

**APPROVED: July 11, 2013**



**ATLANTA CITIZEN REVIEW BOARD**

**APRIL MEETING MINUTES**

55 Trinity Avenue, S.W., Committee Room Two

Atlanta, Georgia 30303

June 9, 2013 / 6:30 p.m.

**ROLL CALL**

*(Eleven Members of the Board)*

ACTIVE MEMBERS PRESENT

<b>PAUL BARTELS</b> <i>(Chair/Bartels)</i>	<b>ALAN MORRIS</b> <i>(Morris)</i>
<b>OSA BENSON</b> <i>(Benson)</i>	<b>LABRIAH LEE</b> <i>(Lee)</i>
<b>WILLIAM HARRISON</b> <i>(Harrison)</i>	<b>RUTH PRICE</b> <i>(Price)</i>
<b>BARBARA HUBBARD</b> <i>(Hubbard)</i>	<b>MACEO WILLIAMS</b> <i>(Williams)</i>

ACTIVE MEMBERS ABSENT

**BILL BOZARTH** *(Bozarth)* *(Advance Notice)*  
**RYAN JOHNSON** *(Johnson)*

ONE VACANT APPOINTMENT

*Atlanta Business League (vacant 12 months)*

STAFF ATTENDEES

**SAMUEL LEE REID** *(Reid)*, Executive Director; **KENNETH LIVELY** *(Lively)*, Investigator; **SHEENA ROBERTSON** *(Robertson)*, Investigator; **MYOLA SMITH** *(Smith)*, Transcriber; **BILL CASTING** *(Casting)*, Attorney, COA Law Department

**A G E N D A**

**MEETING CALLED TO ORDER**

The meeting was called to order by *Chair Bartels* at 6:35 p.m., starting with the roll call. He welcomed citizens announcing that public comments will be heard later into the agenda. Speakers must sign-up and limit comments to three (3) minutes. The *Chair* also welcomed members of the Atlanta Police Department (APD), Office of Internal Affairs, Major Elder Dancy and staff.

**APPROVAL OF MINUTES OF THE LAST MEETING, MAY 9, 2013**

The *Chair* directed the Board's attention to the minutes for May 9, 2013 meeting. The floor was open for discussion and corrections to the minutes.

**Morris** moved to approve. **Benson** seconded. Hearing no further discussion, the motion was approved with no objection.

**Special Note:** *The Chair moved the Executive Director's Report and the next two items up on the agenda to allow additional time for the facilitator to set-up for the APD Taser Presentation.*

## **EXECUTIVE DIRECTOR REPORT**

The following are highlights from Director **Reid's** June report:

### **A. COMMUNITY OUTREACH**

Since our last meeting, the following contacts were made:

- Interview with WAOK, Sydney Wood
- Interview with Keisha Lancelin, WPN, Channel 69 (*scheduled to air June 30 noon*)
- Exhibitor at the Sweet Auburn Festival (*many contacts were made with citizens*)
- Presentation at NPU Vote
- Presentation at Georgia State University to students in a Professional Ethics Course
- Atlanta Jazz Festival at Piedmont Park (*materials and information distributed*)
- Key Atlanta Recreational Centers (*Materials and information distributed*)
- City's Safety Awareness Month Seminar at City Hall.

Future events include two upcoming interviewers, 95.1 WAPE FM and City Channel 26.

### **B. BOARD DEVELOPMENT RETREAT**

The retreat will occur June 29<sup>th</sup>, from 9:00 a.m. to 2:00 p.m. at City Hall in the ATL Stats Room. This is the same location of the first retreat. "Does everyone have their security tags to get in the building after hours? If you don't, contact me or Myola (**Smith**) so we can make set up arrangements for you to get a pass. We will send out an email about getting building identification."

### **C. ANNUAL REPORT**

**Reid** indicated that the report is nearing completion and upon completion, the board will be notified.

### **D. MEDIATION PROGRAM**

Information about ACRB's proposed mediation program was included in the board packets. **Reid** said, "I'd like for you all to read it, study it, think about it, and pose questions to me. Next week, I'd like to meet with the Board Chair, Vice Chair, Bill **Harrison** and any other board members who would like to meet, so we can discuss that proposal and start moving forward on that soon; like yesterday soon."

### **E. FBI PRESENTATION ON THE COLOR OF LAW**

Regarding the presentation, **Reid** said, "The Color of Law issues investigations that I mentioned last month, the Bureau was not able to secure a presenter for us tonight. We received a call earlier this week and they're looking for someone to come in the next few months on a Thursday to make a presentation. So, as soon as we find out about that then I'll let you know"

#### *Questions and Comments...*

1. **Bartels:** "Mr. **Reid** regarding the proposed mediation, is that an addition to the investigative model that we have right now, or is that not intended to replace?"
2. **Reid:** "It is not intended to replace. It's an additional tool that we'll be able to use."
3. **Hubbard** asked, "What channel will the interview be broadcast on?"
4. **Reid,** "CW- Atlanta 69 WUPA. We'll send out information regarding the date and time."

5. Responding to **William's** question regarding the nature of the interview, **Reid** said, "It was basically just an introduction of the ACRB type of interview, six minutes long. Ms. Lancelin asked questions about the agency, what we do, where we get our bookings, who is on the Board, those types of questions, and it was pretty much the same type of interview for WAOK as well."

## INTAKE REPORT FOR MAY 2013

**Investigator Robertson** reported on the number of complaints received for the month of May 2013.

**Robertson** reported that a total of sixteen (16) complaints were received for the month and they are listed as follows:

1. Complaint Number: ACRB 13-33, Ellery Poole alleging False Arrest

Mr. Wilson alleges that on April 23, 2013, APD officers falsely arrested and charged him with criminal trespass.

Preliminary investigation revealed that according to the Atlanta Municipal Court records, Mr. Wilson accepted a plea deal. Therefore, recommend dismissal.

2. Complaint Number: ACRB 13-24, Clinton Wilson alleging False Arrest and Excessive Force

Mr. Wilson alleges that on May 9, 2013, APD Officer Barsolino Leconte falsely arrested him for criminal trespass and disorderly conduct. He further alleges that Officer Leconte used excessive force when he pushed him into the patrol car causing injury to his shoulder.

Preliminary investigation revealed that according to the Atlanta Municipal Court records, Mr. Wilson accepted a plea deal. Therefore, recommend investigation as an excessive force complaint only.

3. Complaint Number: ACRB 13-35, Duane Blocker alleging False Arrest

Mr. Blocker alleges that APD officers falsely arrested him on May 10, 2013.

Preliminary investigation revealed that according to the Atlanta Municipal Court records, Mr. Blocker's case was dismissed on May 13, 2013. Recommend investigation as a false arrest complaint.

4. Complaint Number: ACRB 13-36, Henry Harris alleging False Arrest

Mr. Harris alleges that on April 23, 2013, he was falsely arrested by College Park Police officers.

Recommend dismissal for lack of jurisdiction.

5. Complaint Number: ACRB 13-37, Marvin Harvey alleging False Arrest and Excessive Force

Mr. Harvey alleges that on May 10, 2013, APD officers falsely arrested him. He also alleges that during the incident, the officers physically assaulted him.

Recommend investigation as an excessive force and possibly a false arrest complaint. Preliminary investigation revealed that Mr. Harvey's criminal case is pending adjudication in the DeKalb County Superior Court and the investigation into the false arrest allegation will depend on its outcome. Therefore, recommend suspension of the investigation pending the adjudication.

6. Complaint Number: ACRB 13-38, Gary Holliman alleging Harassment

Mr. Holliman alleges that an APD officer working an extra job at the apartment complex where his father resides is harassing him by continuously stopping him and asking him to provide identification.

Recommend investigation as a harassment complaint.

7. Complaint Number: ACRB 13-39, Robert Cobb alleging Failure to Provide Information

Mr. Cobb alleges that on May 19, APD officers responded to a shooting at his residence; however, they did not provide him with any details of their investigation and no one was arrested. Recommend dismissal because the allegations fall outside the Board's jurisdiction.

8. Complaint Number: ACRB 13-40, Dawn Stevens alleging Other

Ms. Stevens called the ACRB office to file a complaint against the city's Watershed Dept. Recommend dismissal for lack of jurisdiction.

9. Complaint Number: ACRB 13-41, Gwen Molden alleging Other

Ms. Molden contacted the ACRB office to get information on how to obtain a death certificate for her grandmother, who resided in Morgan County, Georgia.

Ms. Molden was referred to the Morgan County Health Department. Recommend dismissal for lack of jurisdiction.

10. Complaint Number: ACRB 13-42, Selinda Malcom alleging False Arrest and Excessive Force

Ms. Malcom alleged that on May 22, 2013, APD SWAT Team and Gang Unit forcibly entered her residence with their guns drawn, because allegedly it was reported that she has stolen merchandise in her home.

Ms. Malcom was mailed a complaint form to complete and return. Recommend investigation as an excessive force and false imprisonment complaint if signed complaint is received within the next few weeks. If no complaint form is received, recommend dismissal.

11. Complaint Number: ACRB 13-43, Michael Broadnax alleging False Arrest and Harassment

On May 23, 2013 the ACRB received a letter from Michael Broadnax alleging the APD officers harassed and arrested him on November 15, 2012. He is currently incarcerated at the Atlanta Detention Center. Recommend dismissal because the incident occurred outside the 180 day time limit imposed by the ordinance.

12. Complaint Number: ACRB 13-44, Michael Broadnax alleging Harassment

Mr. Broadnax alleges that he is being harassed by the correctional officers at the Atlanta Detention Center due to his religious beliefs. He has been incarcerated at the Detention Center since April 7, 2013. Recommend investigation as a harassment complaint.

13. Complaint Number: ACRB 13-45, Biniyam Habteab alleging Harassment

On May 23, 2013, Mr. Habteab called the ACRB office and alleged that an unidentified black female APD officer, driving an unmarked police vehicle (*a black Ford, license plate #GV12357*), has been following and harassing him for approximately seven months. He further alleges that at times, the officer is with other APD officers (*identities unknown*). He believes that he is being followed because his former neighbor falsely reported to APD that he is involved in illegal activity.

Mr. Habteab was emailed a complaint form to complete and return. Recommend investigation as a harassment complaint if signed complaint is received within the next few weeks. If no complaint form is received recommend dismissal.

14. Complaint Number: ACRB 13-46, Curtis Middlebrook alleging Other

Mr. Middlebrook contacted the ACRB office to complain about being placed on **Georgia's sex offender's list**. He said he was wrongly convicted of rape in 1986 and served a 12 year prison sentence. He said when he was released he was not placed on the list. However, when he was incarcerated again for an unrelated offense in 2008, he was then placed on the list. Recommend dismissal for lack of jurisdiction.

15. Complaint Number: ACRB 13-47, Lauren Hart alleging Inadequate Investigation

Ms. Hart called the ACRB office to file a complaint against Sergeant Byrd who is assigned to APD's Major Fraud Unit. She alleges that in December 2012, she filed a complaint with APD Zone 1 involving fraud. The case was then transferred to the Major Fraud Unit and subsequently assigned to SGT Byrd. She stated that when she called Sgt. Byrd on May 28, 2013 for information about the case, he told her that her case has been sitting on his desk and he has not done any investigation on it, because he did not have her telephone number,

which she claims is false. She stated that she asked Sgt. Byrd for his supervisor's name and he told her his supervisor was on vacation and hung up on her.

Ms. Hart was referred to OPS. Recommend dismissal for lack of jurisdiction.

16. Complaint Number: ACRB 13-48, Howard Wright alleging False Arrest

Mr. Wright alleges that on April 16, 2013, APD officers falsely arrested him for criminal trespassing.

Preliminary investigation revealed that according to the Fulton County State Court records, Mr. Wright's case was dismissed on May 29, 2013. Recommend investigation as false arrest complaint.

**Bartels:** "It looks like we are getting a few more people coming in, so I think all this stuff is being done because of community outreach. It's having an effect, so thank y'all. Does anybody have any questions? Is there a motion regarding any recommendations?"

**Motion:** *Williams* moved to accept the staff's recommendations as presented. *Lee* seconded. The motion was approved without opposition.

## **DISMISSAL OF ACRB COMPLAINT NO. 13-29, CLINTON WILSON**

Investigator *Robertson* presented the dismissal. She reported that Mr. Wilson has filed several complaints with ACRB. She said, "This particular complaint, Case No. 13-29, he alleges that he was falsely arrested on December 12, 2012 and April 20, 2013. Regarding the December 12<sup>th</sup> arrest, the courts have no record of this arrest and neither does APD. Also, he did not provide any documentation supporting his claim for that particular arrest. Regarding the April 20<sup>th</sup> arrest, the court records revealed that he took a plea deal. So, I recommend that we dismiss this complaint."

**Motion:** It was moved by *Williams* to accept staff recommendation to dismiss the complaint. *Morris* seconded the motion. Hearing no further discussion, the vote was called and the motion was approved.

## **APD TASER PRESENTATION**

The presentation was facilitated by Investigator Charles Ayeni who is currently assigned to the City of Atlanta Police Department Training Academy. He is a Certified Taser Instructor for the department. Investigator Ayeni has been with APD for seven years. Prior to APD, he spent eight years as a military policeman in the U.S. Army. He began his tenure with the Atlanta Police Department downtown at the Underground location working as a foot-beat officer. Later he was transferred over to the training academy for the next year and a half. In 2010, he was promoted to detective and for the past two and half years, he has been assigned to the Narcotics Unit. Recently, about three weeks ago, Investigator Ayeni was re-assigned back to the training academy.

### INTRODUCTION TO THE NEW CEW TASER DEVICE

CEW stands for Conductive Electrical Weapon. It is a new device that has been introduced to the officers out on the street. Before this new updated version was introduced by Taser, the officers used the ECW model. ECW stands for Electronic Controlled Weapon. It is a semi-automatic unit. It can hold two cartridges at a time, unlike the older version, which was only able to deploy one cartridge at a time. The unit maintains a camera that records all the audio and data right in the battery source of the unit.

All of the cartridges that are assigned to the officers have a serial number. When they are assigned out, each officer has to sign for it. When it is deployed, it releases little pieces of confetti to the floor and each piece will have the serial number of the cartridge that it was fired from, which will identify the officer who was assigned that cartridge and fired it. As soon as the unit is turned on it starts recording. When the trigger is pulled, the unit will be activated for a five (5) second cycle. Four (4) seconds into the cycle an audible indication will signal that one second remains before it immediately shuts off. The officer is able to see the unit as it is counting down from one to five and hear after the fourth second, the audible sound (*beeping*) one second before it shuts off. The unit can also be operated in dry stunt mode without deploying the darts. Whereby the officer will simply applied the device to a portion of the body and gain compliance that way. The difference between deploying the darts and the dry stunt mode is the dry stunt is going to be more pain compliance. You are not going to see Neuromuscular Incapacitation from the dry stunt mode.

***Special Note:** Due to the length of presentation, highlights and more of APD's Taser Presentation is attached to the minutes as a separate document. Please see the attachment for detailed information on the training and presentation.*

On behalf of the Atlanta Citizen Review Board and staff, we extend our appreciation to Chief George Turner, Major Elder Dancy, Investigator Charles Ayeni and the APD Training Academy for providing this important training.

## **REVIEW OF COMPLAINTS:**

### **A. ACRB CASE NO 12.-11, DANIEL WOLCOTT (Deferred at Last Meeting)**

***Special Note:** This case was deferred at the April meeting for additional research. At the May meeting it was deferred for second time for more discussion.*

**Chair Bartels** provided a brief summary. To refresh everybody's memory, at the last meeting, there were two board members who wanted some additional information, so it was reset to that. This is the time that we are going to vote on it. Is there any discussion or anybody want to make any comments?

*Questions and comments...*

1. **Williams** asked, "What exactly was it deferred for?"
2. **Bartels** answered, "There were a couple of board members who did not want to go ahead and vote on it because they wanted more information. Mr. **Reid** or Ms. **Robertson** may be able to summarize any new information that they got."
3. **Robertson** answered, "The only person who had additional questions about this case was Ms. **Price**. Her questions were she wanted to know the disposition of the driver's DUI and the other charges. I contacted the Fulton County State Court, and his case is still pending, and there's no court date set. The other thing that she wanted to know had to do with the supervision of Zone One on that day. I interviewed Tina Crawford. A copy of the interview with the notes is included in your packet. Basically he said that on that particular night, he had two supervisors on duty, Sergeant Jeffrey Childers and Sergeant Rufus Bowers. Sergeant Bowers was assigned to B sector, and the A sector sergeant was off that day, so Jeffrey Childers, who is the administrative sergeant, was responsible for covering that particular sector. This particular sector is where the incident occurred in Zone One. It was his understanding that Officer Thornton contacted Sergeant Bowers directly on the phone and told him about the incident, but he didn't give him details that made him think that he had to respond. He made it seem like it was something minor, and it wasn't until he returned back to the office and read Officer Thornton's incident report that he realized the severity of the issue.

*I also asked Lieutenant Harper about Sergeant Childers. I said, well, Sergeant Childers, did he make an attempt to go out to the scene or to contact Officer Thornton to find out what was going on. He said to his knowledge he doesn't believe that he did so, and he believed that the reason why he didn't, was because there was no radio transmissions that reflected or indicated to him that he needed to go out there. At that point, I informed Lieutenant Harper that I was listening to the radio transmissions and Officer Thornton is heard requesting EMF for a suspect, who has facial injuries, and that he was semi-conscious but he wasn't alert. Lieutenant Harper said, "Well, based on that information, then he should have reached out or clearly reported it to me". Lieutenant Harper also added that normally he also monitors the radio activity, but on that particular evening, he didn't get to work until later on after the incident had taken place, and he wasn't notified until after Sergeant Bowers got back to the precinct and then he immediately notified him of what had happened."*

4. **Price:** "I just want to ask, what time of the morning did this incident happen? Was it around 3:00 a.m.?"
5. **Robertson:** "Yes, 3:00."
6. **Price:** "And the Lieutenant is saying he didn't come on duty until when?"
7. **Robertson:** "On that particular day, he didn't get to the office until about 5 a.m."
8. **Price:** "His watch ended at what, 7'clock, 6:30?"
9. **Robertson:** "I'm not exactly sure, but he was the morning watch commander for that day."
10. **OPS Staff** responded, "Very often commanders have to go to 9:00 meetings. So we'll be at work until noon."

Following the discussion, Chair **Bartels** indicated that there were four officers who were the subject of the complaint. However, he said, "There's Officer Thornton, Officer Daniels, Officer Hicks and Officer Sajak. I will just say it is my understanding that Officer Thornton is the only one who is acknowledged having physical contact and the only officer that anybody else could identify as having physical contact. I think we need to consider the excessive force allegation separately for each officer. The staff's recommendation against the allegation of all four is not sustained." **Bartels** then called for a motion:

Officer Thornton

**Harrison** moved to accept staff recommendation and not sustain. Hearing no second, the motion failed.

*Comments...*

1. Responding to **Benson's** comments to abstain from voting, **Reid** stated, "It's my understanding unless the abstention is associated with a reason related to the case, the abstention wouldn't be possible. You have to vote for or against."
2. **Bartels:** "I would have to say that in every case we have, we have to make a judgment call. And of course, the level of proof is clear and convincing evidence. If a member does not believe that that standard has been met, then the procedure is to vote to not sustain. "

**Williams** moved to sustain the allegation against Officer Thornton. **Price**, seconded that motion. Calling for the vote the motion passed with one nay vote by **Harrison**.

Officer Daniels, Officer Hicks and Officer Sajak

**Price** moved to not sustain allegations of excessive force against Officers Daniels, Hicks and Sajak. **Harrison** seconded. Hearing no further discussion, the motion was approved.

**B. RECOMMENDATION FOR DISCIPLINE**

**Robertson:** This is a category 'C' violation, and based on his disciplinary history he's been on the force since May 1<sup>st</sup> 2007. He has had a total of seven complaints filed against him since his

employment. Of those complaints, four resulted in a finding of sustained, one exonerated, one not sustained and one is still pending. None of those complaints involved excessive force. So, based on his history it will be a category 'C', which is a four (4) to fifteen (15) day suspension."

**Bartels:** "Did you get information about what the four sustained complaints involved?"

**Robertson:** "Yes. One of them was for transporting a female in the patrol car without supervisor's approval. The other one was a firearm...discharging his firearm improperly."

**Price** motioned for the officer to receive a five-day suspension. **Morris** seconded the motion. Calling for the vote, the motion failed. The floor reopened for another motion.

It was moved by **Williams** to recommend a 15 day suspension. **Benson** seconded the motion. Calling for the vote the motion failed. Floor was again reopened for another motion.

It was moved by **Price** to recommend a 10 day suspension for Officer Thornton. **Benson** seconded the motion. Calling for the vote, the motion was approved.

C. ACRB CASE NO 13-05, MICHAEL BROADNAX (*Penalty Recommendation Only*)

**Sheena Robertson** investigated the complaint. **Chair Bartels** summarized the complaint indicating that Case No. 13-05 was filed by Michael Broadnax alleging false arrest against APD Officer Antoine Hart. The Board decided to not accept staff's recommendation to not sustain. Instead they voted to sustain Mr. Broadnax's complaint against Officer Hart. The penalty recommendation was table until the next meeting pending additional information regarding the officer's disciplinary history.

*Discussion & Questions...*

1. **Robertson,** "Officer Hart has been with the department since April 10, 2001, and according to OPS records, he has had twenty complaints filed against him within the past five years. Of those complaints nine resulted in a finding of sustained, ten got sustained and one still pending. None of those complaints involved probable cause issues."
2. **Bartels:** "Ok, can you tell us who they were...the ones sustained?"
3. **Robertson,** "Yes. Four involved accidents in a city vehicle and one was failing to file an incident report; telling the suspect that he was a marked man; taking photographs of the suspect's injuries with his personal cell phone; failure to immediately notify a supervisor of his whereabouts, and another was failure to appear in court."
4. **Bartels:** "And what would the grade recommendation be for that?"
5. **Robertson:** "This is a category 'A' violation, disciplined with an oral or written reprimand."
6. **Williams** asked, "Why is that a category A? Is it because it's one particular offense, but with all these different things against this person, why just an A? What's happening with that?"
7. **Bartels** responded, "We can go outside the grid. It's up to us."
8. **Robertson** added, "We can go outside the grade, but it's based on what the allegations were and according to APD's grid, the category 'A' discipline concerning probable cause issues is correct."
9. **Bartels,** "Is it correct to say that if an officer, if there's a finding of sustained against an officer and it's the first violation of that nature like whether excessive force of false arrest, it doesn't matter if he's had, you know, fifteen violations sustained. If anything else, they don't take that into account. So we can go outside the recommendation if somebody thinks that's appropriate."
10. **Williams** stated, "So in saying that, I would be in agreement for a category 2 or 3 or the next one. What's the next one?"

11. **Robertson**, “It would be... one to three day suspension.”

Following the discussion, the floor was open for a motion.

It was moved by **Harrison** to recommend a one (1) day suspension. **Morris** seconded the motion. Hearing no further discussion, the motion was approved with **Williams** and **Price** voting nay.

D. ACRB COMPLAINT NO. 13-10, TREMAINE MALCOM (New Complaint)

Summarizing the complaint, the **Chair** said that complaint No. 12-10 was filed by Mr. Tremaine Malcom against two APD officers (*Investigator Burkes and Sergeant Smith*) alleging excessive force and abusive language. Staff recommendation is to not sustain the allegation of excessive force for both officers. The allegation of abusive language was only against one of the officers (*Sergeant Smith*). The recommendation by staff is to sustain the allegation of abusive language.

*Discussion and Questions...*

1. **Benson** asked, “With regards to Sergeant Smith, it’s my understanding from the report that Mr. Malcom, I know the brothers are Tremaine and Jermaine, Jermaine was walking away at the time that he took him down, is that correct?”
2. **Robertson**: “Yes, but you have conflicting accounts. According to Sergeant Smith, he was walking away because he realized he was getting arrested, and according to Mr. Malcolm, he complied when he was first told to leave and at that point he was walked away.”
3. **Bartels**: “Now, did he walk away because he thought he was getting arrested, or were they following him in order to make sure that he left the premises?”
4. **Robertson**: “According to Mr. Malcolm, he was just walking away, and according to the officers, he was resisting because he knew that he was about to get arrested. That’s when he started to walk away. When he was told to walk away several times he refused, and that’s when Sergeant Smith made the decision to arrest him. And when he went to reach for him to arrest him, that’s when he started to walk away.”
5. **Lee**: “I would like a little information because it’s confusing on page four of our report where it says that Tremaine begins to walk away from the scene while shouting several obscenities. And then it says Sergeant Smith walks behind Tremaine to ensure that he did not return to the scene. And that’s when Tremaine then turned around again and faced Sergeant Smith in a threatening manner while screaming, and at that point Sergeant Smith advised Tremaine that he was under arrest for disorderly conduct, and for him to place his hands behind his back. So, it sounds like Tremaine was walking away here, but before Sergeant Smith never advised him that he was under arrest.”
6. **Bartels**: Well, it sounds to me like it, and correct me if I’m wrong, depending on whose account is to be believed but my interpretation is that Tremaine was walking away and initially Sergeant Smith was following him to ensure that he left, but Tremaine objected to that and he turned around. Sergeant Smith reported that Tremaine became combative and threatening and disruptive which would count as disorderly conduct. And at that point, Sergeant Smith made the decision to arrest him and he resisted. Is that correct?”
7. **Robertson**: “Well, not according to Sergeant Smith.”
8. **Bartels**: “But that’s the allegation?”
9. **Robertson**: “Correct, well, yes. Tremaine is saying that he didn’t refuse and that when he was told to leave and that he immediately left. He said he didn’t refuse and he wasn’t told several times to leave. Sergeant Smith says that’s not true and the other officers say that’s not true that they heard him, Sergeant Smith and Officer Burkes, tell Mr. Malcolm to leave several times but he refused to do so. Sergeant Smith is saying after telling Mr. Malcom to leave several times and he refused, it was then he decided to make that decision to arrest him. When he reached out to handcuff Mr. Malcom that is when he walked away from him.”

10. **Lee:** “I guess this one is still not clear, because in the statement, here he is saying that the officer advised him that he was under arrest for disorderly conduct after he had already been walking away. He turned and then said that he said, you know, ‘f--- all police’, but that doesn’t necessarily say that he was...”
11. **Bartels:** “But that could be disorderly conduct. I mean, depending on the language used and how it’s directed at somebody...body language. The disorderly conduct, you know, ordinance or statute is not the most clear of guidelines, and it is open to interpretation. It might be saying Sergeant Smith’s statement to mean that when he started using that language, that’s when he made the decision to arrest.”
12. **Williams:** “Yeah, I talked to one of our board members today on the phone, Bill Bozarth, and he asked me to raise something on this case that I certainly agree with. And that is the fact that, sure, we know that the guy was combative. We know that the guy threw out obscenities, that sort of thing, but as a professional, as a person that’s representing our safety, an officer shouldn’t have to go overboard to the extreme of doing things that he did because he has to keep that ‘one up’. ‘Cause he has to show the community that regardless of what’s going on, he’s got this professionalism that he has to, have deal with every day also, ok? So no matter what happens to an individual, you still have this certain ‘one up’ position above the regular citizens, to show the respect and the courtesy to the citizen.”
13. **Bartels:** “Yeah, I would agree. I think the staff makes a good point regarding the abusive language allegation. And this is because a subject is using profane language or whatever, that’s not a reason for the police officer to go down to that level. I mean, I think there should be a higher standard. I certainly agree.”
14. **Lee,** “On this video of Mr. Malcolm screaming on the ground, he can be heard saying, “you’re gonna poke my eye out”, and you can hear Sergeant Smith repeatedly saying, “I’m going to treat you like a savage.” “Get the ‘f---’ up. I’m not playing with you. You better get up” and he continues to call him a “f---ing savage”. And all that’s on video?”
15. **Robertson:** “I just want to add that the first part of the incident is not captured on video.”
16. **Bartels:** “Yeah, it does not capture the whole course of events.”
17. **Price:**” I didn’t get a chance to really read the whole report. That’s my fault, but what I did read, my first mind went to the supervisor. I think he’s very improper approaching the man and calling him a savage. That was a fighting word. So everything else escalated, but he knew it was the first fighting words by referring to him as a savage, and something needs to be done to the supervisor, and he did it in the presence of his subordinates.”
18. **Lee** noted that Investigator Burkes did not have any physical interaction.
19. **Bartels:** “That is...yeah unfounded, I’m sorry. I stand corrected, yeah. I think all the accounts were consistent, that he did not have any physical contact.”

Following the discussion, the **Chair** opened the floor for a motion regarding the excessive force change against Investigator Burkes. Staff’s recommendation on that is to not sustain.

Investigator Burkes / Excessive Force

**Lee** moved to accept the staff’s recommendation as to allegation of excessive force against Officer. Burkes. **Williams** seconded the motion. Calling for the vote, the motion was approved.

Sergeant Smith / Excessive Force

**Benson** moved to not accept the staff’s recommendation and sustain the allegation of excessive force against Sergeant Smith, based on Mr. Malcolm’s injuries that are documented. **Williams** seconded the motion.

To clarify whether the injuries were documented **Robertson** stated, "I just want to clarify that Mr. Malcolm refused medical treatment, so there's no documentation of any injuries."

Hearing no further comments, the vote was called and the motion was approved.

Sergeant Smith / Abusive Language

**Benson** moved to accept the staff's recommendation to sustain abusive language allegation against Sergeant Smith. **Hubbard** seconded. Hearing no discussion, the vote was called and the motion was approved.

E. BOARD VOTES ON DISCIPLINE AGAINST SERGEANT SMITH REGARDING EXCESSIVE FORCE AND ABUSIVE LANGUAGE?

**Robertson** provided background on the officer's history of discipline. She reported that Sergeant Smith has been with APD since 1994 and maintained the rank of sergeant since September 2004. Within the past five years he's had five complaints, and of those complaints, two resulted in a finding of sustained and three were not sustained. Regards to the excessive force allegation, it is a category 'C'. Sergeant Smith has no prior excessive force complaints. Based on the grade it is a four (4) to fifteen (15) day suspension, and the abusive language, that would fall under category 'A' which would be an oral or written reprimand."

Sergeant Smith / Abusive Language:

**Price** motioned to move beyond the grid, and recommend that the Sergeant be placed on a one day suspension for abusive language. **Williams** seconded the motion. Hearing no further comments, the vote was called and the motion was approved.

Sergeant Smith / Excessive Force

**Bartels** stated, "As Ms. **Robertson** indicated, the discipline is four (4) to fifteen (15) days. That would be in addition to the one day suspension regarding the abusive language. Any discussion or a motion?"

**Harrison** moved to recommend a five day suspension for the sustain allegation of excessive force. **Price** seconded.

Discussion...

1. **Bartels**: "That would be in addition to the one day?"
2. **Harrison**: "Right, that would be in addition to the one day."
3. **Bartels**, "Total for both would then be six days."

Hearing no further discussion, the vote was called and the motion was approved with **Benson** and **Williams** voting nay.

## PUBLIC COMMENTS

Three citizens signed up to speak.

1. First speaker: Diane Wolcott

"My name is Diane Wolcott. I'm Daniel Wolcott's mother, and I just want to express my gratitude to the Board for consideration of this. I have never experienced anything like the violent abuse that was done to my son, and I know I'm not the only one, but if this were a family member of yours that received this kind of behavior, this kind of treatment at the hands of somebody that we looked to, to serve and protect our community. And so, I just wanted to express my gratitude."

2. Second speaker: Mr. Scott Wolcott

*“First of all I thought that was a good presentation. I learned something just as a private citizen. I felt I was kind of opposed to tasers in the first place, but I want to say I really appreciate all you did. I know that this has been a tenuous situation for us to review this. I think that it went beyond just force or just trying to detain somebody when we have \$40,000 in medical bills.” “I’m a pilot, and a pretty logical person, and I did research. I found this guy’s Facebook page and Myspace page, and the comments that he makes on it, he’s not really a guy that really belongs on the force. He was caught lying to his supervisors. My wife said, you know. I expect the officers to be protective and I also expect them to be professional. Ms. **Robertson** was very professional from the very beginning. I appreciate that, and I’m really shocked that more people don’t take enough interest in what you guys are doing here. I will.”*

3. Third speaker: Sophia Khalid

*“Well, first of all, my reason for coming here this evening was really to see the FBI and I’m extremely disappointed about that. Second thing is, both as been a victim myself of police brutality 40 years ago on April 7, 1973, I can assure you that anything that Mr. Wolcott or any other citizen may sustain, the bruise has maybe gone but the memory sustains a long, long time. And in this particular situation, I think that you guys, your process may be fine but your punishments aren’t strict enough. It sometimes will take more than just, you know I’m hearing these one day suspensions and some of the stuff that they’re talking about or doing really needs to be reconsidered, to prevent reoccurring behavior with people. I was the 250<sup>th</sup> African American female that was beaten by one officer and it took me years to get him off the force. But I still would not have tolerated any of the things that I hear you guys tolerating is not punishable enough. Three days, one day, ten days is not long enough. It’s just sending the wrong signal. I suggest that all of you re-invent the wheel and perhaps come up with something a little bit more message bound.”*

CLOSING COMMENTS:

- **Chair Bartels** thanked everyone for their comments. “I appreciate your comments, and I would clarify that, you know, we can only make recommendations. We’re not in a position to actually impose anything. Thank you.”
- To clarify a comment made during Public Comments, **Reid** stated, “As far as the FBI presentation goes, we did not promise that they were going to be here. At the last meeting, I stated that the FBI had been invited, but there was never a promised that they would be here tonight. A promise is just something I keep.”
- It was announced that **Barbara Hubbard** completed APD Citizen Academy training. The Board offered congratulations to **Hubbard**.

**ADJOURNMENT**

**Chair Bartels** entertained a motion to end the meeting. **Williams** moved to adjourn. The meeting adjourned at 8:33 p.m.

Approved as to form and content,  
Alan Morris  
Board Secretary,  
  
Signature  
July 11, 2013