegedly damaged.

Ms. Martinez reported that she reviewed the following documents: Citizen's Complaint Forms; CPRB Complaint Form; OPS Confidential Form; APD Booking & Arrest Report; Property Report; Appearance Ticket; Inter-Departmental Correspondence Reports (IDC); Four (4) Photos of the Complainant's Injuries; Albany Memorial Visitor's Information; Monitor's Report; Albany Memorial Information Form of the Complainant's Sprained Wrist and Contusion.

Ms. Martinez reported that there was one (1) document missing from the complainant's case, which was the Albany Medical Center Report. The complainant was acknowledged as being present at the meeting. The complainant stated that she had the Albany Memorial Report and the Urgent Care Report. Ms. Martinez asked the complainant if she had the Albany Medical Report because that is the first place she was admitted to after the alleged incident. The complainant replied that she did not have the medical report from Albany Medical Center. The complainant further stated that she suffered broken elbows from an incident in Florida and she has a lawsuit pending. The complainant stated that the officer threw her against the wall, where her arms were placed above her head. The complainant stated that the officer was riding a bicycle and he did not introduce himself to her. The complainant further stated that when the officer attacked her, she shouted "Who is attacking me?" Ms. Martinez recommended that the Board give the complainant some time to present the Albany Medical Center Report, which is a critical document towards the complainant's case.

A gentleman from the audience stated that he had evidence of the complainant's broken elbows with him. Ms. Martinez stated to the gentleman that the evidence has nothing to

do with the complainant's case. The gentleman stated that the officer laughed at him and said that if the complainant had broken elbows, she would have been wearing a cast and she was not. The man stated that he replied to the officer that the complainant cannot wear casts on her arm because there is no movement.

The complainant stated that she is taking the officer to Small Claims Court. Chairman Smart stated that under the circumstances, the Board will not proceed with her case. Board Counsel Patrick Jordan stated that there was no indication of a lawsuit. Chairman Smart asked the complainant if she had filed a lawsuit against the officer and the complainant stated she was waiting because she did not know what would be the outcome of this review.

OPS Detective Andrew Montalvo stated that he has requested several times for the complainant to sign a medical release waiver and she has refused to do so. Detective Montalvo further stated that the complainant stated she has viewed the documents from Albany Medical Center in detail and there was nothing related to her injuries in regards to this incident. Following this statement, the complainant and the gentleman with the complainant shouted "She has post-traumatic stress" and "I was being attacked." Detective Montalvo reported that she was never treated for any of her injuries at the hospital.

Maritza Martinez moved to table the review of this complaint until the Board's next meeting to allow for ample time to secure the document from Albany Medical Center. Chairman Edward Smart seconded the motion.

Gene Sarfoh reported that before the Board's vote to table the complaint, the Board should find out if the complainant will agree to sign a medical release waiver form.

Chairman Smart stated to Mr. Sarfoh that his point is well taken and understood. Chairman Smart reported that the Board has given all complainants 30 (thirty) days to bring all the information in before the Board. Chairman Smart explained to the complainant that if she does not bring all of the materials needed for the next meeting, the Board will proceed with the complaint. The motion carried unanimously.

**CPRB No. 25-12/OPS No. CC2012-051** (Presented by Mickey Bradley)

Mickey Bradley stated that this complaint involved a conduct standards allegation. He summarized the complaint. Mr. Bradley reported that an officer was driving through the neighborhood because of suspected day burglaries. The officer observed someone by an opened garage. The officer asked the individual if he lived there and the individual told the officer he did not live there and that he was the homeowner's nephew. Mr. Bradley reported that when the officer posed further questions to the complainant, the complainant offered to ask his aunt to verify his identity.

Mr. Bradley reported that the officer and the individual walked inside the house and the officer spoke with a woman. Mr. Bradley reported that the officer asked the woman for identification, she produced the information and the officer then thanked her and left the residence.

Mr. Bradley reported that the officer encountered the complainant's 13-year-old daughter whom he did not speak to directly. The complainant stated "While the officer was not rude or belligerent, the fact that he was having such difficulty believing that my wife and daughter lived there was very unprofessional." The complainant believes that the situation would have been handled differently if they were White.

Mr. Bradley reported that a monitor was assigned to this case. It was noted that monitor Sal Munafo was present. Mr. Bradley asked if the complainant was present. It was noted that the complainant was not present.

Mr. Bradley summarized the OPS finding for the conduct standards allegation as ***not sustained*** which is appropriate where the review failed to disclose sufficient facts to prove or disprove the allegations made in the complaint. The complainant alleged that the officer came to his residence and was unprofessional when he asked the complainant's wife to present identification to confirm her identity while he was investigating possible suspicious behavior in regard to her nephew. Based on the OPS investigation, the officer's suspicions were justified given the circumstances and it was his intent to look into this suspicious behavior. There were numerous burglaries in the area and the officers noticed suspicious activity. The officer stopped and spoke with the nephew to identify that he did in fact have authority to be on the property. It is standard operating procedure for the officer to request identification from subjects associated with suspicious activity. A police officer would be remiss in his duty if he relied only on the word of a total stranger. The complainant's wife and daughter both stated the officer was not rude and did not feel that the officer was being racist. The officer stated that his actions would not have been any different if it were a White family involved. This investigation uncovered nothing that would indicate race in reference to the officer's conduct. Mr. Bradley stated that he agreed with the OPS finding of ***not sustained***.

Mickey Bradley moved to concur with the OPS finding regarding the conduct standards allegation as ***not sustained***. Chairman Edward Smart seconded the motion. Mr. Bradley asked monitor Sal Munafo if he found anything that was considered racially motivated. Mr. Munafo replied in the negative. Chairman Edward Smart stated that there was a monitor assigned to the case after the Board looked at it; they took it back and the monitor looked at it again to protect the interest of the individual. Chairman Smart further stated that this does not mean that anything has changed but it has been verified there was nothing racial on the part of the officer. Mr. Munafo explained that the allegations were baseless and made by the complainant who was not present. The

individuals who were present said the opposite of what the complainant alleged. Mr. Bradley stated that he has a comment to the question in regards to “standing” in this case because the complainant was not directly involved in the situation itself and we talked about the basis of that before. Mr. Bradley stated he thinks the determination is that it was done at his property and in his home, so he was allowed to file a complaint. The motion carried unanimously.

Chairman Smart asked Board Counsel Patrick Jordan if he could define “standing.” Mr. Jordan replied that the Board has their document for them to vote on. Mr. Jordan further stated that he would not necessarily agree this would fit in that category that they discussed previously. Mr. Jordan further stated that the Board has its own discretion, its own rules and by-laws to follow in certain cases that may deviate from the strict definition of standing. Mr. Jordan stated the strict definition of this Board’s standing and any other board is the person has to be there or a direct witness or child under the age of 18 be affected from the incident. Mr. Jordan further stated that he did not read in the complaint that the child that was affected was a relative, and not the child that the complainant reported in his case. Mr. Jordan stated that the child of the complainant was only brought in for questioning or comment. The Board ultimately has its rights. In this case, it is the Board’s decision that the child being in the house grants this person standing.

Chairman Smart asked if the complainant was present. It was noted that the complainant arrived at the meeting while his case was being discussed. Chairman Smart asked the complainant if there was anything he would like to say regarding the complaint he filed. The complainant stated that his wife was offended, his daughter felt offended, and he felt offended. The complainant further stated that he felt the officer’s suspicions were not right and that is why he filed the complaint. The complainant further stated that based on what he does for a living and dealing with people, he knows that this is not how you handle it when you are going into people’s residences and that is why he filed a complaint.

Chairman Smart stated to the complainant that the officer was invited into the complainant’s residence. The complainant replied that the officer was not invited into his home. The complainant stated that his nephew told him that the officer followed him into the residence and he did not know he was being followed. The complainant further stated the reason why the officer followed his nephew is because he didn’t know who he was and he didn’t want his nephew to run.

Chairman Smart apologized on behalf of the officer and explained that the investigation showed that the officer was invited into the residence. His intent was to protect. The complainant stated that according to his nephew, the officer was not invited in. Chairman Smart explained that the officer was suspicious because there were a number of

burglaries in the complainant's neighborhood. The officer was trying to find out if the nephew lived in the home or had reason to be there. Chairman Smart stated that Mr. Munafo reported that the complainant's wife stated that the officer was not rude, did not raise his voice and wanted to find out if the nephew lived there. The complainant stated that his wife was shocked when the officer asked her if she had any ID in her own home. The complainant further states that his wife did get her ID but she felt offended and the complainant did not like how the officer handled his daughter. The complainant further stated his daughter was there in her pajamas making breakfast. Chairman Smart stated that he understood where the complainant was coming from and the Board is sensitive to the residents of the City of Albany.

Eugene Sarfoh asked the complainant what the officer had found suspicious. The complainant stated that his nephew was walking out of the garage with a lawnmower and the officer began to question him. The complainant further states that the nephew saw the officer and when the officer asked him what he was doing, he told him he was cutting the grass. The officer proceeded to ask the nephew "Do you live here?" and the nephew replied that he did not live there. The complainant further alleged the officer asked his nephew if he knew the address and the nephew replied that he did not know the address but his aunt lives there. The complainant further alleged his nephew asked the officer if he wanted him to go get his aunt from the house and the officer said "Yes." The complainant further alleged when the nephew walked inside the house, that's when he noticed the officer following him inside the residence. Mr. Munafo stated that the officer saw the door ajar to the garage and the complainant agreed that the door was open. Something piqued the officer's curiosity. The complainant stated that his nephew came over to cut the grass, his wife went out and got the van, and she opened the garage door and backed out and saw the police officer drive by. The complainant further stated that his wife left the minivan by the sidewalk and walked back into the house. The garage door was wide open.

Mr. Munafo stated that there is nothing concrete to substantiate racial allegations. The complainant stated that he disagreed. He further stated that as far as the complainant's wife's testimony, the officer was not rude or disrespectful. The complainant's wife only stated that it was odd the officer asked for her ID, which she chose to provide. At that point she could have refused but she did not.

Mr. Sarfoh stated that he thinks the issue is we all have kids and if your kids are not out on the lawn doing whatever but mowing the lawn, you're not expecting a police officer to come over and ask them what they are doing. Mr. Sarfoh further stated that you have to weigh that experience against an officer who is being vigilant. Mr. Sarfoh further stated ultimately that is how they are able to, in some cases, catch folks in the neighborhood: by being vigilant. Mr. Sarfoh asked again what exactly was the nephew doing that would cause the suspicion? Mr. Sarfoh further stated if it is just a matter of a young Black man



coming out of the house, to play or for whatever reason, he would want to know what led the officer to be suspicious. Mr. Sarfoh asked "What is it that you should do to not be so suspicious, that would be the concern of the parent that lives in the area." Mr. Sarfoh stated the officer was not rude, he was cordial, he sought out the information he needed and responded appropriately. Mr. Sarfoh further stated he is not suggesting or inclined to say that he disagrees with the findings but these are the issues that are difficult to assess and while showing respect for the citizen you have to figure out what to do.

Akosua Yeboah asked Detective Montalvo if the area had a high number of recent burglaries that would cause the officer to be suspicious. Detective Montalvo replied that a computer check for high daytime burglaries in the area showed recent burglaries. Ms. Martinez stated that for us as parents it's a thin line. Ms. Martinez stated the officer's actions can be substantiated based on what they were working with but it bothers those parents who are law-abiding citizens. Ms. Martinez further stated that it is a thin line because it is your property and you live there but you have to provide ID even if you are on your front lawn. This speaks to the real core of a need for mediation because something like this could have been handled in a mediation setting where the officer and the family would have been able to discuss and could have understood each other's point of views and not have it come to the Board. Something like this could have been handled in a mediation setting.

James Bradley stated that there was something that was mentioned by the officer about a bicycle out front, which triggered his suspicion. Mr. Bradley further stated that he agrees about being in front of your own home and suddenly being a suspect due to the burglaries in the area. Mr. Bradley stated that he wanted to note that the original complaint in front of the Board was not about the fact that the nephew came under suspicion, but that inside the house the wife was asked for identification to prove that she actually lives there. Mr. Bradley further stated that he told the detective that he could not imagine being in his home and someone suddenly comes inside and asks for his ID. Mr. Bradley further stated it was explained to him that it would be a totally different situation if he was sitting at home. If an officer is investigating a situation that has been determined to be possibly suspicious, it's SOP to ask for identification while the people that you encounter are filling out your IDC.

The complainant stated that he would not want anything bad to happen to his family. He has two (2) young African American boys ages 11 and 7. The complainant stated his sons will be cutting the grass and he does not need an officer to see them and think they are doing something wrong. The complainant described a scenario portraying an officer accidentally shooting his son because of a string of burglaries. The complainant further stated this can lead to something more serious and you have to know who lives in the area. He has lived there for 10 years. The complainant further stated that his children are 15, 13, 11 and 7 and he doesn't need any accidents.

Ms. Yeboah stated that it struck her as strange that an officer who suspects a burglary would go into a house alone without calling it in. Detective Montalvo stated that an officer will not walk away if he suspected criminal activity. Akosua Yeboah stated that as members of the Board they are made aware of the SOP's and some of the policies, procedures and the training the officers have to go through. Ms. Yeboah stated it just strikes her that if an officer is suspecting that there is a possible burglary, she does not know that he would walk casually into a home alone without the assistance of another officer if that was really what he was suspecting.

Detective Montalvo explained that the reason or the motivation behind the officer following the subject into the home is that at that point in time, the officer did not confirm that the nephew had legal premise to be there. He was not going to let a potential burglar just walk away from him. Detective Montalvo further stated that if the officer found out that the suspect went into the house and left out the back door and finds out half hour later that the house has been cleaned out, he just let the suspect get away. Detective Montalvo further stated that until the officer confirms, with a degree that everything is okay, he has to pursue that course of action.

Chairman Edward Smart thanked the complainant and stated that they agree with him and they are certainly here to try to see that no one and no young child is lost in our community. Chairman Smart stated to the complainant that his concerns are well taken by the Board and mediation will be a wonderful way of helping them do this. They are pushing those who are in leadership in our community to help us get to that particular point. Chairman Smart further stated to the complainant that his case tonight has moved them just a little closer to offering mediation and, with that in mind, he believes they will be able to save a few lives and better control things that take place in their community.

**CPRB No. 8-12/OPS No. CC2012-014** (Presented by Chairman Edward Smart)

Chairman Edward Smart summarized the complaint. Chairman Smart stated that the complainant alleged that during the search of her home, she was shown a phony warrant and her apartment was demolished. The complainant further alleged that her vehicle was searched without probable cause.

Chairman Smart reported that he reviewed the following documents: Citizens' Complaint Form; Warrant; Call Ticket; Detective Notes; Property Reports; Six (6) Property Reports; Surveillance Report For Three (3) months; Call Report; Capsnet-Six (6) Charges; and Twelve (12) Inter-Departmental Correspondence (IDC) Reports.

Chairman Smart noted that monitor Theresa Balfe was assigned to this case and was present. Ms. Balfe stated that she reviewed twenty-two (22) documents, several of which were IDC's. She further stated that there were six (6) drug charges. She asked if the complainant was present. It was noted that the complainant was not present.

Ms. Balfe stated that the complainant and suspect were alleging the warrant was bogus and did not have an official-looking seal. Ms. Balfe further stated that she looked at the warrant and it looks like all the warrants she has seen in all of her career. The warrant also had the judge's signature. Ms. Balfe stated the complainant felt the judge's signature was forged. She does not know if the complainant has ever seen the judge's signature before. Ms. Balfe reported that the Albany police conducted a two (2) month surveillance and two (2) controlled buys with two (2) different detectives, so they did their homework and had the substantial right to go and get a warrant, which they did. Ms. Balfe further stated that this was the first allegation in the case where the complainant called the warrant bogus.

Ms. Balfe reported that the second allegation was conduct standards, where the complainant alleged several times in her complaint that the officers trashed and demolished her apartment. Ms. Balfe stated that out of all the officers and tenants present, there were three (3) witnesses listed. None of the witnesses said the complainant's home was trashed or demolished. Ms. Balfe reported they did refer to the complainant's home as being messy because of the search looking for drugs, scales, pills and anything related. The warrant included: garage, vehicles, and anybody that had any affiliation with the house. Ms. Balfe further reported what was not mentioned was the complainant was pregnant. When the officers entered the apartment, they told the complainant to get down on the ground. When the complainant told the officer she was pregnant, the officer told her to get on the couch.

Ms. Balfe stated the officers had a no-knock warrant so they have the right to bust the door down.

Ms. Balfe reported that the third allegation was call handling where the complainant alleged the officers should have never searched her vehicle because there was no probable cause. Ms. Balfe reports the search of the vehicle was in the warrant and they certainly had the right to do that.

Ms. Balfe stated that she reviewed six (6) pages of evidence from the objects that were taken from the complainant's residence such as pills with names of people who don't even live in the residence. Ms. Balfe further stated that the police went after the subject, who was arrested, because he made a dash to the bathroom. This was not stated in the complaint. The complainant was not disputing the arrest; she was disputing the six (6) pages of evidence that were taken because her car was illegally searched. Ms. Balfe further reported that the complainant felt that her Fourth Amendment rights were violated but nothing was found in her vehicle—it was all found in the house.

Chairman Smart summarized the OPS finding for the first conduct standards allegation as ***unfounded*** which is appropriate where the review showed that the act or acts complained

of did not occur. Based on the OPS investigation, a valid warrant was obtained from the Albany Criminal Court Judge William Carter. The complainant's residence was under surveillance for a period of two (2) to three (3) months and various individuals were observed entering and leaving the residence at various hours. Documents were obtained that clearly show that a signed no-knock warrant was obtained and executed. The Police Task Force operated under the guidance of the warrant. Chairman Edward Smart moved to concur with the OPS finding of **unfounded**. Anthony Potenza seconded the motion. The motion carried 8-0 with one abstention. Akosua Yeboah abstained from voting because she was unfamiliar with the case as she stepped out of the meeting during its review.

Chairman Smart summarized the OPS finding for the second conduct standards allegation as **not sustained** which is appropriate where the review showed it failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. Based on the OPS investigation, the search by its nature would disrupt the organization of any residence. Chairman Smart further stated that the search was done under the prevailing laws and a signed warrant stated that the officers were authorized to conduct a thorough search for drugs and related items. The search by its nature would disrupt the organization of any residence. The officers were conducting a search for drugs and related items in a residence that has been observed for two (2) to three (3) months. Evidence has been given that there was an effort by someone to destroy the evidence. Many hidden items such as scales, razor blades and other related items associated with drugs, were found in concealed spots of the residence and placed in the bag as evidence. The search was done under the prevailing laws and a signed warrant. Chairman Edward Smart moved to concur with the OPS finding of **not** sustained. Marilyn Hammond seconded the motion. The motion carried 8-0 with one abstention. Akosua Yeboah abstained from the vote because she was unfamiliar with the case as she stepped out of the meeting during its review.

David Rozen asked Detective Montalvo when you are looking for pills and razor blades, is it standard operating procedure to look in every last detail of the home and leave it in the condition that it is in. Detective Montalvo replied that it is SOP, as long as the warrant authorizes the search. Chairman Smart told Mr. Rozen that the warrant that was issued, specifically lists a whole gamut of things like couches, etc. Chairman Smart further stated that if you are going to search the house, it will not be in good order.

Chairman Smart summarized the OPS finding for the call handling allegation as **exonerated** which is appropriate where the review showed that such acts were proper. The complainant alleged that her car was searched without probable cause. Based on the OPS investigation, the vehicle was searched because of its observed use in the transporting and the selling of illegal drugs during a two (2) to three (3) month investigation. The officers secured the vehicle and were authorized to search the vehicle

for illegal drugs and other related items. David Rozen seconded the motion. The motion carried 8-0 with one abstention. Akosua Yeboah abstained from the vote because she was unfamiliar with the case as she stepped out of the meeting during its review.

**CPRB No. 31-12/OPS No. CC2012-073** (Presented by Andrew Phelan)

Andrew Phelan summarized the complaint. Mr. Phelan reported that this complaint involved an arrest authority and procedures allegation. He stated that the complainant was arrested by an officer on July 3, 2012. Mr. Phelan stated that the complainant alleged that the officer did not speak to him or his fiancé, but rather the officer acted solely based on the statement as to what had occurred. The complainant further alleged that the officer could have taken more time to investigate the matter before placing him under arrest. The complainant stated that the officer refused to accept statements from his neighbors who were witnesses to the incident.

Mr. Phelan summarized the OPS finding for the arrest authority and procedures allegation as *unfounded* which is appropriate where the review showed that the act or acts complained of did not occur. Based on the OPS investigation, the officer interviewed other parties and it was apparent that the complainant's fiancé sustained injuries to her neck and arms. The officer went to the complainant's residence and interviewed him. During the interview, no injuries were reported by the complainant. The complainant's fiancé said the officer interviewed her. The neighbors stated that the officer did not refuse to accept their investigation or participation. The other party and her sister stated that the officers were very professional and that there were no neighbors who spoke with the officers. The officers interviewed two (2) other witnesses, but the witnesses wished to remain anonymous. Detectives canvassed the area and several neighbors informed the OPS that they did not want to get involved with the incident. There was no evidence that the officers acted improperly or conducted an unlawful arrest of the complainant. Mr. Phelan further reported that two discrepancies were made in this incident. The first discrepancy was that the officer was training a probationary officer during the night of the incident and as such it was incumbent upon him to properly operate the mobile DVR. The officer was found to be in violation of APD SOP Article 42.2, which the officer failed to adhere to. Mr. Phelan stated that when the officer was transporting the complainant away from the scene, he failed to activate the microphone.

Mr. Phelan reported that the supervisor was in violation of APD SOP Article 2-2, because he failed to respond to an e-mail sent to the OPS requesting an IDC be completed by the witness after the administrative investigation. Mr. Phelan stated the officer in question has since retired from active duty from the APD; therefore, he could not be contacted.

Mr. Phelan asked if the complainant was present. It was noted that the complainant was present. The complainant stated that the incident messed up his life. The complainant

and his fiancé both stated that they are having financial problems and he has lost his job. The complainant stated that his daughter stayed with him for a week and he had not heard from the child's mother whether she was coming to pick their child up. The complainant further stated that he spoke with his attorney and his attorney advised the complainant to call the police about the child's mother's violation. The complainant stated that he did not want his daughter to go through this matter and decided to keep her to Tuesday until her mother called.

The complainant stated that on Tuesday, while his family was sleeping, he heard loud banging at his door. The complainant's fiancé further stated that they were not sure because their doorbell was broken and they had problems with it but it was repaired. The complainant's fiancé further stated they were awakened from their sleep, the doorbell was not repaired at the time, and they were unable to look out of the window to see who was there. The complainant's fiancé further stated this is the structure of the door and the way it was made to see who was visibly there. The complainant stated that when he opened the door to his home, the mother of their child started yelling "Give me my daughter!" and began hitting him. She knocked off his glasses. The complainant stated that he shouted to his fiancé to call the police numerous times while the child's mother and her sister continued to hit him. He was pushing them out of the house.

The complainant's fiancé stated that the residence where the incident took place belongs to her parents and there are charges against the child's mother for property damage and harassment. The other party kicked down the door causing damage to it. The complainant's fiancé further stated they had a 3-month-old child at the time of the incident and they failed to notice that their daughter was living there, too, and could be in danger.

The complainant stated that he has written statements from his neighbors downstairs that helped him break up the fight. The complainant further stated that the officer came inside the residence, asked what was going on and then walked out. The complainant alleged that the officer told him to go outside so that the officer could tell him something. The complainant alleged that as soon as he walked outside, the officer patted him down, put his hands behind his back, and told him that they were going to talk in the car. The complainant asked the officer if he was being arrested and the officer told him that he was not being arrested. The complainant's fiancé alleged that three officers got inside the car, along with the complainant and left. The complainant's fiancé stated that no officer took a written statement or conducted an interview, so she followed them down to the station. The complainant's fiancé stated that when she arrived at the station, the officers informed her that his court case was in the morning at eight (8) o'clock and she could file a cross complaint then.

The complainant's fiancé stated that she and the complainant were violated. The complainant's fiancé stated that the complainant was abused in front of his daughter because of the mother's actions. The complainant's fiancé further stated her daughter was in the midst of it although she wasn't present in the room. The complainant's fiancé alleged that she had to make a FOIL request because the officer informed her that the other party's sister had already placed a call. The complainant's fiancé stated that she was beyond violated in this matter. The complainant stated that he cannot see his daughter since the incident took place.

The complainant's fiancé stated that the child's mother shouted death threats and used obscenities towards her and the complainant. The complainant's fiancé stated that they always drop his daughter off to a third party to avoid the daughter's mother, which is ordered by the court. The complainant's fiancé further stated that the child's mother has never been to her home and she was upset that she came there to start a fight in front of her child.

Chairman Smart asked what the initial call to the police was for and what was said. Detective Hendrick reported that she did not know what the call was for. Detective Hendrick stated that Detective Battuello looked into every aspect of the case. Detective Hendrick stated that the complainants alleged that the officers did not conduct an investigation upon arrival, which they did in fact do, as they spoke with all parties involved.

Detective Hendrick reported that based on the information the officer received from the phone call placed to the dispatcher, the officer made the determination to arrest the complainant. Detective Battuello stated that based on the information the officer received from the phone call placed to the dispatcher, the officer made the determination to arrest the complainant. If a call was made to the dispatcher for police to come to her home and the dispatcher did not inform her that an officer was on the way that can happen at times more than one dispatcher takes calls and they do not communicate with each other. It is possible that the call was not placed earlier at the residence prior to the actual phone call. The complainant's fiancé stated that the officers said the complainant tried to strangle his child's mother, which is false. He was pushing them out of the home. Chairman Smart asked if the police were called as soon as they realized someone was at the door. The complainant replied that he did not call the police.

Chairman Smart stated that it sounded to him like once the door was opened and the person could not come in, they called the police. Chairman Smart further stated that at this particular time, they do not know what the person said to the police.

Andrew Phelan asked if this matter had been resolved in the courts. The complainant and his fiancé replied it was not resolved. The complainant stated that the courts are trying to

give his child's mother full parental rights. The courts informed him if he does not comply with probation he will receive jail time.

Gene Sarfoh asked the complainant if he had filed a cross-complaint with the District Attorney in reference to the incident. The complainant replied that he has done everything that he can do. The complainant's fiancé stated that she filed a cross-complaint with the police. The complainant's fiancé further stated that she filed a restraining order against the child's mother and will continue to renew it. The complainant stated that he was informed he could not file a cross-complaint because there was a complaint filed against him from the child's mother. The complainant's fiancé stated that the officer was not rude but he failed to conduct a thorough investigation. He did not ask for a statement or the complainant's ID. The officer only talked to the complainant's daughter's mother.

David Rozen asked if they had any previous interactions with the officer before. The complainant replied that this was his first encounter with the officer.

Chairman Smart asked the complainant what his daughter's mother said to the officer. The complainant replied that he had no clue what she said to the officer because he was upstairs at the time of the investigation. Chairman Smart stated it is crucial to know the information that was given to the officer initially for this case. The complainant stated that on Mondays he is supposed to bring his daughter to a third party which is his mother. On Monday, the other party failed to answer the complainant's calls to arrange for the drop-off. On Tuesday, the other party sent a text message to the complainant that she was at the hospital. So they fell asleep.

Marilyn Hammond asked if the mother of the complainant's daughter was in violation of the order. The complainant replied that the order was not placed until after the incident, so she was not in violation.

Andrew Phelan moved to concur with the OPS finding for the conduct standards allegation as ***unfounded***. Chairman Smart added that there were two (2) deficiencies against the officer and supervisor during the OPS investigation. Marilyn Hammond seconded the motion. The motion carried unanimously.

**CPRB No. 38-12/OPS No. CC2012-079** (Presented by Eugene Sarfoh)

Eugene Sarfoh summarized the complaint. Mr. Sarfoh stated that the complainant alleged that on July 17, 2012, a sergeant was rude and disrespectful to him during a traffic stop. The complainant further alleged that the sergeant used profanity several times and refused to inform him why he was being pulled over.



Mr. Sarfoh summarized the OPS finding for the conduct standards allegation as ***not sustained*** which is appropriate where the review failed to disclose sufficient facts to prove or disprove the allegations made by this complaint. The complainant was traveling on I-787 and passed the sergeant's vehicle, where the sergeant had already pulled another vehicle over. The complainant stated that he noticed the sergeant's vehicle was following him so closely that he felt compelled to pull over. The complainant alleged that the sergeant did not place his emergency lights on and he still pulled his car over on the side of the road. The complainant further alleged that the sergeant approached his car, was using the "F" word rigorously and informed the complainant he was not pulling him over. The complainant claimed that the sergeant issued him a speeding ticket, crumbled it up and threw it at him through the window. The complainant alleged that before he received his ticket from the officer, he didn't have his driver's license on him, so he got out of the car to show the officer his registration. The complainant alleged that the officer yelled at him to get back in his car and he used additional profanity.

Mr. Sarfoh reported that based on the OPS investigation, the officer was interviewed and the officer stated that the reason why the other car was pulled over was because the motorist was asking him for directions. While the sergeant interacted with the other motorist, the sergeant saw the complainant's car speed past him. The officer completed his interaction with the other motorist and proceeded to follow in the same direction where the complainant was heading. The officer saw the complainant's car pulled over and proceeded to walk up to the car. The officer stated that he never used any profanity towards the complainant. The officer stated the reason for the ticket being issued was because the officer saw the complainant speeding and the complainant admitted he was speeding.

Mr. Sarfoh stated that the speeding ticket was dismissed because there was insufficient evidence to determine the speed the complainant was going at the time of the incident. Mr. Sarfoh stated that there was no audio or video during the traffic stop and the officer is the supervisor of the Traffic and Safety Division. Mr. Sarfoh further stated that the officer's vehicle was inspected and there was no mobile DVR unit, so the ticket he issued to the complainant was handwritten.

Eugene Sarfoh moved to concur with the OPS finding regarding the conduct standards allegation as ***not sustained***. Akosua Yeboah seconded the motion. The motion carried unanimously. Chairman Smart stated that he was concerned that there was no mobile DVR unit in the police vehicle and the office used judgment as to the complainant's speed. Detective Hendrick replied that the APD is allowed to use judgment as per speed. Chairman Smart asked how many police vehicles are without the mobile DVR units. Detective Hendrick replied that the supervisor traffic vehicles do not have mobile DVR units. She added that there might be thirty (30) vehicles without them. The patrol vehicles were given the units first.

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

The following Board members were appointed to the Committee on Complaint Review for December 2012: Mickey Bradley, Maritza Martinez, Anthony Potenza, David Rozen, Eugene Sarfoh, Reverend Edward Smart, and Akosua Yeboah.

*C. Committee Task Force Reports*

By-Laws and Rules

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

Community Outreach

Board member David Rozen asked to be a member on this committee. Committee Chair Akosua Yeboah reported that the committee was currently looking at utilizing social media such as Facebook, Twitter and other websites for community outreach. Coordinator of the Board Sharmaine Moseley reported that at the NACOLE Conference she attended, there was a particular interest in social media for community and police oversight. Ms. Moseley further reported she is looking at putting together an informational session and she has a student who will be doing research and compiling information concerning what other agencies are doing.

Committee Chair Akosua Yeboah further reported she is in the process of creating new meeting brochures. It will be translated from English to Spanish and should be tentatively completed by either December or January. Board member Maritza Martinez agreed to assist with the translation.

Mediation

Committee Chairman Edward Smart stated that great progress needs to be made with the mediation process by the APD administration, the police union, and the CPRB. Board Counsel Patrick Jordan stated that some progress has been made as a basic framework and protocols have been finished. He stated that he thinks that he addressed all of the Board's questions. The union's attorney and he are going over the documents that Sharmaine Moseley sent to him. He has not heard from the union's attorney for a few weeks and will contact her again next week. Mr. Jordan further stated that once he receives her feedback, he will submit his feedback. He will have the forms completed.

Police Department Liaison-Policy Review/ Recommendations

Committee Chairman Andrew Phelan stated he spoke with Detective Hendrick and was informed that the OPS is having on-going meetings about some things that are not clear to the Board regarding additional training for the officers. Committee Chairman Phelan

further stated that Detective Hendrick has also informed him they are keeping track records of information from each meeting. Chairman Smart informed Detective Hendrick that the Board need its SOP's updated. Detective Hendrick stated that she'll speak to Sergeant Whalen to see if there have been any updates. Ms. Yeboah raised the question of how the Board can visit the OPS without going through the front window at the Public Safety Building. Chairman Smart replied that now all Board members are being quickly ushered upstairs.

#### Public Official Liaison

Committee Chairman Edward Smart stated that there is nothing new to report.

#### Task Force on Monitors

Task Force Chair Akosua Yeboah stated there is nothing new to report.

#### *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 twenty-eight (28) active complaints before the Board for review. Of those twenty-eight (28) active complaints, six (6) were reviewed and closed by the Board at tonight's meeting. This leaves the Board with twenty-two (22) active complaints. Currently, there are no cases in back log.

It was reported that five hundred and thirty-four (534) 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 and seventy-two (572).

It was further reported that since the Board's last meeting in October, the GLC received seven (7) grievance forms, bringing the total number of forms received to 388. In response to the GLC's outreach to all individuals, the GLC has received one hundred and four (104) CPRB complaint forms, which is 27%.

#### New Board Member

It was reported that the Board has a new Board member present at tonight's meeting. Mr. Rozen is a Common Council appointee elected to fulfill former Board member Patrick Toye's term. Mr. Rozen has completed his GLC and OPS orientation. The Citizens' Police Academy will begin early next year, so he will be enrolled in the academy at that time. We also have four (4) Board members (Chairman Smart, Martinez,

Phelan, and Yeboah) whose terms expired last week. Member Phelan will not be eligible for re-appointment at this time, since he has served two full terms. Mr. Phelan is a mayoral appointee.

### NACOLE

Sharmaine Moseley thanked Chairman Smart, Anthony Potenza, Marilyn Hammond and OPS Detective Montalvo for attending the NACOLE conference. The conference continues to be a wealth of information to learn. Ms. Moseley suggested that those members who attended should meet to discuss the conference. Ms. Moseley stated that she would like to schedule a meeting with the outreach committee to discuss some of these items.

### GLC Staff Update

It was reported that as mentioned at the last meeting, Ms. Moseley will be on a leave of absence from the GLC beginning tomorrow. Lisa Rivage, will be the point person for complaint form and grievance form intake. Many of you have either met Lisa or spoken to her over the phone. Ms. Moseley is hoping to be back by the December meeting.

### Upcoming Meetings

The next Board meeting is scheduled for Thursday, December 13 at 6 p.m.

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

OPS Detective Kathy Hendrick stated she has nothing to report. Chairman Smart asked for an update on the early warning system. Detective Hendrick reported that the early warnings for this month have not been flagged yet. Chairman Smart asked Detective Hendrick if they can request a report in regards to adding more mobile DVR systems in officers' vehicles. Detective Hendrick reported she will look into placing the request.

#### *F. Report from the Chair*

Chairman Edward Smart reported that there is nothing new to report.

### **V. Public Comment**

Chairman Edward Smart opened the floor for public comment.

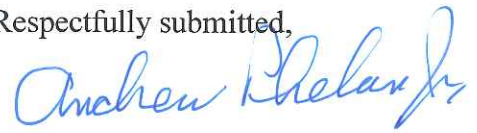
Cheryl Randall spoke on behalf of Ms. Alice Green for the Center of Law and Justice. Ms. Randall stated as her first point she wanted to quote Board Member Eugene Sarfoh, who asked from an earlier complaint "What do you have to do in order to not be suspicious?" Ms. Randall stated that you cannot send an officer out on a call without enough probable cause and this has been a theme in most of the complaints.

Ms. Randall further stated that the audio and video recorders are not being turned on in most of the complaints and she feels this is shameful. The Board should inquire further about this matter rather than going on the OPS findings. Ms. Randall stated that she is thrilled that the Board is moving forward in the mediation of the complaints that are sent before them.

**VI. Adjournment**

Chairman Edward Smart moved to adjourn the meeting. Marilyn Hammond seconded the motion. The motion carried unanimously. The meeting adjourned at 8:40 p.m.

Respectfully submitted,

A handwritten signature in blue ink, reading "Andrew Phelan, Jr.", written in a cursive style.

Andrew Phelan, Jr.  
Secretary