

City of Albany
Citizens' Police Review Board
GWU the Center
274 Washington Avenue - Teen Center Conference Room
January 10, 2013
6:00 p.m. - 8:00 p.m.

Present: Marilyn Hammond, Maritza Martinez, Anthony Potenza, David Rozen, Eugene Sarfoh, Reverend Edward Smart, and Akosua Yeboah.

Absent: Andrew Phelan Jr.

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. Eugene Sarfoh moved to approve the agenda. Anthony Potenza seconded the motion. The motion carried unanimously.

III. Approval of the September 13, 2012 Meeting Minutes

The September 13, 2012 meeting minutes were reviewed. Eugene Sarfoh moved to approve the September 13, 2012 meeting minutes. Anthony Potenza seconded the motion. The motion carried unanimously.

IV. Old Business

Chairman Edward Smart reported that in regards to **CPRB No. 55-12/OPS No. CC2012-136**, the complaint was made against a public service officer from the City of Albany and not an Albany police officer. Chairman Smart further reported that the complaint is out of the Board's jurisdiction and moved to close the case and refer it to the OPS to make a finding and report it to the Police Chief. Akosua Yeboah seconded the motion. The motion carried unanimously.

V. New Business

A. *New Complaints*

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

Chairman Edward Smart reported that the Board received six (6) new complaints since its November 1, 2012 meeting. Board member Anthony Potenza read the new complaints.

CPRB No. 52-12/OPS No. CC2012-125

According to the complainant, on September 29, 2012, officers arrived at a residence to break up a party that he was attending. The complainant alleges that when he told the officer that he did not live at the residence, the officer grabbed him by the shirt, dragged him down the steps and pushed him out the back door. The complainant further alleges that the officer used a lot of profanity, hurt his knee, and broke his gold necklace.

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

CPRB No. 53-12/OPS No. CC2012-1015

According to the complainant, on October 15, 2012, several girls were beating up her sister so she ran towards her sister. The complainant alleges that she was struck in the face and fell to the ground. When she looked up, she saw an officer walk over her and fail to stop to see if she was okay.

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

CPRB No. 54-12/OPS No. CC2012-132

The complainant alleges that Marshall Law officers questioned him while he was handcuffed. The complainant further alleges that the officers waited two (2) more minutes to un-cuff him. The complainant believes that he was violated as a teenager.

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

CPRB No. 55-12/OPS No. CC2012-136

According to the complainant, a public service officer cited him for parking too far from the curb. The complainant alleges that the public service officer was rude, disrespectful, and used vulgar language.

It was noted that a monitor was not appointed to investigate this complaint. This complaint is against a public service officer and was closed out without review by the Board at tonight's meeting because the Board lacks jurisdiction over public service officers.

CPRB No. 56-12/OPS No. CC2013-002

According to the complainant, the complainant was questioned by police officers about why he was standing where he was, the contents of his pockets, and what was on the ground near him. The complainant alleges that following these questions, a police officer handcuffed him and placed the complainant under arrest after discovering a glass tube on the ground. The complainant further alleges that the officer lied about seeing the

complainant throw a glass tube to the ground and the officer's lie resulted in the complainant being falsely charged with a crime. The complainant claims that he was illegally strip searched and that the police are corrupt.

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

CPRB No. 1-13/OPS No. CC2013-004

According to the complainant, on January 6, 2013, while leaving a gas station, officers allegedly told the complainant to cross while they were arresting some young suspects. After the complainant crossed, an officer ran across the street and allegedly threw the complainant on the wall, pushed his face into the boarded up window and kicked his feet. The complainant further alleges that the officer kept screaming "Stop resisting." The complainant claims that when he tried to get information about filing a complaint, an officer grabbed him by the back of his shirt and shoved him out the front door.

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

2. Complaint(s) for Board Review

CPRB No. 7-12/ OPS No. CC2012-015 (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint. The complainant alleges that she was physically removed from the premises of the Armory by a private security bouncer and after striking the bouncer with her clutch, an unidentified man picked her up from behind so she kicked at him. The complainant further alleges that the man threw her down on the concrete, grabbed her hair, slammed her face into the concrete, put her hands behind her back and told her that she was being arrested for assaulting a police officer. The complainant alleges that the officer put the handcuffs on so tight that she began to bleed and the officer used extreme profanity in telling her to be quiet. The complainant also alleges that the officer slammed her into a police car and threatened her while continuing to use profanity. The complainant alleges that when she was crying from the pain from the handcuffs, the officer profanely told her to deal with it. The complainant further alleges that when she asked for the officer's name, the officer failed to supply his name and continued to use profanity towards her.

Ms. Hammond reported that she reviewed the following documents: OPS Confidential Report; Six (6) Inter-Departmental Reports; Civilian Complaint Form; Citizens' Complaint Form; Subject Resistance Report on 1/12/2012; Discipline & Rules Report; An e-mail from the complainant to the detective wanting updates of the case; ER Discharge Report from Ellis Hospital stating injuries to face, shoulder and left knee; Request & Authorization Form to Ellis Hospital's ER; Six (6) Witness Statements; and Detective Notes.

Ms. Hammond reported that the first witness was a security guard who was interviewed on March 1. The witness stated that he did not observe any injuries on the complainant during the incident. Ms. Hammond reported that the second witness was another security guard who was interviewed on April 17. This witness stated that the complainant seemed to be on either ecstasy or some other kind of drug. He did not see the officer push the complainant to the ground. Ms. Hammond reported that a third witness, a taxi driver, was interviewed on April 10. This witness stated that the complainant fell to the ground on her own accord and the officer assisted the complainant by helping her up. The witness stated that he did not see the officer push the complainant to the ground or deploy any force on her nor did he see the complainant sustain any injuries. Ms. Hammond further reported that a fourth witness, a taxi operations manager, stated that at no time did he see the officer slam the complainant to the ground or strike her in any way. Ms. Hammond further reported that a fifth witness, the complainant's boyfriend, said the officer was swearing and being aggressive with the complainant. Ms. Hammond further reported that a sixth witness, another taxi driver, stated that the complainant was arguing, belligerent, loud and getting angry but he could not hear what was being said. Ms. Hammond further reported that the sixth witness stated the officer took the complainant to the ground aggressively, and that the complainant was placed into the cab and the witness did not see the complainant or the officer strike each other.

Ms. Hammond asked if the complainant was present. It was noted that the complainant was present. The complainant stated that the night of the incident she was at a concert and her friend got into an altercation with another female. The complainant further stated that a bouncer pushed her and she did hit the bouncer with her clutch. She was not on any drugs. The officer must have seen her hitting the bouncer with her clutch. The officer did not identify himself. The complainant further stated the officer picked her up from behind, she started kicking her feet in the air, and she was slammed face down to the concrete. Then the officer picked her up by her hair and slammed her back down. She saw blood go everywhere and that is when the officer identified himself. The complainant further stated that the officer put the handcuffs on her so tight that her wrists were basically bleeding and she was screaming in agony. The officer screamed profanities at her, picked her face up again, and proceeded to slam it back down on the concrete. She sustained two (2) black eyes and a black chin. She has pictures showing her injuries. The officer picked her up, slammed her against the police car, took the handcuffs off, and threw her in a cab. She asked him what his name was.

Ms. Hammond stated that several witnesses were interviewed for this complaint. Ms. Hammond reported that a monitor was assigned to the case. Monitor Sal Munafo was acknowledged as being present. Mr. Munafo stated that in his findings it was uncontested that the complainant was escorted out of the Armory because of a physical altercation and was confronted by the officer. The officer used force to the effect what he

intended at the time to be an arrest. The officer reported in the Resistance and Subject report, that the complainant was kicking, screaming and swinging her pocketbook at staff and many witnesses did in fact corroborate the same statement. Most observers believed that the complainant was intoxicated or under the influence of drugs. Mr. Munafo further stated that it was reasonable to conclude the complainant was out of control, as evidenced by much of the testimony that was considered. It was also reasonable to conclude that while in an intoxicated state, the complainant may not have taken notice of the target officer identifying himself. Mr. Munafo further stated that many witnesses were sure that the targeted plain clothes detective was an officer and at one point described the officer as being in uniform at the time. All of the witnesses' statements were that the complainant was loud and verbally abusive. According to several witnesses, the complainant was flailing her arms around. By the complainant's own admission, she struck at least one individual by swinging her clutch bag and using it as a weapon. Mr. Munafo stated that it is reasonable to conclude the complainant was out of control for much of the testimony that was considered. It is also reasonable to conclude that in an intoxicated state, the complainant may not have taken notice of the officer identifying himself. Many of the witnesses were so sure that the targeted plain clothes detective was an officer and at one point describing the officer being in a uniform at the time.

Mr. Munafo stated that the complainant raised a legitimate question as to the amount of force that was used by the officer in conducting what he initially intended to be an arrest of the complainant. Mr. Munafo stated that Section 35.03 of the NYS Penal Law states that a police officer may use physical force when and to the extent that he reasonably needs such to be necessary to affect that arrest.

Mr. Munafo stated that the OPS recommended the findings for the use of force allegation was *unfounded* for a number of reasons. Mr. Munafo stated that despite the issue of the OPS grouping of specific witnesses and the question of excessive force, two of the witnesses leaned more towards the excessive use of force from the officer but their information was not consistent. Mr. Munafo further stated that the target officer was reasonable in the amount of force he used from the actions of the complainant that warranted her arrest. Mr. Munafo also stated that the injuries sustained by the complainant were reasonably consistent with the amount of force used by the officer. Mr. Munafo stated that he concurred with the OPS finding for the first use of force allegation as *unfounded*, second use of force allegation as *exonerated* and conduct standards allegation as *sustained*.

The complainant stated that she was not arrested so the monitor's statements did not make sense to her. The monitor responded that the issue is that the officer intended to arrest the complainant based on his own discretion. The complainant responded that the two black eyes and her bruised chin were not justified.

Chairman Smart asked the complainant if she went to the emergency room after the incident. The complainant stated that she did go to the emergency room and she has pictures for the Board to see. Chairman Smart asked Ms. Hammond if she saw the report. Ms. Hammond replied that she reviewed the complainant's discharge papers from the emergency room, which reported facial injuries, and injuries to her shoulder and left knee. She did not see any pictures of the complainant's injuries.

Chairman Edward Smart asked the complainant if she went to the emergency room right after the incident. The complainant stated that the incident occurred around 3:30 a.m. and she went to the emergency room the following morning. The complainant further stated that her face and her knee were covered in blood.

Maritza Martinez asked the complainant to clarify that the incident at the Armory that evening started with her friend. Ms. Martinez further stated that in the complainant's initial report, the complainant stated that the fight started with her and she was punched in her eye. Ms. Martinez asked the complainant who gave the complainant the two (2) black eyes. The complainant denied the report's information that the fight was because of her. The complainant stated that the fight at the armory was because of her friend and the officer gave her the two (2) black eyes.

Akosua Yeboah stated that she did not know if it was reasonable to conclude the complainant was under the influence at the time of the incident unless they have some hospital report that confirmed it. Ms. Martinez agreed. The complainant stated that she was not under the influence of anything at the time of the incident.

Ms. Hammond stated that she was not able to see the dash cam video. Ms. Hammond further stated that there were several police cars there and that will be an issue until it is resolved. The complainant stated that the Armory refused to show the video of the incident. Ms. Hammond clarified that she was talking about the police video.

Chairman Smart asked Detective Montalvo if there was video from the Armory of this incident. Mr. Munafo replied that he personally viewed the video at the Armory and the portion of the video that he saw it was from the outside front door camera. From visualizing where the club is and the front door, all he saw was the complainant being physically removed outside by one of the bouncers. The complainant is out of the camera range where her interaction took place with the officer.

Ms. Martinez asked if there was a medical report that indicated if the complainant was intoxicated or not. Ms. Yeboah replied that the OPS report seemed to conclude that the complainant was intoxicated, but that conclusion was unreasonably reached. Eugene Sarfoh stated he did not know that was to be concluded or as much to summarize people's observations and they are correct that they cannot say if the complainant was or was not intoxicated.

Mr. Sarfoh further stated that there seemed to be an issue as to whether or not the officer was in uniform or in plain clothes the night of the incident. Mr. Sarfoh asked Mr. Munafo if the officer was in uniform or not. The complainant stated that the officer did not identify himself until after she had been slammed into the ground. Mr. Munafo replied that the officer was in plain clothes.

Chairman Smart asked the complainant if she was involved in any physical confrontation with other people inside or outside the building. The complainant replied that before any physical confrontation could take place, the bouncer had already picked her up and removed her from the premises. Chairman Smart asked the complainant to describe the particular point the officer struck her eyes. The complainant stated that as soon as she hit the bouncer with her clutch, she was picked up from behind by the officer. She started kicking because she did not know who he was. The officer took her by her hair and he literally slammed her body to the ground which caused the black eyes. The complainant further stated that the officer grabbed her by the hair and then slammed her face to the ground three (3) times which caused her to have two (2) black eyes, a bruised chin, and a bleeding knee.

Ms. Hammond stated that the witnesses' statements were different from the complainant's statement at the meeting regarding the use of force from the officer. Ms. Hammond further stated some witnesses say the officer did not use that much force and only took the complainant down once. The complainant stated that she can show Ms. Hammond the pictures. Ms. Hammond further stated to the complainant she knows that she has pictures but she needs to understand that there are 6 witnesses that are saying something entirely different. The complainant stated that the taxi driver who brought her home told her he would vouch that the officer beat the crap out of the complainant and her ex-boyfriend was there on the scene as well.

David Rozen asked the complainant if she was the only one taken outside or was there a huge altercation where the police came in to break up a fight. The complainant replied that did not happen and they took the other girl someplace else. It was just the two of them who were brought outside.

Ms. Hammond stated to the complainant that particular witness (taxi driver) she just named stated that the complainant was arguing, belligerent, loud, and very angry. Ms. Hammond further stated that the witness said he could not hear what was being said but the officer did take her to the ground. Ms. Hammond stated that the witness said the complainant was later put into his cab and he did not see her strike the officer or the officer strike her.

Mickey Bradley asked the monitor if there was any indication of why an arrest was not made. Mr. Munafo stated that there was no indication of an arrest being made but at

some point the complainant's ex-boyfriend talked with the officer and the officer used his discretion by not arresting her.

Ms. Yeboah stated that what bothered her with the use of force issue was that despite the fact that the witnesses were not corroborating, the injuries the complainant sustained and the hospital report confirming her injuries clearly show the amount of force the officer used.

Mr. Munafo stated that if the Board would like for him to take a look further into the officer's report, he will do so. Mr. Munafo further stated the officer described what he used and the injuries thereafter were consistent with the procedure he used.

Anthony Potenza stated that what the Board needs to determine is whether or not the OPS completed a thorough investigation of the complaint. Mr. Potenza further stated that if the Board does not concur with the OPS findings, the complaint will be sent back to the OPS for further review or investigation.

Chairman Smart stated that one of the Board's goals was to make sure that nothing like this happened again. Chairman Smart thanked the complainant for coming forward with her complaint.

Mr. Potenza stated that the OPS investigation concluded that the officer used profanity in dealing with the complainant. Mr. Potenza stated that he wanted the complainant to know that. The complainant stated that she can deal with the detective's use of profanity, but what she cannot deal with is that a man beat her up.

The complainant's mother stated that she saw her daughter's black eyes and a black and blue chin. She looked a mess. The complainant's mother further stated looking at the size of the complainant, regardless of what had taken place because she was not there to see and she does not think her daughter was resisting arrest. The complainant's mother further stated that he threw her daughter on the ground and starting calling her profane language.

The complainant's mother stated that the taxi driver told the complainant that what he witnessed was police brutality. Maritza Martinez states to complainant that she is not insulting her but that she doesn't stand a chance against any police officer. Ms. Martinez states the officers have to assess how out of control how a person is and it can be a difficult thing when you're in the heat of it to assess.

Marilyn Hammond moved to not agree with the OPS finding for the first use of force allegation as **unfounded**. Akosua Yeboah seconded the motion. The motion carried unanimously. Ms. Hammond stated that she believed that a finding of **not sustained**, which is appropriate where the review shows there was insufficient evidence to prove or

disprove the facts made in the complaint, would be more appropriate. Mr. Sarfoh agreed with Ms. Hammond. Marilyn Hammond moved for the Board to accept a finding of *not sustained* in regards to the first use of force allegation. David Rozen seconded the motion. The motion carried unanimously.

Marilyn Hammond moved to not agree with the OPS finding of *exonerated* for the second use of force allegation. Akosua Yeboah seconded the motion. The motion carried unanimously. Ms. Hammond moved for the Board to accept a finding of *not sustained*. Akosua Yeboah seconded the motion. The motion carried unanimously.

Marilyn Hammond moved to concur with the OPS finding of *sustained* for the conduct standards allegation that the officer used profanity towards the complainant. This is appropriate where the review discloses sufficient facts to prove the allegations made in the complaint. Anthony Potenza seconded the motion. The motion carried unanimously.

Mr. Potenza stated that both the monitor and the OPS did a very thorough job investigating the matter.

Mr. Munafo stated that in regards to the dash cam video, he was inadequately able to review it due to the fact that the censor of it is an ongoing issue. It hampers the monitor's view. The policy regarding the officer's identity protection needs to be reviewed and corrected. Mr. Munafo stated that he believes the target officer held the complainant against a squad car, but he was unable to make it out because the video was not great. It is difficult to see what is happening when someone is holding a piece of cardboard over the video of the incident.

Mr. Sarfoh stated that the policy that exists regarding the officers and their anonymity is not helpful to the Board or the monitors. Mr. Sarfoh stated that the detective was complying with it so the target officer will not be revealed. The Board needs to figure out how to at least allow the monitor to see videos during investigations.

Ms. Yeboah stated that this issue has been talked about numerous times and that the Board has been told that acquiring video technology to maintain officer anonymity is an expensive process and the Albany Police Department does not have the funds for it.

Chairman Smart stated that if the officer does not disagree with the video being shown, then the monitor can see the tape. Chairman Smart further stated that this is possible because in a previous case, an incident was recorded and posted on Facebook and the officer agreed to have the recording posted. Detective Hendrick stated that in that instance, the investigation had already been completed. Chairman Smart stated that there needs to be a way for monitors to be able to see video of incidents in their entirety.

Eugene Sarfoh summarized the complaint. Mr. Sarfoh reported that the incident occurred on Friday, June 25, 2012. The complainant alleged that he was attempting to break up a fight in a parking lot when one of the participants struck him in the face. The complainant stated that he confronted the individual who struck him and then police arrived. The complainant alleges that the police asked him to place his hands behind his back and he attempted to explain to them that he was not fighting. The complainant alleges that he was then tased at least three (3) different times. The complainant further alleges that the officer pushed his face down into the ground while continuing to tase him. The complainant alleges that he was then handcuffed and the officer then tased him again in his back while also kicking him in his back and ribs. He further alleged the officer used profanity.

Mr. Sarfoh reported that this case involved three (3) allegations of use of force and one (1) allegation of conduct standards. He further reported that he reviewed the following documents: OPS Complaint Forms; CPRB Complaint Form; and OPS Confidential Report (17 pages).

Mr. Sarfoh noted that monitor Theresa Balfe was assigned to this case. Mr. Sarfoh stated that there were eight (8) officers involved in this incident and they were all interviewed. Mr. Sarfoh further stated that the witnesses were also interviewed about the incident filed by the complainant.

Mr. Sarfoh reported that the complainant was not one of the initial participants in the fight that occurred in the parking lot. The complainant knew one of the individuals involved in the fight and was attempting to intervene on behalf of the individual. While one of the combatants turned against the complainant to fight, a 911 call was made and that is when police arrived on the scene. Mr. Sarfoh further stated that there was a significant crowd of about 20-30 people on the scene so it became chaotic.

Mr. Sarfoh reported that based on the OPS investigation, the complainant was belligerent. He was out of control and easily came to the attention of the officers arriving on the scene of the incident. Mr. Sarfoh stated that the complainant swung at the officers and at that moment an officer was trying to subdue him. Mr. Sarfoh further stated that at that point, the taser was brought out and activated. Mr. Sarfoh reported that the complainant alleges that when the officer first attempted to use the taser it did not work. A physical altercation ensued between the complainant and officers where they brought him down to the ground and the complainant was resisting arrest. Mr. Sarfoh stated that was when the taser was used twice on the complainant. Mr. Sarfoh further stated that the EMS was called to the scene and the complainant received medical treatment. The EMT also stated that the complainant seemed to be belligerent. Mr. Sarfoh further stated that an off-duty

bouncer, who was at the particular location where the fight occurred, was interviewed. The bouncer stated that the complainant was in the fight and continued to fight as the police arrived. Mr. Sarfoh reported that the witnesses did see the amount of use of force on the complainant and felt that it was warranted.

Mr. Sarfoh reported that the complainant was able to identify several witnesses that were interviewed on his behalf. One of the combatants in the fight was arrested and that witness stated that the complainant was out of control and it was not surprising the way it played out. A woman disputed the use of force on the complainant and she was also arrested in connection to the fight.

Ms. Balfe stated that what she found so compelling from what she saw was the complainant's witness' video of the incident that was turned over to OPS. Ms. Balfe stated that Detective Anthony Battuello worked on the case with her and they managed to slow down the video for them to see the incident, which she watched twice. Ms. Balfe further stated that she was not able to see the officer's face because it was covered but the officer did not do anything that he was accused of.

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

Chairman Edward Smart asked Ms. Balfe if after watching the video of the incident, if she believed that he should have been tased three (3) times simply because he was a very large person. Ms. Balfe replied that she did not go by the complainant's size but more by his actions, which included fighting and resisting arrest. Ms. Balfe stated that she does not look at anyone's size. Ms. Balfe further stated that the complainant was a large male and she feels the officer's use of force was appropriate. In the course of the officer tasing the complainant, the complainant continued to lunge at the officer which caused the officers to subdue him.

Detective Andrew Montalvo stated that sometimes when the taser is activated with a five (5) second burst, that does not mean that the person is receiving that five (5) second burst. It has been proven in many case studies that the connection of the taser not giving the burst can be caused by the clothing material and possibly the spread of the prongs being too close. Ms. Balfe stated that it also depends on where the person is struck.

Chairman Smart asked Ms. Balfe if the complainant was handcuffed when the officers tased him. Ms. Balfe stated that she did not believe he was. Chairman Smart asked Ms. Balfe if when the complainant fell to the ground, the officers handcuffed him. Ms. Balfe replied that he was not handcuffed at first because he was resisting.

Chairman Smart stated that it is really amazing to him from watching videos at different conferences that a male around 350 pounds was tased one time and begged officers to

stop tasing him. Ms. Balfe stated that it is unknown whether the complainant was tased three (3) times, but we do know that it was discharged three (3) times.

Eugene Sarfoh moved to concur with the OPS finding for the first use of force allegation as *exonerated*, which is appropriate where the review showed that such acts were proper, where the police officers tased the complainant with three (3) tasers. One of the witnesses, identified by the complainant submitted his cell phone video. The video corroborated the officers' testimony. Anthony Potenza seconded the motion. The motion carried unanimously.

Eugene Sarfoh moved to concur with the OPS finding for the second use of force allegation where an officer pushed the complainant in the face to the ground as *not sustained*, which is appropriate where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. Based on the OPS investigation, the officer admitted to bringing the complainant to the ground, but denied ever pushing him in his face. Mickey Bradley seconded the motion. The motion passed unanimously.

Eugene Sarfoh moved to concur with the OPS finding for the third use of force allegation where an officer tased the complainant again after he was handcuffed and the officer kicked him in the back and ribs as *unfounded*, which is appropriate where the review showed that the act or acts complained of did not occur or were misconstrued. Based on the OPS investigation, evidence to support this finding was introduced by the complainant's witness. The cell phone video displays the complainant on the ground lying on his back facing the officer (not in custody) in a defensive position, when the officer deploys the Taser upon him. The video then reveals the officer turning the complainant over onto his stomach, and then placing him in handcuffs. The video does not reveal any officer striking the complainant in any way. Furthermore, the statement of an independent witness supports that of both officers involved, in that there was no excessive force deployed. All witnesses listed by the complainant stated they did not observe any officers strike the complainant, nor was excessive force used. It has also been introduced that the complainant was believed to be intoxicated, or at least under the influence of alcohol. He admitted to the OPS Detective that he had been drinking during the day. Confirmation of some level of intoxication by him was offered by members of EMS personnel on the scene. The scene was evidentially chaotic and several people were arrested; and as previously stated, there was no indication by EMS personnel that the complainant was injured during the incident. It appears that he was mistaken as to how this portion of the event occurred. David Rozen seconded the motion. Chairman Edward Smart voted against the motion. The motion carried by a vote of 7-1. Chairman Smart stated that he voted in the negative because the video showed that the complainant was on his back facing the officer in a defensive position when the officer used the taser on him. Mr. Kleinmeier stated that was not one of the allegations. Chairman Smart stated that is excessive use of force.

Eugene Sarfoh moved to concur with the OPS finding for the conduct standards allegation where an officer used profanity towards the complainant as *not sustained*, which is appropriate where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged the officer used profanity towards him by stating “Shut the {expletive} up!” Based on the OPS investigation, the officer admitted to using “aggressive language” towards the complainant when attempting to gain control of him and placing him into custody. However, the officer did not recall using any profanity or even the substance of the language he used. There are no supporting statements from any of the witnesses involved with regards to this allegation, because the consensus seems to be that the scene was too chaotic to hear any specific conversations between the officer and complainant. In absence of additional evidence, there is insufficient information to confirm or deny this allegation. Mickey Bradley seconded the motion. The motion carried unanimously.

CPRB No. 35-12/OPS No. CC2012-081 (Presented by David Rozen)

David Rozen summarized the complaint. The complainant alleged that he was driving on Central Avenue and North Lake when he was stopped by a police officer who failed to ask him for his driver’s license or registration. The complainant alleged that one officer told another officer to “take him down hard” and he was pulled through his driver’s side window and placed on the ground. The complainant further alleged that while on the ground, an officer repeatedly punched him in the face and tased him.

Mr. Rozen reported that he reviewed the following documents: OPS Confidential Report; Request & Authorization Information to the Albany PD Form; Medical Report from Albany Memorial Hospital; Patient EDM Report – Northeast Health EDM; Citizen’s Complaint Form; Call Details; Albany PD Subject Resistance Report; Six (6) Inter-Departmental Correspondence; Albany Memorial Hospital Report of Black Eye; Albany PD Appearance Ticket for Resisting Arrest; Five (5) Albany PD Tickets (Reckless Driving, Speed In Zone, Improper or Unsafe Turn/Without Signal, Moved From Lane Unsafely and Cash Bail Affidavit); Two (2) City of Albany Criminal Court Counts (Class A Misdemeanor-Resisting Arrest and Violation-Unlawful Possession of Marijuana); and Patrol Car Video Footage.

Mr. Rozen stated that he was actually able to watch the surveillance video because none of the officers’ faces were present. The complainant was pulled over for several vehicle and traffic violations such as reckless driving, excessive speed, driving the wrong way and throwing a small baggie out the car window. Based on the OPS investigation, as the officer approached the vehicle, the complainant rolled down the window and the complainant’s hands were moving all over the vehicle and in his waistband. The officer provided simple commands to the complainant to put his hands on his head, which were all refused. The complainant physically resisted. The officer, under reasonable suspicion

that the complainant could be armed, grabbed the complainant's hands through the window and waited for backup. Mr. Rozen further reported that upon being advised by the complainant of a broken driver-side door that does not open, the complainant was escorted through the driver's side window by three officers while another officer tried to free the complainant's feet, which were kicking. Mr. Rozen reported that he watched the video and it shows the complainant swinging his hands and the officer attempting to gain compliance, so they tased him for 5 seconds. After the complainant was removed from the vehicle and placed on his feet, he was commanded to place his hands on his head and lay on the ground, which he failed to cooperate with and physically resisted. Mr. Rozen further reported that the officers grabbed the complainant's legs and took him down causing the complainant to hit the left side of his face on the ground. Once on the ground, the complainant continued to physically resist and place his hands out of view. Mr. Rozen further reported that an officer proceeded to punch the complainant with his fist to gain compliance, followed by a five (5) second drive stun with a taser to the complainant's upper back, after which the complainant complied and the officers placed him in handcuffs and in a police vehicle for transport. Mr. Rozen further reported that the medical records indicate the complainant suffered a standard black eye and doctors did not feel imaging was warranted. The doctor recommended that he iced it.

Mr. Rozen noted that a monitor George Kleinmeier was assigned to this case and was present. Mr. Kleinmeier clarified that it was the trooper who punched the complainant and not an officer. Chairman Smart asked if the complainant was present. It was noted that the complainant was not present.

Mr. Rozen moved to concur with the OPS finding for the use of force allegation as *exonerated*, which is appropriate where the review shows the acts were proper. Mr. Rozen reported that he viewed the video and it showed that the officers were in fear for their lives and the complainant refused to comply with direct commands. The complainant refused to make his hands visible and continued to resist. In the video, there was no panic or rush to get the complainant out of the vehicle. Once outside the vehicle, you can see the complainant resist the officers. The video also showed the trooper striking the complainant. After he was tased, the complainant was in full compliance. Mr. Rozen stated that he agreed with the OPS finding of *exonerated*. Chairman Edward Smart seconded the motion. The motion carried unanimously.

CPRB No. 46-12/OPS No. CC2012-102 (Presented by Chairman Edward Smart)

Chairman Edward Smart summarized the complaint. The complainant believed that while she was a passenger in a car driven by her boyfriend, they were pulled over by an officer because she was black and the officer thought that she was a prostitute. The complainant stated that the stop was racially motivated and her boyfriend had done nothing wrong.

Chairman Smart noted that monitor George Kleinmeier was assigned to this case and was present. Mr. Kleinmeier stated that the video does not substantiate what the complainant alleged. The allegations are coming from left field. The video shows that the officer was very professional.

Chairman Smart reported that he reviewed the following documents: Citizens' Complaint Form; Confidential Report; Call Log #12317417; Caps Net; and Detective Notes.

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 conduct standards allegation as ***unfounded***, which is appropriate where the review shows there is insufficient evidence to prove or disprove the facts made by the complainant. The complainant alleged that she was pulled over by an officer because she was a black prostitute and the traffic stop was racially motivated. Based on the OPS investigation, none of the witnesses interviewed were close enough to hear any of the conversation between the officer and the driver or the complainant. No one interviewed could offer an example of any racially biased conduct during the incident in question. The DVR footage clearly showed the vehicle passing the stop sign at Church and Broadway and did not come to a complete stop. The traffic violation was witnessed by the officer, which justified the traffic stop. Chairman Smart further noted that the audio was clear and showed the conversation between the officer and complainant to be respectful, polite and orderly. The investigation shows no biased or racially motivated acts on the part of the officer and no ticket was issued by the officer to the driver.

Chairman Smart reported that the complainant was a passenger in a car that was pulled over for not totally stopping at a stop sign. The officer asked for ID from the driver of the car and the complainant was a passenger. They were following another car on their way to a cruise. None of the witnesses in the other car could hear any testimony concerning the allegation. The complainant and the driver stated at no time that the officer made no notice speak of their racial makeup that the complainant was a prostitute. No evidence was given that the officer was aware of any relationship between the parties. The traffic stop was validated by the DVR and the audio. It showed a very respectful and polite conversation between the officer, the driver and the complainant.

Chairman Smart further reported that a second officer stood quietly on the passenger side of the vehicle. The stop took nine (9) minutes. The investigation shows no biased or racially motivated acts on the part of the officer and no ticket was issued by the officer to the driver. Chairman Edward Smart moved to concur with the OPS finding for the conduct standards allegation as ***unfounded***, which is appropriate where the review

showed there is insufficient evidence to prove or disprove the facts made by the complainant. Anthony Potenza seconded the motion. The motion passed unanimously.

CPRB No. 37-12/OPS No. CC2012-075 (Presented by Akosua Yeboah)

Akosua Yeboah summarized the complaint. The complainant alleged that an officer was rude and unprofessional in response to a call made regarding a property dispute with neighbors in July of 2012. The complainant stated that the officer first called her home, using a private blocked number, instead of proceeding to the premises to assess the situation. Ms. Yeboah further reported that the complainant alleged that during the phone call, the officer was rude and aggressive. The complainant used the word “bizarre” in describing the phone conversation with the officer. Ms. Yeboah reported that the complainant alleged that the officer said that he was not going to come and then the officer said he would come but he didn’t know when. The officer then allegedly said that he would be there in 15 minutes. When the officer arrived on the scene, the complainant alleged that he continued to be rude and aggressive and that she had to make another call to the police station the following day because she felt that the issue precipitating the call was not resolved. During the second call, the complainant stated that she heard the officer on the other end call her a derogatory name and use profanity before hanging up on her.

Ms. Yeboah asked if the complainant was present. It was noted that the complainant was present. The complainant stated that she had an issue with her neighbors about them ripping up six (6) pieces off their new siding with the neighbors’ disabled car door. The complainant stated that as the neighbors were pushing the car out into the street, the car door was open, which in turn ripped up the siding from their home. The complainant further stated they were afraid to get sued by their neighbors because they have been having issues with them in the past.

The complainant further stated that she called the police. She remembered having the same officer at her residence over one (1) year ago, but he never resolved the situation. The complainant stated that when she called the police, the same officer returned her phone call by calling from a private phone. The complainant further stated that she recorded the conversation and the officer was unprofessional and rude. The complainant further stated to the officer that she and her husband were having issues with their neighbors and her husband would speak with him when the officer arrived.

The complainant stated that after the officer refused to come to her home, the officer finally told her that he would arrive in fifteen (15) minutes. They were heading down the stairs to meet the officer, the officer kept pacing back and forth and the officer had an “evil” look on his face. The complainant further stated that when they went to talk to the officer, he was unprofessional and rude. The complainant stated that the officer was only

concerned about was where her property lines were. She told the officer she was going to show him the deed and the concrete apron that was flushed up against their house. The complainant stated in their backyard they have the wire mesh fence that you can see standing in the driveway and inside of that is a vinyl fence. The complainant further stated that the officer was aggressive, rude and a bully in how he talked to her and her husband.

The complainant states she has never been bullied before except by the police. She has never had trouble in school all her life and nobody should have to deal with that or have to be treated that way. The complainant stated that the officer did not even solve the problem. The complainant stated the issue was the neighbor's disabled car ripped up the siding at the end of her driveway. The complainant further states the next day, on camera, she saw the neighbors' nephew bring his bike up against their siding into the backyard. The complainant further stated that she called up the Center Station again and the person said an expletive word and she slammed the phone down. The complainant further stated that when she called back, they answered normally, and sent a different officer. The complainant further stated that the other officer handled the situation in like a minute and they have not had trouble ever since. The complainant further stated it took three (3) officers and his Sergeant to come over on the day that they had the incident with the alleged officer.

Ms. Yeboah reported that she reviewed the following documents: Citizens' Complaint Form; Confidential Report; Inter-Departmental Correspondence; Call Details; Field Interview Report; Review Notes; Letter from the complainant to the CPRB; and Albany Police Department Standard Operating Procedure (SOP) concerning dispatch and patrol personnel.

Ms. Yeboah noted that a monitor was not assigned to the case. The investigation failed to discover any evidence that either proved or disproved the allegations made by the complainant. Based on the OPS investigation, all of the officers involved denied the material allegations in the complaint. However, the investigation discovered several incidents that are cause for concern.

Ms. Yeboah reported that the first cause for concern relates to the fact that the officer admitted to calling the home of the complainant prior to coming to the scene. The officer said that he was calling to inform the complainant that he would be delayed and wanted to make an assessment by phone. Normally, an officer would proceed to the scene rather than make a phone call. Ms. Yeboah further reported even though the Albany Police Department Standard Operating Procedure (SOP) does not address this particular type of matter, the expectation of the Albany Police Department and of the OPS is that an officer shall immediately proceed to the scene of a call and not try to assess the situation by

phone. The OPS recognizes that this is a deficiency of the SOP and is taking steps to correct it.

Ms. Yeboah reported that the officer who took the call on the second day denied using profane language or derogatory names in speaking with the complainant or hanging up. Ms. Yeboah reported this could not be substantiated during the investigation because the recording equipment at the police station was inoperative at the exact time of the call. Ms. Yeboah further reported that this is unfortunate and disturbing because it prevented the OPS and the Board from doing a thorough job of investigating the complaint. Ms. Yeboah reported that an investigation was made as to the cause of the failure and a new fail/safe procedure has been implemented within the APD in an attempt to prevent this from happening in the future.

Ms. Yeboah stated that it was discovered during the investigation that the officer responding to the call on the first day misstated his time of arrival on the scene. This inaccuracy was confirmed by GPS data in the police car. Ms. Yeboah further reported that in her opinion, the fact that the officer stated that he was on the scene approximately five minutes earlier than the GPS recording brings into question the credibility of the officer with respect to other statements that he made regarding this complaint.

Ms. Yeboah reports these concerns notwithstanding, the investigation with respect to this case was not able to substantiate the complaints.

The complainant stated that on January 20, 2011 about 4 p.m., she called the Center Station because she received a “bizarre” phone call from the police department. The complainant stated that she called her husband to inform him of the phone call and he told her to call back to see if the call had anything to do with a security clearance because her husband’s work involved homeland security. The complainant stated that she called back around 4 pm and deemed the officer to be excessively rude, so she contacted the OPS. The complainant further stated that the detective told her it was a different officer that was rude to her but would not reveal the officer’s name to her. The complainant further stated that an OPS detective informed her that she would be speaking with a lot of officers about her complaint, which made her feel like she did not want to continue to pursue the case. The complainant further stated that she began receiving numerous phone calls from law enforcement departments from different area codes in New York at least five (5) times per week for over a year. The complainant further stated that she considered these phone calls harassment and she felt it was ironic after the detective told her she would be hearing from a lot of officers.

Akosua Yeboah moved to concur with the OPS finding for the first conduct standards allegation as *not sustained*, which is appropriate where the review showed there was

insufficient evidence to prove or disprove the facts made by the complainant. Chairman Edward Smart seconded the motion. The motion carried unanimously.

Akosua Yeboah moved to concur with the OPS finding for the second conduct standards allegation as *not sustained*, which is appropriate where the review showed there was insufficient evidence to prove or disprove the facts made by the complainant. Chairman Edward Smart seconded the motion. The motion carried unanimously.

Akosua Yeboah moved to concur with the OPS finding for the call handling allegation as *unfounded*, which is appropriate where the review showed that the act or acts complained of did not occur or were misconstrued. David Rozen seconded the motion. The motion carried unanimously.

B. Appointment of New Members to the Committee on Complaint Review for February 2013

Chairman Edward Smart reported that the next Board meeting that was scheduled to be held on Thursday, February 14 will be postponed to a different date.

The following Board members were appointed to the Committee on Complaint Review for February 2013: Marilyn Hammond, Maritza Martinez, David Rozen, Eugene Sarfoh, Reverend Edward Smart, and Akosua Yeboah.

C. Committee Task Force Reports

By-Laws and Rules

Committee Chairman Edward Smart reported there are no adjustments to the by-laws and suggestions that have been made will be considered during the committee meeting.

Community Outreach

Committee Chair Akosua Yeboah reported that with respect to community outreach, the Board will be setting up a Facebook page. Ms. Yeboah reported that she feels their current website is a passive outreach and people have to come to them to see what they are doing. Ms. Yeboah stated that Facebook and Twitter are social media sites that are active and this will help them reach out to the public. Ms. Yeboah stated that the page is set up in beta, and she expects the page will go live in March. Ms. Yeboah stated that she is looking for volunteers to help with the page.

Chairperson Yeboah reported that they have completed three (3) out of four (4) brochures that are ready to go. Ms. Yeboah reported that one of the Spanish version brochures is done and they still have one remaining to translate.

Mediation

Detective Kathy Hendrick reported that the mediation program forms was in Corporation Council's hands or with the police union.

Board Counsel Patrick Jordan reported that the union members have the forms to make their comments. Mr. Jordan stated that he will continue to press the union to send the forms back to the GLC.

Police Department Liaison-Policy Review/ Recommendations

Committee Chairman Edward Smart reported that Committee Chairman Andrew Phelan Jr. is still a part of the Board until someone is appointed.

Public Official Liaison

Committee Chairman Edward Smart reported that he met with the Chairman of the Public Safety Committee and its members. Chairman Smart reported that he updated the Committee on the status of the mediation program, the progress of the Board, the number of cases and the excellence of the individuals that are a part of the Board. Chairman Smart further reported his enthusiasm for David Rozen to be a member of the Board to the members of the Public Safety Committee.

Task Force on Monitors

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

D. Nominations for Elected Board Officers Positions

Anthony Potenza moved to nominate Reverend Edward Smart as Chairman of the Board. Akosua Yeboah seconded the nomination. Reverend Edward Smart accepted the nomination for Chairman of the Board.

Chairman Edward Smart moved to nominate Anthony Potenza as Vice-Chairman of the Board. Marilyn Hammond seconded the nomination. Anthony Potenza accepted the nomination for Vice-Chair of the Board.

Chairman Edward Smart moved to nominate Akosua Yeboah as Secretary of the Board. Eugene Sarfoh seconded the nomination. Akosua Yeboah accepted the nomination for Secretary of the Board.

E. Committee/Task Force Chair Elections

Committee Chairman Edward Smart stated that he will step aside from the Mediation and the Public Official Liaison Committee. Chairman Smart stated that he took the committees at that time because there were not enough members and he would like for

the other members to take leadership of the committees. Eugene Sarfoh reported that he will serve as a member of the Mediation Committee and the By-Laws & Rules Committee.

Chairman Smart reported that Akosua Yeboah will serve as a member of the Complaint Committee. Chairman Smart reported that James Bradley will serve as Chairman for the Mediation Committee. Chairman Smart further reported that Anthony Potenza will serve as Chairman of the Police Liaison Committee and Marilyn Hammond, Maritza Martinez and Eugene Sarfoh will serve as members of the committee.

David Rozen requested to Chairman Edward Smart that he serves as Chairman on the Public Official Liaison Committee. Chairman Smart accepted his request.

Akosua Yeboah reported that she would like to relinquish her position as Chair for the Task Force on Monitors and nominate Eugene Sarfoh to chair the committee. Mr. Sarfoh humbly accepted the nomination to serve as Chair of the Task Force on Monitors. Ms. Yeboah stated that she will continue to serve as a member of the committee.

F. 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, five (5) were reviewed and closed and one (1) closed without review by the Board at tonight's meeting. This leaves the Board with twenty-four (24) active complaints.

It was reported that five hundred and forty (540) complaints have been closed. The total number of complaints that remain suspended from review is seventeen (17). The total number of complaints filed to date is five hundred and eighty-one (581).

It was further reported that since the Board's last meeting November, the GLC received nine (9) grievance forms, bringing the total number of forms received to three hundred and ninety-seven (397). In response to the GLC's outreach to all individuals, the GLC has received one hundred and nine (109) CPRB complaint forms, which is 27%.

New Board Member Update and Re-Appointments

It was reported that the Board's newest member David Rozen enrolled in the Citizen's Police Academy. The Academy begins in March. It was further reported that four (4)

Board members (Chairman Smart, Ms. Martinez, Mr. Phelan and Ms. Yeboah) terms have expired. Everyone except for Mr. Phelan is eligible for re-appointment.

NACOLE

It was reported that the Board would like to move forward and schedule a debriefing session from last year's NACOLE conference. The next conference will be held in September in Utah. An email will be sent to Chairman Smart, Ms. Hammond and Mr. Potenza regarding potential meeting dates for a debriefing session.

Upcoming Meetings

It was reported that next Board meeting is scheduled for Thursday, February 14, at 6 p.m. This meeting will be rescheduled for possibly February 7.

G. Report from the Office of Professional Standards

Detective Kathy Hendrick reported that as of tomorrow morning, eleven (11) new recruits will be graduating from the police academy and will be working the streets within two (2) weeks. Detective Hendrick further reported that they will be swearing in twelve (12) new police officers tomorrow afternoon. Detective Hendrick asked for the Board to be patient with them as they are filling in the open positions that were available in the police department.

H. Report from the Chair

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

VI. Public Comment

Chairman Smart opened the floor for public comment.

A former complainant stated that he came to the meeting just to observe. The complainant stated that he previously had a complaint filed with the Board for review but withdrew his complaint because he did not feel comfortable. He wanted to know how much power the Board had and how do they handle complaints. The complainant stated that some of the testimony he has heard related to law, police procedure, and people's rights jump out to him immediately. The complainant further stated that with regards to the law, it seems someone's hands are being tied. It is not enough for the problems in the community versus the problem within the police department. The complainant stated that he wants to be optimistic but he is fearful.

Chairman Smart spoke to the former complainant about a previous case brought to the Board involving a gentleman being pulled over by police. Chairman Smart stated that the complainant's car fit the exact description of a car the police were looking for. Chairman

Smart further stated that the complainant lived in a different city in New York State but his complaint would not have been addressed because there is no oversight review board in that complainant's area. Chairman Smart further stated that the Board is not perfect, but he assures the complainant that there are some changes to be made in the future. Chairman Smart further stated within the structure of the Board, there are three (3) entities that are attempting to work out their differences: the Albany Police Department, the Board and the Citizens of the City of Albany.

Cheryl Randall from the Center of Law & Justice stated her concerns with the too liberal use of the taser in one of the complaints. Ms. Randall commended Chairman Edward Smart for taking exception to one of the OPS findings and bringing that into the light. Ms. Randall also commended the Board for their handling of the first complaint reviewed, where the Board went beyond the finding rather than settle on the OPS doing a thorough investigation.

VII. Adjournment

Chairman Edward Smart moved to adjourn the meeting. Marilyn Hammond seconded the motion. The motion carried unanimously. The meeting adjourned at 8:25 p.m.

Respectfully submitted,

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

Andrew Phelan, Jr.
Secretary