

City of Albany
Citizens' Police Review Board
Minutes of 10/7/02 Meeting
Albany Public Library, HBH Junior Room
Washington Avenue

Present: Manuel Alguero, Barbara Gaige, Marilyn Hammond, Judith Mazza,
Herman Thomas, Paul Weafer, Eleanor Thompson and Michael Whiteman

Absent: Kenneth Cox

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

The meeting was called to order at 6:00 p.m. Paul Weafer noted the absence of Chairman Kenneth Cox.

II. **Approval of Agenda**

The agenda was reviewed. Paul Weafer moved to accept the agenda. The motion was seconded by Manuel Alguero. The motion carried unanimously.

III. **New Business**

A. *New Complaints*

1. Paul Weafer gave a brief summary of the new complaint.

B. *New Complaints for Review*

1. **CPRB No. 15-02/OPS No. C02-169.** Michael Whiteman gave a summary of the complaint. The complainant was allegedly stopped in traffic because of race. The police officer was rude, the vehicle was searched without permission and he was unjustifiably issued a ticket. The complaint alleged improper use of force. The officer pushed the complainant. There is a dispute between the police officer and complainant about the details. The complainant does not say that the female with him was a known prostitute, but was a professional because she solicited him for business. The complainant said she asked him for a ride from the McDonald's on South Pearl and Madison over to Henry Johnson, but he let her out at Orange and Lark because he didn't want her in the car. The complainant claimed he stopped on Orange going north, let her out, then he made several turns and once on Henry Johnson he was stopped by a patrol car.

The officer said he had seen the passenger and wanted to know what was going on. When the officer asked, the complainant said he was with a friend, but didn't know her

name. The officer concluded that the complainant knew that she was a prostitute and that they had business together. The officer asked to search the car because he thought there might be drugs, and the complainant agreed. The complainant asserted he never consented to the search. The officer did not find anything. The complainant claimed the officer pushed him.

With respect to the push, OPS made a finding of “not sustained” because there was no evidence of the push and there were conflicting stories. With respect to the traffic stop, (race, rudeness, unjustified stop), OPS recommends *exonerated* since the stop took place, but was justified given the neighborhood and identity of passenger. The passenger testimony was ambiguous, he did not testify as to what exactly happened in the car. It is not the Board’s job to determine whether the ticket was warranted. As far as the stop, it is unclear. It took place between 8 or 9pm. MW is not sure how many tickets are given out at that time regarding pulling out without a signal. Perhaps the ticket was given because he was stopped on another suspicion. As to whether or not the ticket was given on a discriminatory basis, I am not sure because the information on the officer was redacted. It is hard to draw an inference simply from the race of the officer and the complainant.

OPS recommended with respect to the traffic stop a preliminary finding of *exonerated*. The alleged push was not sustained.

Monitor Richard Lenihan added that looking at the demographics of that area, it is likely that there would be a black motorist. He did recommend that even if there was a verbal consent, the police should have filled out a search consent form. However, it was not filled out. As to the push, there were no witnesses and therefore, he concurred with the findings of OPS of not sustained.

Michael Whiteman recommended concurrence with OPS’s findings.

The complainant was recognized. He stated that he didn’t know the female was a prostitute. The woman asked if he was going anywhere near Clinton and Lark. She did proposition him in the car. He let her out at a red light and proceeded from Orange and Lark. He picked her up and did not stop until he let her out when she saw someone she knew. The officer pulled him over and shoved him against the car and then searched the car without reason.

Paul Weafer inquired as to how long after the complainant had let the passenger out did the police officer pull the complainant over. He replied a couple of minutes. The complainant was in traffic the whole time, he never parked.

Michael Whiteman asked if he was on Lark and the complainant replied yes.

Judith Mazza asked if the officer followed him from there. The complainant didn’t know. He noticed him when he made the turn to get on the Thruway.

Michael Whiteman stated that he felt there was not anything for the Board to decide regarding what happened. The driver's testimony did not indicate one way or the other that he knew she was a prostitute and drug user. The stories were diametrically opposed, unable to determine one way or the other.

Paul Weafer asked if there was any indication the police officer saw the woman get into the car, justifying following the complainant. The officer did not see the complainant until he let the woman out. He made a u-turn and followed the complainant.

Herman Thomas asked why the officer did not stop her and inquired as to why the officer went 3 or 4 blocks before making the stop.

Michael Whiteman made a recommendation of not sustained on all allegations because there is insufficient evidence to prove that the incident occurred or did not occur. Paul Weafer seconded. There were 2 in favor, 1 opposed and 4 abstained. Paul Weafer did a roll call:

Marilyn Hammond:	Abstain
Michael Whiteman:	For
Manuel Alguero:	Abstain
Paul Weafer:	For
Herman Thomas:	Abstain
Eleanor Thompson:	Abstain
Barbara Gaige:	Abstain
Judith Mazza:	Opposed

Barbara Gaige made a motion for further investigation. Herman Thomas seconded.

Judith Mazza stated that there is a great distance between Orange and the stop. While she understood the reason for the stop, she did not understand why it took so long to make the stop. She also wondered why the woman was not picked up as well.

Michael Whiteman replied that there is no reason for the apparent delay, but he did find it difficult to draw any inference from that. He was skeptical about the officer's story, but that did not give him a basis for making a finding. If he thought there was some concrete reason on one side or the other, he would have moved to exonerate or sustain.

Judith Mazza asked, if going back to a previous case, was there a reason given for the stop. The policy has not been followed. Commander Bruno replied that that is inaccurate. The officer does not have to come up with a specific charge on the air. He only has to state that he is making the stop. The book of laws is large and impossible to memorize. It would be difficult for them to find the exact law at that moment. They merely recognize a violation .

Paul Weafer asked if it would be fruitful to send it back to OPS. He wanted the answer because he thought it did warrant investigation, but on occasion, OPS has indicated that re-investigation would be fruitless because there is no way to find out.

Commander Bruno replied that he honestly did not know if it would be fruitful. It was recommended that the police officer be asked why he made the stop.

Barbara Gaige asked if there was a policy concerning signed consent. Commander Bruno replied there is a policy, but it is not mandatory.

Manuel Alguero asked about the reason for the lapse in time from first observing the car until it was pulled over. Richard Lenihan replied that he did not have the answer. The Commander would as long as it was asked of the officers involved. The next step would be to take it from there.

Michael Whiteman replied that there is an indication that a second officer arrived to assist. He asked if there was any information about how that happened - was there a call or did the other officer see the incident occurring. Commander Bruno replied that it could be either way. Richard Lenihan stated, he responded to a call.

Michael Whiteman proposed a hypothetical scenario: He is observed going down Washington and through a light, an officer sees him and follows. Mr. Whiteman then inquired as to whether or not the officer routinely calls into the station to inform dispatch that he or she is making a stop.

Commander Bruno replied, yes, he will call in the location, the reason (traffic), the number of people and the type of car.

Michael Whiteman asked if they retain that tape for 30 days. Commander Bruno replied, they may still have the tape. If OPS has requested the tape, a copy is given and the tape will be maintained indefinitely.

The complainant asked if the officer was worried, would he be allowed to search the complainant. If they pulled him over for a turn signal, then why would they search him.

Herman Thomas stated that there was a motion on the table. It was seconded by Manuel Alguero. All in favor. The complaint was returned for further investigation.

CPRB No.17-02/OPS No C02-282. Barbara Gaige deferred presenting the complaint until the next meeting.

CPRB No. 27-02/OPS No. C02-247. Judith Mazza gave a summary of the complaint. The complainant was at a club one evening. There was a large group trying to enter. A bouncer was screening IDs and the complainant tried to get in without having her ID checked. The bouncer and security officer tried to make her leave. A police officer on

duty monitoring traffic was there, but not involved. When security officers and the bouncer tried to get the woman to exit, the bouncer saw what appeared to be a fight and assisted her. She initially stated that she was dropped to the ground, but none of the witnesses saw that occur. Her top apparently fell down during the scuffle inside. She never said that the officer was involved. She complained that some were being let in and others kept out. It was more of a complaint regarding the security staff. OPS recommended that the officer be exonerated because he merely assisted.

The complainant was recognized and clarified the complaint. When she got there, there was a large crowd that was unorganized. They were in line for 45 minutes. While they were waiting, they brought out two girls, one with no shoes and her skirt up. They had another one in a full nelson. Officers were doing this, not security. The complainant finally got in, they scanned her ID. The head of security came up and told her to get out. The owner said she was okay. The security officer said that she could not come in. The security officer started screaming at her. The security guard grabbed her by the neck and threw her out of the club. She asked him why he was coming at her. She slapped the security guard with her purse. She swung again and he grabbed for her arm. They fell on the ground and were wrestling. The doors were shut and then opened up and the officer (the same one who had the girl outside with no shoes on) came in. The officers automatically tried to drag her out of the club. All police officers came inside to grab onto her, touching her. No one could see what happened. She was swinging. All four picked her up and brought her outside into a crowd of 400-500 people, dropped her on her back and did not help her up. Her sister came in and got her. She asked the police officer if she could make a report. She had no clothes on at this time. This should never have happened. They should have female security officers and police officers down there. When they saw the incident, the officer should have come and tried to pull them apart. No one would assist her in making a report. She was so upset she did not know what she was going to do. She went to the emergency room the next day and then went to OPS. If it was someone else, it would not have happened. The guard was staring her up and down. The officer merely came in to impress his coworkers.

Herman Thomas asked if she had ever been there before. The complainant replied yes, she knew the man was the head security officer. Herman Thomas asked why he may have picked her out. She replied because he saw her in line, she had just got there, and honestly looked at her because she looked at him.

Judith Mazza stated that George Kleinmeier was the monitor.

Paul Weafer commented that it sounded like the bulk of the complaint is overwhelmingly directed at the employees of the club. The complainant replied that the police officer was trying to impress friends. She never said the police officer was not involved.

Monitor George Kleinmeier stated that the complainant blacked out during some of this because of dizziness and may not have been sure who grabbed her. The police officer did not see what was going on inside. Witnesses could not corroborate the story. One witness did say that she saw a white male grab her by the arm, but the occurrence happened in the door entryway. Seven other officers were interviewed, but saw nothing because she was inside. The manager was contacted and he said the fight started when she was grabbed inside and she swung her purse.

Manuel Alguero noted that it had nothing to do with police action. Judith Mazza said the police officer did not see anything. He just came to assist.

Manuel Alguero asked Commander Bruno if when police officers feel the need to physically touch the complainant, when they escorted her out, would it have been appropriate to call for a female officer. Commander Bruno replied that there was a physical fight going on. He did not know if it was wise to call for a female police officer and wait for her arrival before breaking up the fight because it could have escalated.

Judith Mazza recommended the Board accept the OPS finding of exonerated. Paul Weafer seconded. All in favor.

CPRB No. 32-02/OPS No. C02-301. Paul Weafer gave a summary of the complaint. This complaint involved a car accident where an African-American woman was driving a car down Henry Johnson. A truck took a turn onto Washington Ave, hit the woman driving her onto the median. By the time the truck stopped it was by the Key Bank on the other side of Lark St. The driver got out and called the police. According to the complaint, the woman was in shock. Once the officers arrived they were joking around with the truck driver and they seemed to ignore the woman. The complainant said the police officer wouldn't take a statement and was disappointed with the treatment of the woman and the handling of the accident. The complainant followed the woman home to make sure she was all right. The officers didn't tow her car, but just took the bumper. The officers said they let the truck driver go because he had food for a party down at the Capital. When OPS contacted the woman she did not want to make a complaint and did not need medical treatment. She was disappointed in how the officers treated the truck driver.

The complainant was recognized. She explained that she was right behind the truck driver. The woman driver was in shock and shaken up. It was a serious accident with lots of witnesses. Everyone left this woman to her own. When the officer was approached, he blew her off, was extremely rude and told her to get off his face. He did not pick up the bumper and told the driver to pick it up and put in her own car. He didn't offer her medical attention and did not offer help with a tow. She almost passed out. The complainant explained that she had never been treated this way by public officials. The woman was young and had never had an accident. She felt the woman was innocent and did not know what her rights were. She did not even know that her rights were being violated. She came this far because she felt the officers' behavior

was appalling.

Paul Weafer commended her for being a good citizen. The complainant said there were two other people who came forward and wanted to give a statement and the officer told them to go away. Paul Weafer asked the complainant if she was aware that her statement was part of the report. He also wondered if she was aware that the woman didn't want to make a complaint and didn't want medical treatment. The complainant replied that she was not aware and was glad to know that it was there. The police officer was extremely rude to her.

Paul Weafer said that frankly, he was offended that the officers refused to take the statement and that they let the driver go to deliver his food. However, his statement was a part of the report.

The complainant said the officer asked if the woman driver had money for a tow and she said she did not. The officer told her that she had to pick up the bumper.

Michael Whiteman said there were two opposing views: one which is not flattering to either side. He thought it might be useful to have some facilitated conversation between the police and the complainant.

Manuel Alguero recommended mediation. Michael Whiteman concurred. Paul Weafer asked Commander Bruno. Commander Bruno replied that he thought it would be a good case for mediation.

Paul Weafer asked the complainant if she would be willing to participate in mediation. The complainant said yes. Paul Weafer asked Karleen Karlson if she would be willing to participate and she replied yes.

Paul Weafer made a motion to refer the complaint to mediation. Judith Mazza seconded. All in favor.

CPRB No. 33-02/OPS No. C02-291. Michael Whiteman gave a summary of the complaint. The complaint involves excessive use of force and taking the complainant into custody due to circumstances of the complaint. Several officers responded to a complaint that there was an individual on Lexington Ave who was brandishing a gun. The individual was described as wearing jeans and a white t-shirt. The police officers saw a young man fitting the description. They asked him to come over and he fled. He admits he fled, but they were not polite about it. He did concede that he was carrying marijuana and was afraid they would find it. The police officer said they had little interest in drugs. They were worried about the gun. The complainant alleges that he was held by four officers and another hit him twice. One officer said he hit the complainant once with an open hand to get control and after they were able to get control and handcuff him. After they searched the young man, they realized they did not have the person with a gun. They let him go; there were no charges. After the facts

came out, the aunt and young man both conceded that the action was reasonable. It seems that mediation may be useful to get the young man to understand what was going on. The officers could benefit from finding out why he ran. It would not change this case, but could help in similar circumstances. OPS found similar results.

The monitor questioned whether the use of force was excessive. Monitor George Kleinmeier stated that the force was consistent with departmental guidelines.

Michael Whiteman made a motion for mediation. Manuel Alguero seconded the motion.

Paul Weafer spoke against the motion because he did run and had a controlled substance in his pocket. He did resist.

Michael Whiteman, made a recommendation, if not mediation, he recommended exonerated . The only real dispute of fact is whether the police officer struck the man once or twice.

Paul Weafer said, under the timing of the report that if officers think that in the future, a similar arrest would lead to mediation it would hamper their efforts. For the young man it might be beneficial, but not for the police officer in effecting the arrest.

George Kleinmeier replied that he thought it would be different if there were no call.

Manuel Alguero added, I think Michael Whiteman recognizes that young people have a general fear of the police. He was not being looked at as a suspect based on the marijuana, but something else. That does not mean that the officers should overreact.

Michael Whiteman appreciated the support, but cautioned the Board against thinking he was saying that they overreacted. He was merely saying the Board should adopt a finding of exonerated, but set up some sort of conversation so that the young man could understand that he is not being picked on.

Judith Mazza stated she was a little confused about who was complaining. It came from a witness and filed by the witness. She would agree that the officer in the situation should be exonerated, but that by having a conversation, it will prevent him from getting in to trouble in the future with the police. So she agreed with asking for mediation.

Manuel Alguero seconded the motion for mediation. Paul Weafer opposed, motion passed.

CPRB No. 34-02/OPS No. C02-309. Manuel Alguero gave a summary of the complaint. The incident occurred on Central Ave 6/18/02. The complainant alleged that an officer came to a domestic violence office with an attorney, requesting to see a resident. They were advised that due to confidentiality reasons, the receptionist would not give out the address of where the woman was staying. They badgered the

receptionist for two hours and the officers wrote out a report indicating that the shelter was being cited for Obstruction of Justice.

The preliminary finding by OPS recommended it be closed as sustained (see OPS report).

Manuel Alguero recommended that they concur with OPS that the investigation be closed as sustained.

Commander Bruno does not think the officers were being malicious, but they were unaware of the circumstances. They had the order from the Court that the kids were in danger. OPS sustained complaint because the officers were wrong.

Paul Weafer seconded the motion. All in favor.

CPRB Nos. 35-05/44-02/OPS Nos. C02-383-385. Judith Mazza gave a summary of the complaint. The complainant appears to be having problems with her neighbors in her apartment. They are harassing her consistently. The police have been called. The complaint against the officers is not of conduct or rudeness. Interviews have been conducted with the complainant and the Albany Housing Authority.

The complainant was recognized. She indicated that he is still doing it and now is doing voodoo along with the woman. The kids come down everyday and kick the door and yell up to her window. No one will do anything. She had sent for the police 3 times. The neighbor threatened her and said if she called the police they will get her. They call her a filthy prostitute. She cannot afford to move. They won't pay attention to the law. She sees a doctor who says she is fine except for the diabetes. She is getting older and they pick on her for no reason. They only say that she is an old woman.

Judith Mazza responded that one of the problems is that the review board is really about police misconduct. It cannot help with the situation in the building. She was not sure that the complaint came to the right place. It needs to go to the housing authority. The Board cannot do anything.

Judith Mazza made a motion to accept the findings of OPS of unfounded. Manuel Alguero seconded. All in favor.

CPRB No. 36-02/OPS C02-319. Barbara Gaige gave a summary of the complaint. The complainant parked on Grand Avenue and was going to his apartment when he saw two African-American teenagers being stopped and frisked. There were 3 cars parked on the street. He walked between the canine unit. The dog started barking and the officer asked, "Is that your best attempt to get by?" The complainant could not hear and asked him what he said. The complainant said the police officer responded, "Asshole." The complainant confronted the police officer who told him to go home. The police

officer shoved him in the direction and told him again to go home. He shoved him a second time and called him a moron. The complainant asked for a badge number and then left.

OPS talked with the complainant who did say he walked by the vehicle and the dog started barking. The officer says he was trying to keep the complainant from being bitten. One witness heard the complainant saying, "Yo, come get your dog." The witness did hear the officer use the n-word. The target officer initially did not respond to the swearing allegation and later denied it. The other officers heard nothing. Because there was nothing to prove, it is not sustained.

The complainant was recognized. He indicated that everything reported was right, except the officer never used the n-word. He did call me an asshole and pushed me. Barbara Gaige responded, that the complainant said the officer took him by the arm and shoved him in the direction to keep going. The complainant agreed. Barbara Gaige stated that the other officers saw nothing. The target officer did say he pushed the complainant to get him away from the dog.

Barbara Gaige made a motion to concur with the recommendation of not sustained.

Michael Whiteman replied that he found that even though there is a differing story, he was puzzled as to why there was a complaint. There was no arrest. He has to infer that something happened or perceived to happen to trigger the complaint.

Barbara Gaige asked the complainant why he was walking between the cars. The complainant replied that he was just going between to avoid the dog. He was holding his head and the officer said to get away. When the complainant said he did not hear him, the officer called him an asshole under his breath.

Paul Weafer asked what the complainant found objectionable with respect to the other two kids. The complainant replied that they patted them down and let them go, which was about 5 yards away. He wondered if they had to arrest them because he heard their rights being read.

Michael Whiteman asked if he made a comment in the complaint about what was happening to the kids. The complainant replied, no, it was just going on.

Paul Weafer was unclear, if the complainant did not say anything, why did the officer say something to the complainant.

Barbara Gaige made a motion to move to mediation and asked the complainant if he would agree. The complainant replied that he would. Eleanor Thompson seconded. All in favor.

CPRB No. 38-02/OPS No. C02-318. Manuel Alguero summarized the complaint, which involved an incident between four youths and several officers in a parking lot on South Pearl.

Michael Whiteman asked if there was any follow up after the mother was given the information about who the attorney should contact. Commander Bruno replied, no she would not give us the name and you can only go so far.

Manuel Alguero added that he thought that given the fact that the complainant did not come forward and given the fact that the attorney has not taken any action, he concurred with OPS as closed with no finding. Paul Weafer seconded. All in favor.

CPRB No. 37-02/OPS No. C02-320. Paul Weafer gave a summary involving two interrelated complaints. Events took place on Sheridan Avenue between 12:45 - 2 am. There are nine documents that go along with George Kleinmeier's report. OPS had a detailed statement. A boy was standing in front of his house talking with his girlfriend. He was double parked. A police car pulled up behind him. He said the officer had his spot light on (the one on the left hand side of the car). He recognized this to be a police car. He immediately got up and moved his car down the street. The officer said it would have impeded traffic. The officer made a call regarding the car. He said because the complainant moved the car, he followed it down the street and pulled up along side. At the same time, the report came up saying there were outstanding fines of \$275. The officer said as he looked in the car, the driver did not have his seatbelt on and he turned on his red emergency lights. The driver got out and walked back to his girlfriend. There was a distance of about 200ft. The officer then called from his car for the complainant's son to stop. He ignored the officer. The officer then got out of the car and said stop 3 or 4 times. The driver did not stop. The officer then reached out to grab him and a fight ensued. The witness summarized the situation. There was a statement that the complainant came out of the house where not only is the officer involved with the son, but also the mother who is on his back choking him. A second officer arrived and had to pull the mother off the first's back. There are two different statements which conflict. One she sent to the mayor and the other to OPS. In one she said the mother was outside, the other states the mother was inside. The situation began at 12:47 and the arrest occurred at 12:52. The sister was highly emotional and seems to be trying to support her mother's complaint. The mother was arrested for assault and the son was arrested for assault and resisting arrest.

George Kleinmeier stated, the only difference is that the officer began stopping the son after he was outside the car.

Paul Weafer asked both Commander Bruno and George Kleinmeier a series of questions about the stop of complainant's son and the complainant's involvement to the extent that it gave rise to the incident precipitating the complaint. Paul Weafer also inquired about police procedures during the stop in this complaint.

It was reported that during the stop, the complainant mother was upstairs in the house at the time. Witnesses heard the officer call for backup. One witness indicated that the son was resisting by grabbing on to the officer and instigating the struggle. As a result the mother became involved in the ensuing struggle.

Commander Bruno noted that OPS is exonerating the officer because the arrest of the complainant was proper.

Michael Whiteman inquired as to what the complaint was about, specifically. Judith Mazza responded that the complainant is complaining that she was arrested because of racial discrimination. Michael Whiteman then asked about her allegation regarding use of force. Paul Weafer responded that the complainant was on the officer's back trying to tear things off of the officer. When the assisting officer arrived, he or she saw this. The complaint alleges use of force when the officer was removing her from the scuffle.

Paul Weafer recommended that a finding of exonerated by made. Marilyn Hammond seconded the motion. All in favor.

C. *Appointments to the Committee on Complaint Review for November 2002*

Paul Weafer, Herman Thomas, Marilyn Hammond, Barbara Gaige, and Manuel Alguero were appointed to the Committee on Complaint Review for the November 2002 meeting.

D. *Report from the GLC*

The report from the GLC was reserved for the November meeting.

E. *Report from OPS*

No report was offered

IV. Public Comment

A member of the public was recognized. She commended the Board and offered the following comments. As a citizen, why is the board assuming that people know their rights and the law. Why not give out pamphlets to the community for those who are not educated. She came in because she saw a sign in the library. One of your goals is to improve communication between the police department and the community. She said that she would pass out the Board's pamphlets to everyone she knows. She commented that she never heard of the Board and noted that she is an informed citizen. There are a lot of good and kind police officers. She said that she didn't know why the Board was not coming to schools and why they weren't out there more in the community. She commented that she would like to see more diversity, more youth.

Barbara Gaige, replied we are volunteers and have jobs during the day. However, she added that if the Board were invited somewhere, it would certainly arrive.

V. **Adjournment**

The meeting adjourned at approximately 8:45 p.m.

Respectfully Submitted,

Michael Whiteman
Secretary