

City of Albany
Citizens' Police Review Board
GWU the Center
274 Washington Avenue- Teen Center Conference Room
March 14, 2013
6:00 p.m. - 8:00 p.m.

Present: Mickey Bradley, Maritza Martinez, Anthony Potenza, David Rozen, Eugene Sarfoh, Reverend Edward Smart, and Akosua Yeboah

Absent: Marilyn Hammond

I. Call to Order and Roll Call

Chairman Edward Smart called the meeting to order at 6:00 p.m.

II. Approval of the Agenda

The agenda was reviewed. David Rozen moved to approve the agenda. Akosua Yeboah seconded the motion. The motion carried unanimously.

III. Approval of the October 11, 2012 Meeting Minutes

The October 11, 2012 meeting minutes were reviewed. David Rozen moved to approve the October 11, 2012 meeting minutes. Maritza Martinez seconded the motion. The motion carried unanimously.

IV. Old Business

CPRB No. 30-12/OPS No. CC2012-071 (Presented by Maritza Martinez)

Maritza Martinez summarized the complaint. The incident occurred on June 22, 2012. The complainant alleges violations of use of force, property handling, and conduct standards. The complainant alleges that an officer was blocking her path as she was walking on Hudson Avenue and Willett Street. The complainant asked the officer to move in order to avoid having to walk onto the street where she could possibly get hit by a car. The complainant claims that the officer became nasty and abusive towards her and threw her up against a door as hard as he could. The complainant told the officer that her elbows were broken and that she had a bad back but he ignored her. According to the complainant, being thrown up against the door caused her to sprain her wrists and also resulted in her having contusions all over her upper arms. The complainant also states that she did not have a bottle of beer in her possession as charged and that the knife found in her purse was a lighter that she found on the street. The complainant states that when her ex-husband approached the officer at her court hearing about how he treated his ex-wife, the officer responded by stating that the complainant was going to engage in a sex

act with a male she was with. The complainant further claims that the officer smashed her wallet on the floor and damaged it. She is looking for him to give her \$22 to replace her damaged wallet.

Ms. Martinez asked if the complainant was present. It was noted that the complainant was not present.

Martiza Martinez reported that she reviewed the following documents: Citizen Complaint Form; Confidential OPS Report; CAPSNET Incident No. 12-209390; Albany PD Booking & Arrest Report; Albany PD Property Report; Appearance Ticket; Intra-Departmental Correspondence of 8/20/12; Call Ticket Details; Four (4) Photos; Monitor's Report; Albany Medical Hospital Patient Visit Information; Albany Medical Hospital Information Sheet; and Detective Notes.

Ms. Martinez reported that monitor Joel Pierre-Louis was assigned to the case. Ms. Martinez asked Mr. Pierre-Louis if he would like to give more details from his report. Mr. Pierre-Louis stated that he reviewed the case file and submitted a monitor's report on September 9, 2012. Mr. Pierre-Louis further stated that based on the evidence that was contained in the file, as well as the Confidential Report that was prepared by Detective Andrew Montalvo, he found that the complaint had three (3) allegations: use of force, property handling, and a conduct standards allegation. Mr. Pierre-Louis further stated that with respect to the first allegation of use of force, the OPS recommended that the case file be closed with the finding of **exonerated**. Mr. Pierre-Louis further stated based upon his review of the file and the information that contain therein, he agreed with the finding of the OPS first allegation. Mr. Pierre-Louis stated that with regard to the second allegation of property handling, he also agreed with the OPS recommendation regarding the property handling allegation be closed as **not sustained**. Mr. Pierre-Louis further stated that he also agreed with the OPS recommendation of **not sustained** for the conduct standards allegation.

Ms. Martinez reported that based on the OPS investigation, the Albany Medical Center records indicated that when the complainant was brought into the ER, she was grossly intoxicated, combative, and belligerent. Ms. Martinez stated they did not see any physical signs of any injuries in the report so she was inclined to agree with the OPS findings.

Maritza Martinez moved to agree with the OPS finding of **exonerated** for the use of force allegation. Anthony Potenza seconded the motion. The motion carried unanimously.

Maritza Martinez moved to agree with the OPS finding of **not sustained** for the property handling allegation. David Rozen seconded the motion. The motion carried unanimously.

Maritza Martinez moved to agree with the OPS finding of *not sustained* for the conduct standards allegation. Anthony Potenza 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 seven (7) new complaints since its January 10, 2013 meeting. Newly-appointed Board Secretary Akosua Yeboah read the new complaints.

CPRB No. 2-13/OPS No. CC2013-005

According to the complainant, on November 16, 2012, officers followed him to a residence. The complainant alleges that one of the officers threw him face down on the stairs while the other two officers assaulted him with blows to his ribs and head. The complainant further alleges that the officers had no right to stop him and failed to ask him for identification. The complainant claims that when he went to the station to file a report, he was threatened with arrest if he entered the station.

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

CPRB No. 3-13/OPS No. CC2013-003

According to the complainant, she was at a gas station getting gas when an officer pulled into the station and stared at her. The complainant asked the officer why he was staring at her. The officer allegedly pulled up behind the complainant and asked her for her “f***king” ID. The complainant refused to stop putting air in her tire and asked him to wait a minute. The officer allegedly grabbed the complainant by her jacket and squeezed her arm. The officer handcuffed her while other officers appeared and surrounded her. The complainant alleges that the officers laughed and belittled her and one of the officers called her an “animal” when she said that they racially profiled her. According to the complainant, when one of her hands slipped out of the handcuffs, the officer handcuffed her again but it was too tight. The complainant claims that the officers pulled her hair to get her into the patrol car and used profanity when talking to her. The officers checked the complainant’s ID and license and found that she had no warrants against her, so they let her go with no money for air and a flat tire. The complainant claims that she went to the hospital for her injuries and was out of work for two days for strained muscles.

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

CPRB No. 4-13/OPS No. CC2013-006

According to the complainant, she told the officer that everything was okay, but the officer ignored her and came in. The complainant alleges that when she lifted her arm, the officer allegedly began to argue with her and her partner. The officer allegedly tried to push the complainant's partner while he was holding her baby. She grabbed the baby while the officer continued to restrain, punch, and choke her partner. The complainant claims that the officers were rude and unprofessional.

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

CPRB No. 5-13/OPS No. CC2013-009

According to the complainant, on December 10, 2012, plain clothes officers failed to identify themselves when they stopped the complainant. The complainant thought the officers were trying to rob him. The officers allegedly beat the complainant to the extent of him receiving 6 stitches on his head, black eyes, and pain on the left side of his head. The complainant alleges that one of the officers made a statement about "Obama." The complainant further alleges that the officers gave him an appearance ticket and threatened him that he better not file a complaint.

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

CPRB No. 6-13/OPS No. CC2013-011

According to the complainant, as he was standing at a bus stop, an officer allegedly approached him, searched him and found weed in his pocket. The complaint further alleges that the officer refused to loosen up the already tight handcuffs. The complainant claims that the officer used profanity and was unprofessional. According to the complainant, when he tried to loosen the cuffs himself, the officer allegedly threw him to the cement face first and weighed the complainant's head down with his knee. The officer arrested the complainant for weed after the complainant promised not to come around that neighborhood again.

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

CPRB No. 7-13/OPS No. CC2013-015

According to the complainant, she called 911 because she heard children screaming in the upstairs apartment. When the officers arrived, the complainant let them know that the child was okay and would go get her. The complainant alleges that when she turned to

go get the child, the officers entered her home without her permission. The complainant further alleges that the officers were demanding and rude to her.

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

CPRB No. 8-13/OPS No. CC2013-022

According to the complainant, on March 10, 2013, an officer allegedly pulled him over, asked for his ID, and asked him why was he in the neighborhood. The complainant told the officers that he lived in the area and was looking for a place to park. The officers placed handcuffs on the complainant. The complainant asked the officers why they pulled him over. The officers allegedly told the complainant they pulled him over for weed and crack. An officer allegedly searched the complainant's car and approached him with white things in his hand and asked if he did crack. The complainant denied that he did crack. The other officers shouted that they found more crack in the complainant's car. The complainant alleges that the officers planted the drugs in his car. After the officers left, the complainant noticed that there was green and brown stuff on the seat of his car that was not there before. The complainant feels that he was discriminated against because he is White.

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

2. Complaint(s) for Board Review

CPRB No. 41-12/ OPS No. CC2012-093 (Presented by Akosua Yeboah)

Akosua Yeboah summarized the complaint. She reported that the complaint consisted of two (2) allegations of "use of force" and one (1) allegation of conduct standards. The complainant alleges that while eating at a pizza parlor on Madison Avenue with two (2) friends, police officers arrived on the scene and shoved and pushed the complainant and a friend with such force that it caused the complainant to cry. In addition, the complainant alleges that an officer told him to "shut up" multiple times. The complaint also alleges that a police officer made a fist and pushed him hard in the chest right in front of his mother.

Ms. Yeboah noted that monitor Theresa Balfe was assigned to the case. Ms. Yeboah asked if the complainant was present. It is noted that the complainant was not present.

Ms. Yeboah reported that she reviewed the following documents: OPS Confidential Report; Arrest Report; Call Details; Intra-Departmental Correspondences; Complaint Form; Review Notes; and APD Booking and Arrest Report.

Ms. Yeboah reported that based on the OPS investigation, police were responding to a call involving the shooting of two college students with what appeared to be a hand gun.

The hand gun was reported to have been discharged several times at the victims on the scene injuring them in the back and thigh. Ms. Yeboah further reported that statements from witnesses and victims corroborated that this occurred. Ms. Yeboah reported that although there was no evidence that anyone went to a hospital or medical facility for injuries, she thought that was strange because if someone got shot, she would expect that person to go to the hospital. There was no evidence of this in the report. Ms. Yeboah further reported that when the police arrived at the pizza parlor, they found a cell phone which belonged to one of the shooting victims in the possession of one of the other two individuals in the pizza parlor. A Black Crossman Airsoft gun was also found in a bag inside the pizza parlor near where the complainants were sitting. The witnesses who were interviewed did not see any pushing or shoving by the police. Ms. Yeboah further reported that an employee of the pizza parlor was in the establishment at the time. This employee stated that he never saw the police shoving or pushing the complainant either. One (1) of the three (3) individuals was charged with possession of a stolen cell phone and arrested. Another individual who was identified by one of the victims as the shooter was also charged and arrested. Ms. Yeboah stated that it should be noted that the complainant, who was a minor and in a Juvenile Supervision Program, was informed by police that he was in violation of his curfew order which required that he not be out past 9 p.m. Ms. Yeboah further reported that the complainant was not arrested by police but instead, handcuffed and transported back to his residence into the custody of his parents. Ms. Yeboah further reported the police stated that once there, the complainant tried to push past the officer in an attempt to gain entrance into his home. The complainant was still handcuffed, so the officer reached out his arm to prevent the complainant from entering his residence.

Ms. Yeboah stated that the OPS investigation was conducted in a thorough and professional manner. Ms. Yeboah summarized the OPS finding for the first use of force allegation as **unfounded**. Based on the OPS investigation, the act or acts of pushing and shoving in the pizza parlor were not corroborated by any of the witnesses interviewed. Even the employee of the establishment who was present at the time of the alleged use of force said that he did not see this occur.

Ms. Yeboah summarized the OPS finding for the second use of force allegation as **not sustained**, as the act or acts either did not occur or were misconstrued. Based on the OPS investigation, the complainant's mother was understandably upset to see her son in handcuffs and a police officer on her porch. However, all of the police officers agreed that they did not see this occur and the police officer reached for him in order to prevent him from entering the residence.

Ms. Yeboah summarized the OPS finding for the conduct standards allegation as **unfounded**. Based on the OPS investigation, except for the complainant and the police officers, there were no other witnesses who were present both inside and outside the

pizza parlor and at the location of the complainant's residence throughout the entire time. Ms. Yeboah stated that although the OPS would like to close this allegation as *unfounded*, she would like the Board to consider disposing this as *not sustained* rather than *unfounded*.

Chairman Edward Smart asked if a monitor was assigned. It was noted that Theresa Balfe was assigned to monitor this case. Chairman Smart asked Ms. Balfe if there was anything that she would like to add. Ms. Balfe stated that Detective Eric Crist did a thorough investigation. Ms. Balfe reported that two (2) college students were shot at with a gun as they were walking down the street and the three (3) individuals took off. Ms. Balfe further stated there were witnesses that identified where they went and two of them entered this pizza parlor. Ms. Balfe stated that it was not like they were just eating pizza and the police officers came in out of nowhere. The officers had information that led them to the pizza parlor. Ms. Balfe further stated that she suggested that Detective Crist ask the guy behind the counter if they were actually eating pizza in order to establish how long they were in there. Detective Crist asked the question and was told that only one of them had ordered pizza but he was not eating it. When the second individual saw the police coming he quickly ordered pizza.

Ms. Balfe stated that what occurred was not like the description states: that these boys were eating pizza and minding their own business. The witnesses led the police to the pizza shop. Ms. Balfe stated the individuals that were shot at gave a very good description of the three (3) individuals. The officers went after the kid that was not in the pizza shop. They got him and then went after the other two (2). Ms. Balfe further stated that everything she listened to led to the two (2) suspects at the pizza shop and the one (1) that was detained outside the pizza shop. The complainant had a curfew from being in trouble before and was supposed to be in by 9 p.m. The mother of the complainant was more concerned with him getting into trouble.

Chairman Smart asked Ms. Balfe "Was anyone arrested by the officers?" Ms. Yeboah replied that two (2) people were arrested but not the complainant. Ms. Balfe stated that the complainant was actually treated with kid gloves and brought back to his mother. The complainant's mother was very upset to see her son in handcuffs. All of the police officers who were interviewed witnessed the complainant on the porch. Even the officers who were down by the vehicles stated that the kid was the aggressor and using force towards the officers. The complainant was trying to get to his mother. The police would have been in violation of the Standard Operating Procedures (SOP) had they let him enter the house while he was still handcuffed.

Ms. Yeboah stated that she agreed with Ms. Balfe's report. The officers could have arrested the complainant because he was violating his curfew but instead they took him to his parents. Ms. Yeboah stated that she was looking at the monitor's report and did not

have the police report. Ms. Balfe stated that the monitor's report followed everything. Theresa Balfe states that she comes up with two (2) allegations. Akosua Yeboah stated that there are three (3) allegations. Detective Kathy Hendrick clarified that the first use of force allegation finding was *unfounded*, the second use of force allegation finding was *not sustained*, and the conduct standards allegation finding was *unfounded*.

Eugene Sarfoh stated that the Confidential Report only lists two (2) use of force allegations. Ms. Yeboah stated that he was correct but the report in the case file also lists a conduct standard's violation.

Ms. Yeboah stated that the conduct standards allegation was where the officer allegedly told them to "shut up!" Based on the OPS investigation, since there were no witnesses who were consistently in the pizza parlor or outside of the pizza parlor or at the residence, the OPS could not corroborate that the officer said that at any time. Ms. Yeboah further stated that only the police officer and the complainant were consistently at all three (3) venues. Since it was one person's word against another and people did not hear him say it, then the finding is more consistent with *not sustained*.

Chairman Smart stated that the Board only has two (2) allegations listed on the OPS report. The first use of force allegation was listed as *unfounded* and the second use of force allegation was listed as *not sustained*. Chairman Smart further stated that a third allegation was not listed. Ms. Balfe stated that the OPS must have transcribed the report and missed the third category. Chairman Smart stated that they have two allegations before them and asked if he was correct. The Board agreed. Ms. Balfe reiterated that the complaint has three (3) allegations. Ms. Yeboah stated that the advantage she had was that she went to the OPS and reviewed the entire file. The charges were broken out in the file itself although the report received by the Board was not correct.

Chairman Smart suggested that the Board move on the first two (2) allegations and then move on the third allegation so that the Board will understand what they are voting on.

Chairman Smart asked Ms. Yeboah what was her recommendation on the use of force allegation as *unfounded*. Ms. Yeboah asked if this was the use of force in the pizza parlor where the officers allegedly pushed and shoved the complainant and witnesses saw that happen. Chairman Smart replied in the affirmative. Ms. Yeboah stated that the finding is *not sustained*. Chairman Smart stated that on the report it says *unfounded*.

Ms. Balfe and Ms. Yeboah stated that they have *not sustained* on their report. Chairman Edward Smart asked Ms. Yeboah for her motion on the second allegation. Akosua Yeboah stated that she agreed with the OPS finding as *not sustained*. Anthony Potenza seconded the motion. The motion carried unanimously.

Akosua Yeboah stated that she agreed with the OPS finding as ***unfounded*** for the first use of force allegation. Eugene Sarfoh seconded the motion. The motion carried unanimously.

Ms. Balfe stated that under the first category, the pushing and the shoving at the pizza parlor allegation was ***unfounded***. Chairman Smart replied in the affirmative. Akosua Yeboah stated that she has it as ***not sustained***. Ms. Balfe stated that the second category where the mother was making the fist and blocking was ***not sustained***. Ms. Balfe further stated that the conduct standards allegation should be changed from ***unfounded*** to ***not sustained***. Ms. Yeboah stated that was what she respectfully recommended. Chairman Smart clarified that the Board did not voted on the third allegation. The Board agreed.

Ms. Yeboah stated that for the conduct standards allegation, she is recommending that it be disposed of as ***not sustained*** rather than ***unfounded***. Ms. Yeboah further stated that she gave her reasons earlier but she would be happy to repeat them. Chairman Smart asked if the OPS finding was ***unfounded***. Ms. Yeboah replied in the affirmative. She further stated that she recommended that the finding be ***not sustained*** because there was no one present who could confirm or deny. A finding of ***unfounded*** would mean that the event did not happen or it was misconstrued.

Chairman Smart stated that on the third count of misconduct, Ms. Yeboah would like to change the OPS finding from ***unfounded*** to ***not sustained***. Chairman Smart asked the OPS if they are okay with the change. The OPS agreed with the change. Chairman Smart stated that they agree and thanked OPS. David Rozen stated that he would like to vote in the negative for the record with the ***unfounded*** recommendation. Chairman Smart asked the Board if they agree with OPS and Ms. Yeboah properly being on ***not sustained***. Anthony Potenza seconded the motion. David Rozen opposed the motion.

David Rozen stated that from his reading of the materials and listening to the discussion, he was going to agree with the monitor's and OPS suggestion that the statements were misconstrued. Anthony Potenza stated that it should reflect that the originator of this complaint was the complainant's mother because the complainant is a minor. Ms. Balfe stated that Detective Crist thoroughly went over all three allegations. Ms. Balfe further stated that she did not know whether it was transcribed wrong but Detective Crist investigated all three (3) allegations. The motion carried by a vote of 6-1.

CPRB No. 52-12/OPS No. CC2012-0125 (Presented by Mickey Bradley)

Mickey Bradley summarized the complaint. The complainant alleged that he was at a house party when police arrived and dispersed the crowd following the neighbors' complaint about the noise. He was sitting at the top of some stairs waiting for the path to clear so he could safely go down the stairs because he had knee surgery in the past month. An officer approached him and asked him if he lived there. When the

complainant responded "No," the officer grabbed him by the shirt collar and dragged him down the stairs and pushed him out the back door. During this time, the complainant yelled, "I just had knee surgery." The complainant alleged that his gold necklace was broken in the incident. The complainant further alleged that the officer used a lot of profanity.

Mr. Bradley noted that monitor Theresa Balfe was assigned to the case. Mr. Bradley reported that based on the OPS investigation, two (2) witnesses corroborated the use of physical force allegation. They saw the police officer punch the complainant and then pull him down the stairs by his shirt collar. Mr. Bradley reported that no one recalled the officer saying that the complainant had three (3) seconds to get out of the house. Mr. Bradley further reported that the complainant stood up and the officer ripped the chain off of his neck and then pulled him down the stairs. The third person who was interviewed resided at the house but did not witness the exchange between the complainant and the officer. That person described the APD actions in general as overly aggressive and said they were pushing each other. Neither of the two (2) witnesses witnessed the officer using profanity. None of the officers on the scene admitted to using profanity, which led to the OPS finding on the allegation of profanity as *not sustained*, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. Mr. Bradley stated that he agreed with the OPS finding.

Mr. Bradley summarized the OPS finding of *not sustained* for the use of force allegation. Based on the OPS investigation, officers are allowed to use "escort" force to move somebody out of an area which included grabbing them by their clothing. However, if the officer knows that the person has an injury such force will not be permitted. Mr. Bradley further stated that according to the complainant's statement, he mentioned his injury only after the officer began removing him. Mr. Bradley further stated the officer did not respond to the complainant's injury. The officer just escorted him down the stairs and out of the house. Mr. Bradley asked if the complainant was present. It was noted that the complainant was not present.

Mr. Bradley stated that whether or not this is excessive use of force however the issue is overwritten in this case by the fact that neither of the witnesses nor the complainant could name nor otherwise identify the officer. They only described him as a white male who possibly had shaved hair or a close cut hair. This nearly describes all of the officers on the scene. Mr. Bradley stated all twelve (12) officers connected to the incident have submitted signed statements saying they did not interact with the complainant or see any other officer doing so.

Mr. Bradley stated that this is the more troubling aspect of this complaint. The officers did not say that they were not sure if they did not interact with the complainant as they were moving a lot of people out of the house but they say they did not interact with the

complainant. Mr. Bradley stated given that two (2) people witnessed the incident, it seemed likely that at least one (1) of the officers is inaccurate in his statements. Mr. Bradley further stated that it should be noted in the report that Detective Montalvo tried to identify the officer in question. He asked the complainant and the witnesses whether the officer was younger or older and did the officer have an accent or anything that could identify the officer. Mr. Bradley further stated that Detective Montalvo did a very thorough investigation. Mr. Bradley stated that he listened to the witnesses' interviews, but none of them could provide any substantial information. Mr. Bradley further stated that the OPS finding was ***not sustained*** and he agreed with their finding. Mr. Bradley asked Ms. Balfe if there is anything she would like to add. Ms. Balfe stated that he covered everything in the complaint and she agreed with the OPS findings.

Mickey Bradley moved to concur with the OPS finding for the first use of force allegation as ***not sustained***. Anthony Potenza seconded the motion. The motion carried unanimously. Mickey Bradley moved to concur with the OPS finding for the conduct standards allegation in regards to profanity as ***not sustained***. Chairman Edward Smart seconded the motion. The motion carried unanimously.

CPRB No. 42-12/OPS No. CC2012-095 (Presented by Anthony Potenza)

Anthony Potenza summarized the complaint. The complaint consisted of an arrest authority and procedure allegation and two (2) evidence and property handling allegations. These allegations relate to the procedures used by a detective in regards to searching the complainant's apartment and the procedure of property and failure to give the complainant a receipt for the seized property.

Anthony Potenza reported that he reviewed the following documents: Citizens' Complaint Form; OPS Confidential Report; Call Ticket with Call Details; Seven (7) Intra-Departmental Correspondence from the Detective Investigation detailing the actions regarding the arrest of the complainant and handling the complainant's property; Investigating Detective's Handwritten Notes; Arrest Report of Possession of Narcotics with the Intent to Sell and Criminal Possession of a Controlled Substance; CAPSNET Mugshot and Record; Albany PD Property Report; Copy of Article 48 of the NYS Penal Law; and Money Subject to Seizure in Felony Controlled Substance Offense.

Mr. Potenza reported that the complainant alleged that the detectives arrested him for possession of a controlled substance and then searched his apartment without a warrant or his permission. He further alleged that when he was taken into custody he was never given a receipt for his property and the police never returned his money that was taken.

Anthony Potenza noted that a monitor was not assigned to this case. Mr. Potenza summarized the finding of the OPS for the arrest authority and procedures allegation as ***not sustained***. The complainant alleged that after he was arrested, the detective searched

his apartment without a warrant or his permission. Based on the OPS investigation, when the complainant was interviewed, the complainant stated that after he was arrested, he asked the detectives to give his apartment keys to his employer who was at his apartment. Allegedly, the employer was there to pay him for some work that he had done with the employer in another location. The complainant stated that he gave his keys to his employer so that he can lock up his apartment after he was arrested and taken away. The complainant stated that he did not ask the police to remove anyone from the apartment and he did not give the police permission to search his apartment. The employer was present when the police returned to the apartment. The employer stated that he did not see the police search the apartment but heard what sounded like to be drawers being opened while the police were in the apartment. Mr. Potenza stated that the OPS and the detectives who were investigating the case reported that the officers did a security sweep of the premises to make sure no persons were still in the property. The employer was asked to leave, so he did. The apartment was locked and the detectives left.

Mr. Potenza reported all the detectives that were involved in the arrest stated that the apartment was searched for people only and the search for property was not conducted. Mr. Potenza further reported that the detectives stated they never had possession of the complainant's apartment key and it is worthy to know that no property was taken from the apartment. Anthony Potenza moved to concur with the OPS finding of *not sustained* for the arrest and authority procedure allegation. Chairman Edward Smart seconded the motion.

Akosua Yeboah asked Detective Montalvo whether the complainant was alleging that he had a certain amount of money on him when he were arrested and when he went to get the money back, all of it was not returned. Detective Montalvo replied in the affirmative. Ms. Yeboah asked "Isn't it standard police procedure to have the arrestee sign about the contents with respect of the contents from that person?" Detective Montalvo replied that the person doesn't have to necessarily sign the property report. A copy or a receipt of the property that is secured from the officer is given to the defendant. The defendant, at that time, can take a look at the property receipt to make the determination as to if the items listed are correct. Ms. Yeboah clarified so the person does not have to sign for it, so in this case, it explains why the complainant came back a day later to sign for it. Detective Montalvo clarified that the complainant came back after he had been released to retrieve his property.

Chairman Edward Smart stated he thinks that the first charge is about whether they had a right to go and do a thorough search of his property. Detective Montalvo stated that the officers did a security sweep of the premises after the complainant was taken away. The motion carried unanimously.

Anthony Potenza summarized the OPS finding for the improper evidence and property handling allegation as *exonerated*. The complainant alleged that at the time of his arrest, he had approximately \$800, a cell phone, and identification that was all confiscated and placed into evidence. Based on the OPS investigation, the day after his arrest, the items were released. When the complainant went to retrieve his property, the money was missing. Mr. Potenza reported that according to the Police Property report, at the time of the complainant's arrest for Criminal Possession of A Controlled Substance in the 3rd Degree, the complainant was in possession of \$627 as it was stated in the report. Mr. Potenza further reported that the money was subjected to seizure under the NYS Penal Code Article 48 and the final disposition will be determined pending on the outcome of this charge. Mr. Potenza further stated that with regard to the charge of improper evidence and property handling, he concurs with the OPS finding of *exonerated*. Akosua Yeboah seconded the motion.

Maritza Martinez asked for clarification as to the amount listed by the complainant on the complaint form. Detective Montalvo stated that he thinks it said about \$800 on the form but the complainant never gave a specific amount. Detective Montalvo further stated that he also spoke with the complainant's employer who was there. He interviewed him over the phone and the employer gave him a different amount as well, about \$567. In the written complaint, the complainant asked where his money disappeared to. Under the rules of Confiscation of Property, the money was kept as a forfeiture loss and it was noted on the receipt. Ms. Martinez asked "So he can never get that money back?" Detective Montalvo replied that it depends on the outcome of the disposition of his case and if he is exonerated. Detective Montalvo stated that from what he understood, the complainant was able to retrieve all of his property that was listed on the property receipt with the exception of the currency. Detective Montalvo further stated that he also interviewed the complainant in Albany County Jail where he was incarcerated. The complainant just mentioned the money and he wasn't able to get the cash back. Chairman Smart asked "What was the exact amount of the cash that was taken?" Detective Montalvo replied "\$627.00." Chairman Smart asked "What is the disposition of this case?" Detective Montalvo replied that it's still pending prosecution and has not gone to trial yet. The motion carried unanimously.

Anthony Potenza summarized the OPS finding for the improper evidence and property handling allegation as *sustained*. The complainant alleged that after his property was confiscated from him, he asked several times for a property receipt and was never given one. Based on the OPS investigation, the detective stated that he seized and processed the property from the complainant and did not offer him a proper receipt. Mr. Potenza reported that in one of the IDC's an officer stated that he failed to give a property receipt to the complainant. Mr. Potenza further reported that as per the SOP Article 7.19 of Property, an officer who takes custody of property will complete a property report in full

and that will become part of the department's records as well as the yellow receipt copy to be given to the person the property was seized from. This did not happen at the time of the complainant's arrest. Mr. Potenza stated that he concurs with the OPS finding of **sustained** and moved that the Board accept this finding as well. Chairman Edward Smart seconded the motion. The motion carried unanimously.

CPRB No. 43-12/OPS No. CC2012-098 (Presented by Chairman Edward Smart)

Chairman Edward Smart summarized the complaint. The complainant alleged that he was subjected to a felony traffic stop and detained for approximately thirty minutes. He further alleged that when he tried to file a complaint, he was told that no formal complaint would be taken and it would be sent to a supervisor.

Chairman Smart reported that he reviewed the following documents: Citizen's Complaint Form; OPS Confidential Report; Intra-Departmental Correspondence (IDC); High Risk Training Bulletin on October 2012; Supervisor Report; Incident Report; Field & View Report; Three (3) Log Reports; Additional OPS Report; Cap Photo Yellow Bottom Green, Top Yellow Bottom Burgundy Top; Capitaland Taxi; and Capital Region Taxi.

Chairman Smart stated that this complaint is about a cab, which was stolen, and an officer who was flagged down by a passerby. At that particular time, the person said that their cab has been stolen on Henry Johnson Boulevard. The officer left the person, got on the radio and reported that it was a cab #5. He believed that the cab had a yellow bottom and a green top. Chairman Smart further reported that while the officer was attempting to find the stolen cab, he pulled over a cab that looked similar to the stolen cab but it was not the cab. Chairman Smart further reported that the officer took the cab driver out of the taxi at gunpoint, controlled the situation, and handcuffed the driver.

Chairman Smart asked if the complainant was present. It was noted that the complainant was present. Chairman Smart informed the complainant that he will have an opportunity to speak.

Chairman Smart summarized the OPS finding for the call handling allegation as **ineffective policy of training**, where the matter does not invoke guilt or lack thereof but rather ineffective department policy training to address the situation. The complainant alleged that he was subjected to a felony traffic stop and detained for approximately thirty minutes. Based on the OPS investigation, an officer was flagged down by an individual who advised the officer that his taxicab had just been stolen. The officer indicated it was a yellow cab #5 and it was last seen heading South on Henry Johnson Boulevard. The officer then began to survey the area searching for the stolen cab. Meanwhile a call was received from the cab operator that indicated that it was a Capitaland Taxi #5, which was a minivan that has several advertisements on the back. It had a yellow bottom and green top and was last seen driven by a White female. The officer observed a Capital Region #

5 cab driving eastbound on Central Avenue driven by a Black male. The cab had a yellow bottom and a burgundy top.

The officers conducted a felony traffic stop of the Capital Region taxicab and removed the driver at gunpoint. The officer who was flagged down and initiated the stop failed to properly conduct a preliminary investigation by obtaining pertinent information leading to the stolen vehicle, which could have been relayed to other units in the area. The officer, in his zealous efforts to locate this stolen vehicle, did not pay attention to information that was relayed by the dispatcher. The officer stated that it is normal procedure to conduct a felony stop on any stolen vehicle due to the propensity of violence. He further stated because of policy and procedure, every stolen car involves the removal of occupants at gunpoint.

Chairman Smart stated that this is clearly not the policy and procedure of the Albany Police Department. Chairman Smart further stated that every occupied stolen vehicle requires officers to initiate a felony stop. Unless there are extenuating circumstances the occupants are not removed at gunpoint. Chairman Smart stated it should be noted that on October 23, 2012, the department sent out a training bulletin to all department members with regards to the high risk violent stop. Chairman Smart further stated that a high-risk stop is defined as stopping a vehicle when the officer has advance knowledge or a reasonable belief that the vehicle contains a high-risk subject. Chairman Smart stated that with regard to this specific stop, there was no advance knowledge and no reason for the officer to believe that the vehicle contained a high-risk subject. Chairman Smart reported that this officer was sent for further training with regard to vehicle stops.

Chairman Smart further stated that the actions of the officer, detective, or officers who received the supervisor complaint are irresponsible and without defense. The officer who reported the stolen cab, violated protocol and refused to adhere to the dispatch officers who are trained to listen, talk, hear and remain aware of the circumstances around them. Chairman Smart stated that there is a great cause for concern when an officer pulls a gun on a citizen without cause. The officer's life was not in danger and there was not a high-risk stop based on the case review. This was not a high-risk suspect and it was the wrong cab. The Black man was not a White woman and the cab stop was not on the street designated by the owner of the cab.

Chairman Smart further reported that the other units were given false information and the innocent cab driver was removed from his cab at gunpoint. The protocol and procedures were clearly disregarded in this stop. The cab driver's life was in danger. There could have been an accidental discharge from a weapon and officers were driving with misinformation and assuming their lives were at risk. Chairman Smart further stated that he believed that the Board's duty is to maintain public trust in partiality and integrity. To agree with the OPS would be a violation of the mission of the legislation given to the

Board. Chairman Smart further stated that he agreed with the complainant. Chairman Edward Smart moved that the Board accept a *sustained* finding for the call handling allegation. Chairman Smart further stated that there is sufficient evidence and facts to indicate that the complainant's rights and privileges were violated.

Chairman Smart stated that he also agreed with the additional finding of the OPS and concurred that additional training and targeted officers need re-training. It is quite clear that the policy is ineffective. Chairman Edward Smart moved to concur with the OPS finding of *ineffective policy and training*. Akosua Yeboah seconded the motion. Chairman Smart stated it is properly moved that the Board agreed with the OPS finding of additional training and ineffective and also agreed on the finding of *sustained*. The motion carried unanimously.

Chairman Smart explained to the complainant that the Board agreed with his allegation. The Board also agreed with the OPS on the second allegation of conduct standards as *ineffective policy and training* where the matter does not invoke guilt or likely invoke guilt but rather there is an ineffective departmental policy or training that needs to be addressed. The complainant alleged that he was told that a supervisor would be notified. It would appear that there was a lack of communication and a possible language barrier between the complainant and the detective. The detective's intention was to have the matter addressed by a supervisor and the complainant was not satisfied that steps were not taken to file a formal complaint. It was not the intention of the detective to sway the complainant from filing a complaint nor is it the policy of the OPS to prevent a complaint from being filed. The detective thought he had explained the process; however, it was not understood by the complainant. The matter was addressed with the detective as a training issue and he understood where he failed to properly relay the steps that should have been taken. The detective began a complaint to be forwarded to the supervisor ; however, the complaint was not completed. In the meantime, the complainant filed his formal complaint where it was investigated by the OPS and not handled at the supervisor level. It should be noted that the complainant chose that a supervisor handle his initial complaint. If a supervisor addressed it, then the supervisor would have sent a report back to the OPS for review. The complainant is contacted by an OPS detective to ensure that they are satisfied in the matter in which the complaint was addressed. If the complainant is not satisfied, the complainant may file an official complaint form which would be investigated by the OPS.

Chairman Smart stated the OPS investigation also found that a mobile DVR microphone was not activated during the traffic stop, and therefore the officer was in violation of SOP Article 42-12 No. 6C under the mobile DVR policy to record all traffic stops and arrests resulting from traffic stops. The remote microphone is also supposed to be recording audio at all times.

Chairman Smart stated that an officer in question should not in any way deter a complainant from filing any complaint at any time. It is not the position of any detective or any officer to give their opinion about whether a person should or should not file a complaint. The complaint was not forwarded to the supervisor and no action was taken. The OPS said that it was not intended and was a mistake. Whether it was a mistake or not, it was not followed through and was not done. Chairman Smart further stated that the detective was not an officer but a promoted officer who must ensure that his work meets a superior standard. This is not a matter of training but a matter of negligence. Chairman Smart further stated there is a big difference between negligence and training.

Chairman Smart stated that he cannot read a detective's mind, and therefore his intent is difficult to measure and the results are the same. A finding of ineffective policy and training indicates that the detective did not know and failed to follow protocol. Chairman Smart further stated that as a Board member, he was deeply concerned that officers are not following protocol that requires the use of the DVR recording equipment. The citizens of Albany are invested in this useful tool for the protection of all. The citizens cannot turn the equipment on and the officers refuse to obey and follow the protocol. The Board hears this repeatedly that officers are not turning on the DVR's and the audio. This warrants the attention of our Chief, our Common Council and our Mayor, that this practice by some officers is not a matter of training and policy but a matter of refusing to follow protocol. It is either that or the penalty for not turning it on is not severe enough that officers know that if they do not turn on the DVR and the audio that they are going to be dealt with. Chairman Smart further stated he therefore agreed with the complainant on the matter of conduct and *sustained* the allegation and he concurred with the OPS finding of *ineffective policy and training*.

Chairman Edward Smart moved to agree with the complainant on the matter of conduct standards as *sustained* and with the OPS finding of *ineffective policy and training*. Anthony Potenza seconded the motion.

Maritza Martinez stated that she too was troubled by the actions of the officer because it was clearly obvious to her as she read this that the officer was just acting on his own accord. Ms. Martinez further stated that the dispatch clearly stated that a White female was driving the taxi, so there was no reason that the Black male should have been stopped. Ms. Martinez further stated that it would be disturbing for all of the Board to have a gun pointing at them. The complainant was disturbed so much by the incident that he could not return to his duties that night. So there was a loss of income as well. Ms. Martinez further stated that she was strongly in support of what Chairman Smart said and the penalties were way too light. By saying this officer needed further training, this officer knew what he was doing and she agrees with Chairman Smart's recommendation that this will be taken further up the chain of command.

Akosua Yeboah stated that she was also going to suggest that the Board look at what the options are for escalating this particular case to a higher command to get the attention that it deserves. Chairman Smart acknowledged that the complainant is present. He asked the complainant if there was anything he would like to say before they make the final vote. Chairman Smart further stated that he wanted the complainant to know that the Board agreed with him and apologized on behalf of the city for how he was treated. Chairman Smart stated they would hope that no law-abiding citizen of Albany would have to go through what the complainant went through.

The complainant stated (*inaudible*). He knew that he was stopped because the wrong information was given. The complainant further stated (*inaudible*). The worse thing at that time was there was an officer following him and his car was in park. The complainant stated that if it was not him then it could be someone else. The motion carried unanimously.

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

Chairman Edward Smart reported that the following Board members were appointed to the Committee on Complaint Review for April 2013: Marilyn Hammond, Maritza Martinez, Anthony Potenza, David Rozen, Eugene Sarfoh, Chairman Edward Smart, and Akosua Yeboah.

C. Approval of 2011 Third Quarterly Report

The 2011 Third Quarterly Report was reviewed. It was noted that there were no changes. Eugene Sarfoh moved to approve the report. Anthony Potenza seconded the motion. The motion carried unanimously.

D. Committee Task Force Reports

By-Laws and Rules

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

Community Outreach

Committee Chair Akosua Yeboah reported that there are three (3) main points she would like to mention. Committee Chair Yeboah stated that she has been in conversation with the Mayor's assistant who handles all of their IT computer operations. The assistant is going to get back to her but preliminary agreed to look into having the Board's meetings and the status of their meetings added to the City's Twitter feed so that it can go out to anyone who subscribes rather than having to go through the Board's website. It would be a more active way to get information out. Committee Chair Yeboah further stated that by adding more information and activities to the City's main website, people are more likely

to go there when they are looking for information about Albany rather than the Government Law Center's website since people might not even know about that website. Committee Chair Yeboah stated also with respect to giving presentations to neighborhood associations, other organizations and schools, the staff is going to compile a list of contacts for those organizations and reach out to them to try to set up times they can go out and give meeting presentations about the CPRB's process. Committee Chair Yeboah further stated that the committee is just one step away from completing the final brochure in Spanish and will be meeting with Board member Martinez this Wednesday to try and finish that up.

Mediation

Committee Chairman James Bradley reported that the proposals for mediation are still in the hands of the Police Union's counsel so the committee is still waiting for a response. Board Counsel Patrick Jordan stated that the Board met with the Deputy Mayor, the Chief and the Assistant Chief. The Chief will continue to assist the Board with trying to move it along.

Police Department Liaison-Policy Review/ Recommendations

Committee Chairman Anthony Potenza stated that he was unable to attend the meeting on February 4 at the last minute. Coordinator of the Board Sharmaine Moseley reported that the committee talked to Chief Krokoff about the cameras in the cars and there was a discussion about the audio and the cameras not working well. Ms. Moseley further reported that the Chief mentioned looking into getting new vehicles with different camera equipment in it. Chairman Smart added that Chief Krokoff is concerned about the issue and is being proactive about it. The cameras are very important tools that need to be used by the police department and the Chief agrees with the Board in that manner. Chairman Smart further reported that mediation is in the hands of the lawyers, so he was encouraged that progress will be made on those particular things. Ms. Moseley added that the monitors had some issues with the cardboards being in the visual part of the cameras that they were viewing. During the meeting, the Chief mentioned that the OPS has a blue dot technology that is in place now so that issue has been resolved. Ms. Moseley stated the monitors can now see the video without cardboard being used to hide the identity of the officer.

Akosua Yeboah asked Ms. Moseley "Was there ever a determination made as to whether a member of the Board can see that video?" Patrick Jordan replied in the affirmative. He stated that he spoke with the OPS on the Board's behalf. He did not see any reason why the Board could not see what the monitors saw. There is nothing in the protocol or legislation that prohibits this and the OPS definitely agreed with that.

Public Official Liaison

Chairman Edward Smart stated that Committee Chairman David Rozen left tonight's meeting early to attend the Citizen Police Academy. Chairman Smart stated that he met with Deputy Mayor Phil Calderone and Chief Steven Krokoff to update them on the Board initiatives. Chairman Smart further stated that he did recommend a couple of things. The first is that this is a volunteer Board and the members put in many hours. Chairman Smart stated when people have eleven (11) years of service and they are no longer able to serve on the Board somehow the city may recognize them for their years of service with a certificate or something that says "Thank you." Chairman Smart further stated that he had in mind not only their former Chairman Jason Allen, but also Andrew Phelan Jr. Chairman Smart further stated that Marilyn Hammond, who is not present at the meeting, has given years and years of excellent service.

Sharmaine Moseley added that Chairman Smart also mentioned at the meeting that they are trying to get representatives from different denominations to attend APD sessions with its officers. Ms. Moseley stated that the police chief agreed to it and will look into it because it's a good idea. Chairman Smart stated that he would like all Board members to go to the NACOLE Conference, which will be held on September 22-26 in Salt Lake City, UT. Chairman Smart further stated they will be leaving on a Saturday and returning back on Thursday. Albany Law School will be paying for the flight and hotel accommodations. Chairman Smart further stated they would like to encourage the police officers and the chief to go. The Board would also like to have NACOLE hold their conference in Albany, New York. It would be an excellent idea for other oversight agencies to learn about our model. This will be an opportunity for everyone to see how the Board's partnership with Albany Law School has been popular and will also have an opportunity to visit major educational institutions that Albany has to offer like SUNY, Siena, Saint Rose, etc. Chairman Smart further stated that no money is needed to do this.

Task Force on Monitors

Task Force Chair Gene Sarfoh stated that there was nothing new to report.

E. Election for Board Officer Positions

Chairman Edward Smart stated that the Board nominated members for Board officer positions at its January meeting. The Board officers for this year are: **Secretary** – Akosua Yeboah (accepted); **Vice Chairman** – Anthony Potenza (accepted); and **Chairman** – Reverend Edward Smart (accepted). Chairman Smart asked if there is a motion that we receive those officers and move them for the New Year. James Bradley moved to accept the slate of new Board officers for this year. Eugene Sarfoh seconded the motion. The motion carried unanimously.

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-six (36) active complaints before the Board for review. Of those thirty-six (36) active complaints, five (5) were reviewed and closed by the Board at tonight's meeting. This leaves the Board with thirty-one (31) active complaints.

It was reported that five hundred and forty-five (545) complaints have been closed. Since the Board's last meeting, four (4) complaints were suspended by the Mayor and suspensions were lifted from ten (10) complaints. The total number of complaints that are currently suspended from review is twelve (12). The total number of complaints filed to date is five hundred and eighty-eight (588).

It was further reported that since the Board's last meeting, the GLC received fifteen (15) grievance forms, bringing the total number of forms received to four hundred and twelve (412). In response to the GLC's outreach to all individuals, the GLC has received one hundred and fifteen (115) CPRB complaint forms, which is 28%.

Re-Appointments

It was reported that Board member David Rozen was enrolled and participating in the Citizens' Police Academy. It was further reported that three (3) Board members' (Chairman Smart, Martinez, and Yeboah) terms expired. The GLC is waiting on letters of re-appointment. It was reported that there is also a vacancy created by former member Andrew Phelan. This is a mayoral vacancy.

NACOLE

It was reported that in January 2013, the members who attended the NACOLE conference in San Diego, CA held a debriefing session. This year's NACOLE conference is scheduled for September 22-September 26 in Salt Lake City, Utah. Board members were asked to let Ms. Moseley know if they would like to attend.

Upcoming Meetings

It was reported that a Facebook Media Session is scheduled for Wednesday, April 3 from 8:30 a.m. – 4 p.m. at the Hampton Inn. Chairman Edward Smart, Outreach Committee Chair Akosua Yeboah, and Coordinator of the Board Sharmaine Moseley are registered to attend this session.

It was further reported the next Board meeting is scheduled for Thursday, April 11 at 6 p.m.

G. *Report from the Office of Professional Standards*

Chairman Edward Smart commended OPS Detective Kathy Hendrick on her hard work. He further stated that they are exceptionally proud to have her providing leadership at the OPS.

Detective Kathy Hendrick reported the OPS is currently undergoing a change of personnel. Detective Anthony Battuello has been promoted to sergeant. Detective Rohan, who was at the OPS for a very short time, was promoted to sergeant. Detective Hendrick further reported that Detective Andrew Montalvo will become a community officer walking the beat. Detective Joshua Laiacona will begin at the OPS next month. The OPS detectives are actively trying to get caught up with the investigations.

Detective Montalvo stated that it was an honor to work with the Citizens' Police Review Board (CPRB) for the past few years. The level of professionalism, integrity, and fairness that has been displayed by every member has given him the confidence to do his job a lot more efficiently. Detective Montalvo further stated that he would like to acknowledge the diversity of the Board and how it reflects the diversity in what they do and what they deal with in a society with different backgrounds with different individuals. It really helps the OPS to get these cases hashed out in a fair and accountable manner.

H. *Report from the Chair*

Chairman Edward Smart stated that he gave his report. He thanked the Board once again for their hard work and excellent manner in conducting business of the CPRB. Chairman Smart further stated that the Board is appreciated.

VI. **Public Comment**

Chairman Edward Smart opened the floor for public comment.


A lady wanted to know about the case with the cab driver. She stated that it seemed that so many complainants file complaints about racial profiling and their cases just gets dismissed. It seemed like the officer intentionally stopped the wrong person. It sounded like a case of racial profiling because a black male was stopped instead of a white woman. The lady asked when the officer held the gun, was that a use of force charge or just a call handling charge. She further stated that the officer got off very easily in that case. The lady questioned the Board's review of the complaint by the man who was allegedly pushed down the staircase. She stated that she did not understand how the Board reached a finding of *sustained*. Chairman Smart replied that he did not think that the officer got off very easily. He thought the woman's assessment of that did not take into account what the Board has voted and decided on. Chairman Smart further stated

that the OPS said that there was an ineffective policy and more training was needed. The Board sustained what the complainant alleged. Chairman Smart further stated that the Board's task and mission is to bring together a more effective relationship between the community and the police department. Chairman Smart stated that he thinks the complainant understood the review of his case and they have apologized to him. The Board did a good job.

VII. Adjournment

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

Respectfully Submitted,



Akosua Yeboah
Secretary