

**City of Albany  
Citizens' Police Review Board  
GWU the Center  
274 Washington Avenue – Teen Center Community Room  
January 16, 2014  
6:00 p.m. - 8:00 p.m.**

**Present:** Mickey Bradley, Marilyn Hammond, David Rozen, Eugene Sarfoh, Reverend Edward Smart, and Akosua Yeboah

**Absent:** Anthony Potenza, Maritza Martinez and William McCarthy

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

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

Chairman Edward Smart acknowledged Councilman for the eighth ward Jack Flynn, as being present.

**II. Approval of the Agenda**

The agenda was reviewed. Akosua Yeboah moved to approve the agenda. Chairman Edward Smart seconded the motion. The motion carried unanimously.

**III. Approval of the May 16, 2013 Meeting Minutes**

The May 16, 2013 meeting minutes were reviewed. Akosua Yeboah moved to approve the May 16, 2013 meeting minutes. David Rozen seconded the motion. The motion carried unanimously.

**IV. Old Business**

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

Chairman Edward Smart reported that this complaint had been recommended for mediation. It was further reported that a letter was sent to Albany Police Department (APD) Chief Krokoff regarding a possible mediation. Chairman Smart requested that this case be closed and sent to mediation.

David Rozen moved to send the case to mediation. Akosua Yeboah seconded the motion. The motion carried unanimously.

**B. CPRB No. 53-13/OPS No. CC2013-097**

Chairman Edward Smart reported that at a previous meeting the vote to close the case without review had failed with a vote of five (5) to four (4).<sup>1</sup> This case had been moved on because the complaint was filed well over six (6) months after the alleged incident occurred. Chairman Smart explained that a case which is not timely filed becomes difficult to review. Chairman Smart further explained that with such an attenuated date witness and records may be hard to find, making any review futile.

Chairman Edward Smart moved to close this case. Mickey Bradley seconded the motion. The motion carried unanimously.

## **V. New Business**

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

#### **1. New Complaints Received since the December 12, 2013 Meeting**

Chairman Edward Smart reported that the Board received two (2) new complaints since its December 12, 2013 meeting. Board Secretary Akosua Yeboah read the new complaints.

Akosua Yeboah requested that the Board only proceed with reading new cases where a monitor was not assigned. Both the Board and its counsel agreed that this was an appropriate action.

Both new complaints are listed as follows:

#### **CPRB No. 53-13/OPS No. CC2013-097**

On December 18, 2013, all members of the board were read this complaint verbatim. By a majority vote, the Board voted not to accept and review this complaint since the complaint was filed six months after the date of the alleged incident. The case was placed on tonight's meeting agenda and closed out accordingly.

#### **CPRB No. 1-14/OPS No. CC2013-140**

According to the complainant, on November 1, 2013, she had an altercation with the driver of a van that belonged to a local food store. The complainant stated that the driver of the van was going to hit her so she pulled out a knife and punctured the tire. When the complainant went to the police station to report it, she was allegedly told that someone called in a report of a woman with a knife wearing a grey coat and chasing people. The complainant alleges that an officer snatched her arm and handcuffed her. The

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<sup>1</sup> On December 18, 2013, all members of the Board were read this complaint verbatim. By a majority vote, the Board voted not to accept and review this complaint since the complaint was filed six months after the date of the alleged incident.

complainant further alleges that the officer was so aggressive with her that the officer reopened a wound that the complainant had. The complainant claims that the officer failed to give her medical treatment to stop the bleeding.

2. Complaint(s) for Board Review

**CPRB No. 10-13/OPS No. CC2013-027** (Presented by Chairman Edward Smart)

Chairman Edward Smart summarized the complaint. The complainant alleged that officers entered her apartment with force, arrested her and used “extreme force” and profanity towards her. The complainant further alleged that she was denied a phone call while in booking.

Chairman Smart reported that he reviewed the following documents: Monitors Report; Time Line; Confidential Police Report; Citizens Complaint Form; Appearance Ticket; AMC Exit Care Form; Discharge Form; Booking and Arrest Report; Five (5) call Reports; six (6) Inter-departmental Correspondence (IDC); Memo Concerning Custodial Arrest; Memo Concerning Without Warrant Ruse Procedures (People v. Santiago); Corporate Counsel Response; Phone Call Standard Operation Procedure (SOP); and SOP Arrest Transportation Article 64.1.

Chairman Smart reported that monitor Joel Pierre-Louis was assigned to this case and was present.

Mr. Pierre-Louis summarized the factual background based on his report. Mr. Pierre-Louis stated that he reviewed OPS Detective Joshua Laiacona’s report for this case. Mr. Pierre-Louis reported that the OPS report divided the complaint into multiple smaller allegations with different recommendations for each. The OPS finding for the arrest authority and procedures allegation was *unfounded*. The complainant alleged that the officers opened her door, entered with force, and then arrested her without telling her why. Mr. Pierre-Louis stated that he agreed with the OPS finding of *unfounded*.

Chairman Smart further summarized the underlying facts of the case. Chairman Smart reported that the complainant resided on the third (3<sup>rd</sup>) floor of an apartment building. The police received a call from a resident on the second (2<sup>nd</sup>) floor complaining of unreasonable and excessive noise after midnight. This first complaint was responded to with the responding officers knocking on the door and asking the complainant to quiet down and to simply reduce the noise. The officers left without incident. Approximately forty-five (45) minutes to an hour later the police were called to the scene again because a different individual complained of excessive noise. During this second call, the police gained entry into the apartment because the complainant’s boyfriend opened the door. Chairman Smart reported that it was during this second incident a verbal altercation ensued between the responding officers and the complainant. It was at this time that the officers arrested the complainant for being uncooperative. The officers noted that the complainant was intoxicated during the incident, and was then brought to the station for booking procedures. Chairman Smart reported that what occurred in the booking facility also gave rise to some of the allegations in this complaint. After booking the complainant, the complainant was given an appearance ticket and allowed to leave the

station. After these events transpired, the police were called for a third (3<sup>rd</sup>) time for a noise violation by the neighbor who had reported the first noise violation. Officers then reported back to the scene, where they were not able to gain access into the residence. Due to the officers' inability to gain access to the residence, the officers called a supervisor. The supervisor told the officer to leave the scene.

Mr. Pierre-Louis reported that the complainant's allegation contained multiple allegations including: conduct standards allegations where the officers used profanity; a use of force allegation; that when she was released from the police custody she was allowed to leave with only one shoe and no jacket; and she was not allowed a phone call.

Chairman Smart began the discussion with the arrest authorities and procedures allegation. Mr. Pierre-Louis summarized the finding for the allegation that the officers opened the complainant's door and forced their way into her apartment. Mr. Pierre-Louis stated that this was a major component of his analysis, in looking at whether the police had entered the apartment lawfully. Mr. Pierre-Louis stated that based upon the documents he reviewed and the testimony from the complainant's male roommate, it appeared that when the roommate opened the door, the officers placed their hands on the door and entered the apartment. Once inside, the officers saw cans of beer strewn around the apartment. They also noticed that the complainant appeared to be intoxicated. The complainant was warned to keep the volume down. The officers also informed the complainant that if they needed to come back due to another complaint they would need to take further action. Mr. Pierre-Louis further reported that when the police responded again there was some confusion as to who had opened the door first. It was noted that there were conflicting reports as to whether it was the complainant or her roommate who opened the door. Mr. Pierre-Louis noted that the roommate stated that he opened the door but did not let the police in. According to the roommate, the officers placed their hands on the door and came in. Mr. Pierre-Louis stated that the OPS finding for the arrest authority and procedure was *unfounded* due to the fact that the complainant's neighbors had called the police to complain about fighting and noise. These noises were corroborated by the Albany fire department who also requested police assistance for a fight. Mr. Pierre-Louis further reported that the complainant's roommate was also interviewed. The roommate confirmed that the police had previously been to the residence and advised the complainant to keep the noise down. While the roommate stated he had let officers in the apartment, DVR footage from both the booking room and the patrol vehicle shows the complainant stating that she let the officers into the apartment. Mr. Pierre-Louis stated that based on all this evidence the police were lawfully in the complainant's residence, so he concurred with the OPS finding of *unfounded*.

Chairman Smart stated that he wanted to reiterate that this was a case where the officers were allowed into the residence. He reminded the Board that during the third incident the officers were not allowed access and the officers left the premises. Chairman Smart stated that it is clear that the APD did not break down the door to enter the residence but the greater question that repeats itself is the handling of the second call. Chairman Smart stated that this second call points not to a finding of *unfounded* alone, but there is an issue because the same officers were dispatched to the same location for a second time.

These officers had preconceived ideas and perhaps preconceived actions. Chairman Smart stated that although there is no evidence of wrong doing, he believes that with the OPS finding of *unfounded*, there should be a finding of *ineffective policy and training* that would assist officers in these sensitive matters. This incident might have been avoided or other outcomes might have ensued with an effective policy and additional training.

Chairman Smart stated that he believed that sending new officers to a scene may have been beneficial in diffusing the situation. Chairman Smart asked if anyone had anything they wanted to add. Mickey Bradley stated that while he understood Chairman Smart's position he had concerns that officers who had responded during the first call would have valuable information about the situation when responding to the second situation. David Rozen stated that it was his belief that officers are typically assigned to a specific neighborhood, and that there is a value to having officers in a neighborhood learning about the people who live there and getting an understanding of their personalities and history with the police.

Akosua Yeboah stated that this may be a discretionary policy issue and one that would need to be looked at in a case by case situation by a supervisor. She went on to state that it would not be an officer training issue but one that could be dealt with via policy or procedure.

David Rozen stated that in this case he would simply like to concur with the OPS finding of *unfounded*. However, he recommended that more discretion be given to the supervising officer to allow a different officer to be sent to the scene.

Commander Hicks stated that currently there is no process for officers from another zone to be dispatched to a second or third call to the same area for the same incident. He went on to say that it is something that could be looked at because the zones are close together.

David Rozen moved to concur with the OPS finding of *unfounded* for the arrest authority and procedures allegation. Along with requesting OPS review the policy of dispatching the same officers to a scene for three calls in a row with the same people. Chairman Edward Smart seconded the motion. The motion carried unanimously.

It was noted that the complainant was present. The complainant summarized her version of the events. She stated that she resided in an apartment building which was a noisy complex to begin with. She further stated that the noise report was filed falsely by a vindictive neighbor. She stated that when the officers first arrived the officer was nasty to her, and the only noise in the apartment was a television which had been at a volume which had never been complained about before. The officers then responded due to another noise complaint, but at this point the complainant was not pleased with the officer's attitude towards her. She asked if the officer was a rookie because of the way he was treating her, and that her comment upset the officer who charged into the apartment. At this point she was arrested, and was not told why she was being arrested. The physical altercation caused bruising to her arms, wrists, and legs. The complainant also alleged that the officer stepped on her foot causing a hematoma and her shoe to fall off. At the time of her arrest, the complainant was in pajama pants with no coat on. She

reported that she was not allowed a phone call, and officers in the station would not tell her the charges. Because she was not given a call she had to walk home from the station, during the night, with one shoe on in the cold. She stated that once she got home, the officers arrived again banging on the door like they were attempting to knock it down. At this point, it was the officers who were making enough noise to wake the neighbors. The complainant was afraid to open the door because of what had just happened to her. The officer stated he had a warrant, and continued to bang on the door. The complainant was humiliated by the incident. The officers may need more training of some sort because they proceeded with a level of force that was not equivalent to the charges filed against her. There needs to be an equivalent level of respect between officers and the public.

Chairman Smart allowed the Board to ask questions of the complainant.

David Rozen asked the complainant about her actions during the time her foot was stomped on. Mr. Rozen inquired as to whether she was resisting or non-compliant at the time of the incident. The complainant replied that she was not resisting, because she was not charged with that.

Akosua Yeboah asked monitor Mr. Pierre-Louis whether he was able to get a statement from neighbors corroborating the noise allegations. Mr. Pierre-Louis reported that there was a statement in the file from a neighbor who did not actually witness the altercation. The statement was based on third hand information.

Chairman Smart inquired as to whether there were any indications to the officers hearing noise as they approached the residence. Mr. Pierre-Louis reported that one of the officers stated that when they arrived on the scene they heard loud noises coming from the building and attributed that to the complainant.

Chairman Smart summarized the OPS finding for the conduct standards allegation as **sustained**, where the review discloses sufficient facts to prove the allegations made in the complaint. The complainant alleged that the officers were using profanity towards her. Based on the OPS investigation, the officers admitted to using profanity towards the complainant because she was being verbally abusive towards them.

Chairman Smart suggested that the Board agree with the OPS finding of **sustained**. Chairman smart stated he insist that "our finest" always take the high road and never respond to others in a fashion and or in language that doesn't represent the best that Albany has to offer. The City of Albany expects a hallowed response to language that offends and desecrates our finest.

Chairman Edward Smart moved to concur with the OPS finding of **sustained** on the conduct standards allegation. David Rozen seconded the motion. The motion carried unanimously.

Mr. Pierre-Louis stated that on the use of force allegation, the OPS made a finding of **not sustained**, where the review failed to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that the officers used extreme force in twisting her arms behind her back and stepped on her foot while walking her

out of her apartment and dragged her down a flight of stairs. Based on the OPS investigation, there was a witness statement which stated that the officer handcuffed the complainant and then grabbed her around the triceps area of the arm and pushed her arms upward above her shoulders. The witness reported that he could not see the complainant being led down the stairs because it was unlighted and dark. Mr. Pierre-Louis reported that the confidential report referred to a neighbor's statement which stated that the officers would not let the complainant walk down the stairs on her own, but rather were pulling and dragging her. However, when the neighbor was interviewed, the neighbor admitted that he only heard the incident and only saw what he could see through the window of his apartment. Mr. Pierre-Louis stated that based on this, the neighbor would not have been in view of the stairs or the complainant's apartment due to the floor plan of the building. The officers reported that the complainant was slightly actively resistant but mostly passively resistant and had used a standard technique to bring the complainant down the stairs. This technique is consistent with the incident observed by the witness. There was DVR footage from both the back of the patrol vehicle and the booking room. In this footage the complainant was walking and standing or otherwise acting as if she was uninjured. While the complainant stated that she hit her head while in the rear of the patrol vehicle, it was apparent from the video that she was uninjured. Mr. Pierre-Louis stated that video from the rear of the vehicle shows the complainant as being intoxicated and verbally abusive. Based on this video footage, it would have been warranted for the complainant to be escorted. Mr. Pierre-Louis stated that while there is the allegation that the officers stepped on the complainant's foot, and there were allegations of the complainant being "roughed up" in the booking room, it was clear from the booking room video that there was no violence during that incident. The complainant walked home with one (1) shoe in an intoxicated and agitated state which could have led to an injury to her foot. Based on the multiple inconsistencies and DVR footage which tends to show that the complainant was not injured, it does not appear the officers used excessive force.

Akosua Yeboah asked Mr. Pierre-Louis why the officers made this arrest so urgent that there was not enough time to allow the complainant to get her shoes or to dress appropriately. Mr. Pierre-Louis stated that there was a question of law of whether the police were allowed to enter the apartment when the door was simply opened. Corporation Counsel sent a memo stating that the officers are allowed to enter a residence once the door is opened. Mr. Pierre-Louis stated that in the DVR footage he clearly heard the complainant state that she let officers in and that she did not have to let them in. This is why Mr. Pierre-Louis concurred with the OPS finding of ***not sustained***. While there were conflicting reports over who let the police into the apartment, the DVR footage contained statements from the complainant stating that she opened the door and allowed the officers in when it was not required.

Chairman Smart reiterated that the Corporation Counsel's memo stated that once a door is opened to the police they are allowed to enter.

Chairman Smart stated that he is convinced that the actions of the officers were in line with their training. He also agreed that the complainant was by all indications too much to handle. He further stated that there was no mention of injuries by the complainant at

the booking station, but never the less she was injured and did receive some treatment at Albany Medical Center (AMC). Chairman Smart believed that the complainant was roughed up and an injury might have occurred. The complainant could have also been injured as she walked from the police station and if that took place then the APD has some responsibility in the matter of not providing transportation. Chairman Smart stated that he agreed with the OPS finding of *not sustained*.

David Rozen stated that he did not believe that the police department has an obligation to transport an individual from the police station back to her residence. Chairman Smart stated that she should have been allowed a phone call and not allowed to walk home as she was. Akosua Yeboah stated that she was concerned by the fact that there was force used and such urgency in this situation. She further stated that this was an unreasonable use of force in this case based on the fact that this was a nuisance call with no danger. She believed that the act of pulling the complainant out of the home so quickly that she was unable to have two (2) shoes on her feet was a use of force issue.

Chairman Edward Smart moved to concur with the OPS finding of *not sustained* on the use of force allegation.<sup>2</sup> The motion failed to carry by a vote of 4-2. Marilyn Hammond and Akosua Yeboah voted against the motion.

Mr. Pierre-Louis summarized the OPS finding for the arrest authority and procedures allegation as *sustained*. The complainant alleged that she was denied a phone call when in the booking room. Based on the OPS investigation, Chairman Smart states that he agrees with the finding because she was in fact denied a phone call.

Chairman Edward Smart moved to concur with the OPS finding of *sustained* on the Arrest Authority and Procedures allegation. Mickey Bradley seconded the motion. The motion carried unanimously.

Chairman Smart summarized the OPS finding for the arrest authority and procedures allegation as *ineffective policy or training*. The complainant alleged that she was released from the station without being allowed to make a phone call which created the situation where she only had one (1) shoe on, was not wearing appropriate clothing for the weather conditions, and was forced to walk home as a result. Mr. Pierre-Louis states that OPS report recommends this portion be closed with two (2) separate findings: *ineffective policy or training*; and of *sustained*.

Mr. Pierre-Louis states that the *ineffective policy or training* is in regard to the complainant being released into inclement weather wearing only one shoe, having no jacket, and being intoxicated. The finding of *sustained* addresses to the portions of the investigation as it pertained to the booking room sergeant. During the interview of the sergeant it was apparent that the weather conditions were adverse and that it was unsafe to release the complainant without a phone call. According to the national weather service records the temperature was between mid-30 and low 40's. This was in direct violation of SOP 2.2 which states that it is the officer's responsibility to safeguard the

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<sup>2</sup> Chairman Smart put a motion on the table to concur with the OPS investigation. The motion was not seconded by a Board member.



welfare of their prisoners. Further it is part of the SOP for officers to care for the safety and wellbeing of intoxicated individuals.

Mr. Pierre-Louis stated that he disagreed with the OPS finding of *ineffective policy or training* but agreed with the OPS finding of *sustained*. He also wanted to note that the complainant wore an open toe flip flop shoe.

Chairman Edward Smart moved for the Board to accept a finding of *sustained* and *sustained* on the arrest authorities and procedures allegation. Marilyn Hammond seconded the motion. The motion carried unanimously.

Mr. Pierre-Louis summarized the OPS finding for the arrest authority and procedure allegation as *exonerated*. Based on the OPS finding, the complainant was placed under custodial arrest for a minor GCO offense that is commonly handled with a field arrest resulting in an appearance ticket. There was a question of whether a person could be placed under custodial arrest for a GCO offence. Corporation Counsel provided detectives with a memo stating that an arrest may be made when enforcing noise violations when the officer has reason to believe that such person committed the offense in their presence and when such offence was made in the geographical area of the officer's jurisdiction. A person who refuses to quiet down may be charged with additional charges including disorderly conduct. The confidential report included an analysis of the officer's conduct in using a "ruse" to lure the complainant out.

Mr. Pierre-Louis commented on this aspect of the investigation, by stating that this issue was not present in the complaint and the issue was not fully researched and demonstrated. Mr. Pierre-Louis stated that he was uncomfortable with making a recommendation based upon these facts. The "ruse" was not presented to him as an allegation in the complaint. Mr. Pierre-Louis stated that without his independent legal research he would not like to comment on it.

Chairman Smart stated that he would like to disagree with the OPS finding of *exonerated* because using a ruse is improper with an infraction of such a low level.

Chairman Edward Smart suggested that the Board moved to disagree with the OPS finding of *exonerated*.

The Board discussed aspects of the APD's abilities to use a ruse or lie to coax a suspect out of their residence. There was further discussion as to what is both legal and also proper from a societal and social point of view. The Board's mission of furthering and facilitating trust between the citizens and police so while there is a legal technicality the Board should uphold societal values.

Mr. Pierre-Louis reported that the Corporation Counsel memo only contained case law which stated that there is an allowance for a ruse particularly when there is no SOP for guidance for this in the department. This led Mr. Pierre-Louis to believe that there were no SOP rules governing the use of a ruse by the department.

Chairman Smart mentioned that he believes with a case so minor such as this the police should have used judgment in pursuing the complainant.

David Rozen moved to concur with the OPS finding of *exonerated* and send the “ruse” issue to the Board’s public department liaison/policy review recommendations committee to analyze the issue and to make recommendations to the police department for a change in the SOP. Chairman Edward Smart seconded the motion. The motion carried unanimously.

**CPRB No. 51-12/OPS No. CC2012-123** (Presented by David Rozen).

David Rozen summarized the complaint. The complainant alleged that at approximately 5:30 a.m. on October 27, 2012, as he was coming around the corner of the Silver Slipper, four (4) squad cars pulled up to him and asked where he was going. The complainant was allegedly put into the rear of one of the police cars. While in the rear of the car, the complainant alleged that he was asked profile-type questions and that the officers were sarcastic and “mouthy” to him. The owner of the property that was allegedly burglarized then showed up. The officers and the owner reviewed the tapes and the complainant was released. The complainant alleged that at that time officers were very angry with him so they were exchanging words. The officer allegedly gave the complainant back his belongings in an evidence bag, but in doing so, the officer dropped the bag and instructed the complainant to pick it up. The complainant alleged that he refused to pick it up and walked away. At that point, an officer came up from behind and grabbed the complainant’s wrist and shoulder and slammed him to the concrete. This action allegedly sent the complainant’s bottom tooth through his lip. The complainant stated that he was again detained and words were exchanged between the complainant and the officers. EMS arrived on the scene and the complainant was subsequently released.

Mr. Rozen reported that a monitor Frank White was assigned to this complaint because there was a use of force allegation in this complaint. It was noted that Mr. White was present at the meeting.

Mr. White reported that he met with the OPS detectives. During the complainant’s interview, the complainant reiterated the same set of facts as alleged in the complaint. It was reported that when the officers responded to the scene the complainant was found with a pair of construction gloves. Mr. White reported that the OPS detectives inquired as to why the complainant had these gloves on. The complainant responded that he wears gloves at all times in case he gets into a fight. It was further reported that while the complainant claimed to be in the area to meet a girlfriend he refused to give a name or the location of where she lived.

Mr. White reported that he reviewed the Confidential Report; Police Reports regarding the incident; and DVR footage from the squad car. It was noted that the complainant alleged that the officers maneuvered him to the rear of the squad car so he would not be seen by the cameras. Mr. White reported that based on the OPS investigation, this was not the case. There were rear facing cameras and they recorded the events that took place at the rear of the vehicle. Mr. White further reported that while some of the audio was muffled he was able to hear many of the questions asked of the complainant. The questions were reported to be innocuous and not disrespectful in any manner. It was noted that it was in fact the answers to the questions which were sarcastic and disrespectful. Mr. White explained that one question from officers was “What are you

doing here?" To which the complainant responded "This is what I do." It was noted again that while the some of the actual questions and answers were difficult to hear, at no point did the monitor hear raised voices. The complainant was released from the vehicle where he was then brought to the rear of the patrol vehicle. The complainant could then be seen having the evidence bag being handed to him. At that point, the officer stepped back. Mr. White further reported that he did not observe the bag being thrown by the officer.

Mr. Rozen reported that while it was not an aspect of the complaint, he did agree that there was probable cause to detain the complainant. It was reported that the officers were reporting to a burglary call where a cinderblock was thrown through a window and the complainant was located in front of the premises wearing gloves with the powder of a cinderblock on them.

Mr. Rozen summarized the OPS finding for the conduct standards allegation as ***unfounded***, where the review shows that the act or acts complained of did not occur. The complainant alleged that he was walking on Henry Johnson Blvd. when officers detained him and got "mouthy" with him while he was in the rear of the patrol car. Based on the OPS investigation, the in car video showed that the complainant was disrespectful and uncooperative. An officer stated that the complainant stated to another officer "you're a little b\*\*\*\*. If we were somewhere else I would f\*\*\* you up." That officer stated "The complainant was very agitated, saying that he was a boxer, he would fight all of us, he wasn't afraid of any of us and then he would pause and stare at us in a threatening manner." The complainant alleged that an officer threw a bag on the ground and ordered him to pick it up. The complainant later changed his story and stated, "I emptied my stuff and dropped the bag before he could grab it. He told me to pick it up. I told him I am not picking up the bag. I felt like he was trying to disrespect me." Mr. Rozen stated that he completely agreed with the OPS finding of ***unfounded***.

David Rozen moved to concur with the OPS finding of ***unfounded*** for the conduct standards allegation. Mickey Bradley seconded the motion. The motion carried unanimously.

Mr. Rozen summarized the OPS finding for the use of force allegation as ***not sustained***, where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint. The complainant alleged that as he started to walk away, the officer grabbed his arm and his neck and pushed him to the ground causing his tooth to go through his lip. Allegedly while on the ground an officer pulled the complainant's arm behind his back, folded it, pulled it up again and asked how it felt. Based on the OPS investigation, the officers stated that the complainant clenched his fists and raised his arms towards an officer in an aggressive manner. The officer stated that he was very close to the complainant, grabbed his arm, put him on the ground, handcuffed him, and did not crank his arm maliciously. Mr. Rozen reported that he went to the OPS and reviewed the video tape taken from the night of the incident and reviewed all relevant documentation. Based on his review, he was satisfied that the OPS and the monitor conducted thorough investigations into this complaint and agreed with the conclusion of ***not sustained*** regarding this portion of the complaint.

David Rozen moved to concur with the OPS finding of *not sustained* for the off-duty conduct standards allegation. Eugene Sarfoh seconded the motion. The motion carried unanimously.

Mr. Rozen stated that he would like to commend the OPS on its investigation and for also informing the Board that the sergeant on duty was in violation of APD SOP article 2.2 No. 22 and Article 21.1. Mr. Rozen reported that under the SOP, it is the supervising sergeant's responsibility to report to the scene of an incident to review probable cause to arrest. Further the sergeant was required under SOP to respond immediately after being informed of a use of force incident, and the sergeant did not report accordingly. Mr. Rozen further reported that the OPS disciplined the sergeant and sent the sergeant for further training.

**CPRB No. 45-12/OPS No. CC2012-100** (Presented by Eugene Sarfoh)

It was noted that the complainant was present via conference call.

Eugene Sarfoh summarized the complaint. The incident took place on August 22, 2012. It stemmed from a strong arm robbery that took place in Washington Park. Two (2) McDonald's employees were walking home through the park where they were confronted by four (4) males. This interaction ended in a cellphone being taken by one of the individuals. One (1) of the employees made a 911 call and pursued the group who had confronted him. The complaint was filed by the mother of the men arrested. The complainant alleged that the men were repeatedly struck on the head, tackled, and assaulted.

Mr. Sarfoh reported that he reviewed the following documents: OPS Final Report; Confidential Report; Witness Statements from the two (2) victims; Supplemental Report; Oral Reports; IDC's; and Email Correspondence.

It was acknowledged that the complainant was on the conference call.

The complainant stated that she is upset with the officers' handling of the situation. The complainant further stated that she was unaware that her sons were arrested at the time. She is aware that the police have the right to arrest people who break the law, but they are not allowed to beat people. The complainant further stated that she had witnessed a prior incident where her son was beaten, so she is aware of police abuse and misuse of authority. Her son was beaten with a night stick, by the four (4) officers who "jumped" him, and was denied medical attention. The complainant stated that she received conflicting stories which indicates to her the fact that there was a cover up.

Mr. Sarfoh stated that monitor Richard Lenihan was assigned to review this case. Monitor Richard Lenihan was acknowledged as being present.

Mr. Lenihan reported that the person who filed the complaint was not a witness or party to the incident. He further stated that the most compelling evidence in this case was the video in the interrogation room that showed one of the complainants repeatedly throwing his head into the wall and falling down on the floor. These actions on the part of the injured parties are the direct cause of the injured parties' injuries.

Mr. Sarfoh stated that the injured parties in this incident never filed a complaint on their own behalf. The two (2) boys indicated in the complaint filed by their mother were given opportunities to file complaints on their own behalf but declined to do so. The claims of injuries are rebutted by video which shows that while in the booking room there was bashing of heads into the wall in an obvious effort to create a claim of abuse or injury. Mr. Sarfoh further stated that upon his review of DVR footage from the patrol car there was no indication of abuse from that video.

The complainant stated that she never saw the video so she will not accept what she is hearing as fact. She stated that she believes that the video was tampered with because she has not seen it.

Mr. Sarfoh stated that this video was viewed by both the OPS and the monitor who was appointed to review this case. Mr. Sarfoh further stated that in the video, the complainant's son was heard saying "Watch what happens next" and then began slamming his head into the wall and floor, in an attempt to have an altercation with the officers. This video directly contradicts the allegations made in the complaint.

Mr. Sarfoh summarized the OPS finding for the use of force allegation as *unfounded*, where the review showed that the act or acts complained of did not occur or was misconstrued. The complainant, on behalf of her son, alleged that four (4) officers repeatedly struck her son about the head. It was alleged that they tackled him from his bike, punched him in the head, causing him to hit his head on the concrete causing a huge knot on his head. The son admitted to committing the crime and robbing a man. All involved officers were interviewed regarding the matter and Subject Resistance Reports were completed on the night of the incident. Furthermore, video of the incident was reviewed and revealed that the two (2) individuals were belligerent and engaging in activities which incited an altercation between themselves and the officers. They caused their own injuries. Mr. Sarfoh reported that based upon this information, he concurred with the OPS finding of *unfounded*.

Eugene Sarfoh moved to concur with the OPS finding of *unfounded* for the use of force allegation. David Rozen seconded the motion. The motion carried unanimously.

**CPRB No. 30-13/OPS No. CC2013-078** (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint. The complainant alleged that he was stopped by an officer when he did nothing wrong. The complainant further alleged that the officer pointed to the residents on Second Avenue and stated that they were the reason of the complainant's arrest.

Ms. Hammond reported that she reviewed the following documents: CAD call; IDC's; DMV reports; Arrest Authority Procedures Report; Witness Statement; and Booking Report.

Ms. Hammond reported that there was a traffic inspection checkpoint on the street, which is an activity the APD sometimes do in various places throughout the city. At this checkpoint the complainant was observed driving a vehicle with what was observed by officers to be a "cut and pasted" inspection sticker on the vehicle. Upon further review of

the inspection sticker it was founded to be a valid inspection for that vehicle. However, after a check of the DMV records revealed that the complainant had three (3) suspensions of his license, he was then placed into custody. Ms. Hammond reported that she agreed with the OPS finding of *exonerated* for the arrest authority and procedures allegation.

Ms. Hammond reported that on the conduct standards allegation there was no documentation to substantiate the complainant's allegation. It was reiterated that the officer was doing a traffic inspection on the road, not at the behest of residence. It was also noted that there were multiple officers in the area, some of whom may have been in contact with people near Second Avenue. Ms. Hammond reported that given this information she agreed with the OPS finding of *not sustained*.

Marilyn Hammond moved to concur with the OPS finding of *exonerated* for the arrest authority and procedures allegation. Akosua Yeboah seconded the motion. The motion carried unanimously.

Marilyn Hammond moved to concur with the OPS finding of *not sustained* for the conduct standards allegation. David Rozen seconded the motion. The motion carried unanimously.

**CPRB No. 06-13/OPS No. CC2013-011** (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint. The complainant was waiting on the corner at a bus stop. The officer approached the complainant and asked him to place his hands on his head. Ms. Hammond reported that monitor Theresa Balfe was assigned to this complaint.

Ms. Balfe reported that Detective Christ and Detective Hendrick both investigated this complaint. Ms. Balfe reported that the officers were at a CDTA bus stop upon a tip from a local reverend who had reported that an individual had moved into the area and was making drug sales. The police officer who responded approached the complainant because he fit the description of the suspect reported to the police department. A bulge was observed in the complainant's pocket and twenty – five (25) bags of marijuana were located in the complainant's pocket.

The first allegation is of arrest authority and procedures because the complainant believes that the procedures leading up to his arrest were not followed properly. The second allegation of use of force is due to complainant's assertion that the officer used excessive force in his arrest.

Ms. Balfe reported that the case file contained the following contents: Confidential OPS Reports; Call Tickets; Citizens Complaint Form; Arrest Reports; IDC's; Subject Resistance Report; SIR for Arrest; SIR Injury to an officer; DVR from the unit; Copies of PCR reports; interviews from both the officer on the scene, back up units and the Reverend who reported the individual.

Ms. Balfe further reported that the OPS cited *People v. DeBour* which is a New York State Court of Appeals case. This case raises the fundamental issue of whether or not a police officer, in the absence of any concrete indication of criminality, may approach a

private citizen on the street for the purpose of requesting information. Ms. Balfe noted that the officer asked the reverend for a complete description and the individual arrested met that description, which gives the officers reasonable cause to stop the individual. However the officers did not have the right to frisk the complainant simply for drugs at that point in the encounter. It was explained that while the officers could pat someone down for a weapon, it does not allow a search for drugs.

Mickey Bradley moved to concur with the OPS finding of *sustained* for the arrest authority and procedures allegation. David Rozen seconded the motion. The motion carried unanimously.

Ms. Balfe stated that for the use of force allegation the OPS recommended be closed as *exonerated* because all officers interviewed all claimed the complainant was uncooperative, and the complainant admitted he did kick and maneuver so he could not be handcuffed. The complainant admitted that he was acting “stupid” during the encounter.

Marilyn Hammond moved to concur with the OPS finding of *exonerated* for the use of force allegation. Akosua Yeboah seconded the motion. The motion carried unanimously.

*B. Appointment of New Members to the Committee on Complaint Review for May 2014*

The following Board members were appointed to the Committee on Complaint Review for February 2014: Mickey Bradley, David Rozen, Eugene Sarfoh, Edward Smart, and Akosua Yeboah

*C. Committee Task Force Reports*

By-Laws and Rules

Committee Chair Eugene Sarfoh stated that he had nothing new to report.

Community Outreach

Committee Chair Akosua Yeboah reported that, the new brochures were created in both English and in Spanish. The brochures discuss both the meetings themselves and the complaint review process. These brochures were provided to all Board members, to review the brochures in private and there will be a vote next meeting on the content of the brochures.

Committee Chair Yeboah also reported that David Rozen and she have agreed to attend the Albany Citizens Police Advisory Council (ACPAC) training next week. They will be representing the Board at that training. Mr. Rozen will be presenting a sample case to ACPAC and will take them through the process that the CPRB takes in reaching a decision.

Mediation

Committee Chair Mickey Bradley reported that the Police Union Council requested additional documentation and definitions that other groups currently have in place. Mr. Bradley stated that this is not a refutation of the guidelines that were already approved. Mr. Bradley stated that the GLC did that research and the union has been provided with that information.

Mr. Bradley stated that once the terms are approved the next step will be gathering resumes and performing interviews for the position of mediator. Mr. Bradley states that the committee will be looking for ten (10) mediators representing the diversity of the city.

#### Police Department Liaison-Policy Review/ Recommendations

Chairman Edward Smart stated that Committee Chair Anthony Potenza was not present at tonight's meeting due to a death in the family so a report will not be given at tonight's meeting.

#### Public Official Liaison

Committee Chair David Rozen reported that the Common Council had its first meeting where committees were decided. These committee positions are now posted on the Common Council website. Leigh Golby is now the Public Safety chair.

#### Task Force on Monitors

Task Force Chair Gene Sarfoh stated that he had nothing new to report.

#### *D. Approval of Revised Complaint process Brochures (English & Spanish) Approval of Guide to CPRB Meeting Brochures (English & Spanish)*

The approval of the four brochures was tabled until the next meeting to allow all board members to thoroughly review the brochures.

#### *E. Nominations/Elections for Elected Board Officer Positions*

Akosua Yeboah casted a unanimous vote to approve the slate presented of Edward Smart for Chairman, David Rozen for Vice-Chairman, and Akosua Yeboah for Secretary. All were nominated and elected to serve in the positions that they were nominated for.

#### *F. Committee/Task Force Chair Elections*

Chairman Edward Smart questioned the current chairpersons of the committees and task forces if they would continue their service in that capacity. Each Chairperson agreed to continue their service.

Chairman Edward Smart stated that adjustments to committee membership would be adjusted as necessary at the next meeting.

#### *G. 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 fifty-three (53) active complaints before the Board for review. Of those fifty-three (53) active complaints, four (4) were reviewed and closed by the Board at tonight's meeting. This leaves the Board with forty-nine (49) active complaints. There are at least nine (9) cases ready for review at the February meeting.

It was reported that five hundred and seventy-six (576) complaints have been closed. The total number of complaints that are suspended from review is nine (9). The total number of complaints filed to date is six hundred and thirty-four (634).

It was further reported that since the Board's last meeting, the GLC received six (6) grievance forms, bringing the total number of forms received to four hundred and ninety-eight (498). In response to the GLC's outreach to all individuals, the GLC has received one hundred thirty-seven (137) CPRB complaint forms, which is 28%.

#### Upcoming Meetings

It was reported that the next Board meeting is scheduled for Thursday, February 13<sup>th</sup>.

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

OPS Detective Kathy Hendrick and Commander Michael Hicks were present. Commander Hicks reported that as of the last Board meeting, the Albany Police Department graduated fifteen (15) new recruits from the police academy including three (3) women, and one (1) African American man. Commander Hicks reported that these graduates have been brought up to speed as to what the Board does and what the OPS function is. Commander Hicks reported that there were thirteen (13) new hires last week six (6) of which were minorities including three (3) African American men, one (1) Hispanic man, one (1) woman, and one (1) Albanian.

It was further reported that some of the officers who have been hired were veterans of our armed forces.

#### *I. Report from the Chair*

Chairman Edward Smart stated that he gave his report as the Board has moved through its agenda.

#### **VI. Public Comment**

Chairman Edward Smart opened the floor for public comment. It was noted that there were no comments.

**VII. Adjournment**

Chairman Edward Smart adjourned the meeting at 8:35 p.m.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Akosua Yeboah', written in a cursive style.

Akosua Yeboah  
Secretary