

**City of Albany**  
**Citizens' Police Review Board**  
**Albany Public Library, Washington Avenue (HBH Room)**  
**October 13, 2003**  
**6:00 p.m. – 8:00 p.m.**

**Present:** Manuel Alguero, Kenneth E. Cox, Barbara Gaige, Judith Mazza, Herman Thomas, Paul Weafer and Michael Whiteman.

**Absent:** Marilyn Hammond and Eleanor Thompson.

**I. Call to Order & Roll Call**

Chairman Kenneth Cox called the meeting to order at 6:10 p.m. Chairman Cox noted that while Board Members Marilyn Hammond and Eleanor Thompson were not in attendance at the meeting, a quorum of the Board was present for the purpose of conducting Board business.

**II. Approval of the Agenda**

The agenda was reviewed. Chairman Cox moved to approve the agenda. Judith Mazza seconded the motion. The motion carried unanimously.

**III. Approval of July 28, 2003 and September 8, 2003 Meeting Minutes**

The minutes were reviewed. Michael Whiteman moved to approve the minutes in the absence of any corrections or comments made by members of the Board. Barbara Gaige seconded the motion. The motion carried unanimously.

**IV. New Business**

A. *New Complaints*

1. Four (4) new complaints received since 9/8/03 meeting

Barbara Gaige noted that there were four (4) new complaints received since the Board's September 8, 2003 meeting.

**CPRB No. 23-03** The complainant alleged that on September 4, 2003, four police cars surrounded her black SUV while she was parked outside of her cousin's home on Lark Street. The complainant saw three uniformed officers and one detective. As she opened her door to exit her vehicle, she was "pulled from the vehicle" by a female officer. The female officer pulled both of the complainant's hands and held them over her head. The complainant yelled to the

officer, “you are hurting me.” The complainant alleged the officer held her in that position, twisting her right shoulder while she was being patted down. The complainant claimed the female officer “examined [her] breasts on at least 2 occasions.” The complainant alleged the officer “kicked [her] feet apart . . . checked between [her] legs” and reached down the back of her pants and felt her rear-end. The complainant asked to get her ID from her purse, but was refused. She alleged that a male officer searched her purse. The complainant claimed that she overheard the detective comment that “they were looking for a red SUV with two women with ponytails inside, with the driver waving a gun around.” The complainant stated that she did not have a ponytail and added that she went to St. Peter’s Hospital the next day with right shoulder pain, was given three prescriptions, and will be seeing a chiropractor.

*A monitor was assigned.*

**CPRB No. 24-03**

The complainant stated that while he was standing outside of his friend’s car talking, the friend flagged down a passing police car to ask about “something he needed to know.” When the officers came over, they screamed for the complainant to “put the bat down.” The complainant alleged one of the officers “had his hand on the gun,” so he dropped the bat. The officer asked the complainant why he had the bat and the complainant told the officer that he was “about to bring it into the house.” The complainant stated that he “was so nervous” when he was asked his name and told the officer “William Smith”(the complaint is signed by William Earl). The complainant alleged the one officer grabbed his arm while another officer went for his cuffs. The complainant claimed that when he started to walk away, the officers jumped on his back, slammed him on the ground, and one officer dropped his or her knee into the side of the complainant’s head while he was lying on the ground. The complainant alleged that he was not read “any rights which they were suppose to,” and was told that he “had weed.” At the station, the complainant was given a ticket for operating a vehicle with a suspended license. The complainant’s car was towed. The complainant claimed that he was not near his car and that the officers did not see him driving at the time this incident took place.

*A monitor was assigned.*

**CPRB No. 25-03**

The complainant alleged that on August 18<sup>th</sup>, she witnessed an incident involving her boyfriend and another man. She stated that they were pulled over for cell phone usage while driving. A search

of both men took place and marijuana was found. Both men were subsequently arrested and a “full body” search took place. After the two men were transported to the station, the complainant claimed an officer found crack cocaine in the back seat of the police car. The complainant also alleged that she was issued a ticket fifteen minutes after she parked her car on the street where the incident involving the two men took place. She claimed that “the street was blocked off making it impossible to speed.”

*A monitor was assigned.*

**CPRB No. 26-03**

The complainant stated that on the evening of September 5, 2003 at approximately 11:30 p.m., she returned to St. Peter’s Emergency Room “for the 3<sup>rd</sup> time that day to enter detox.” While she was waiting, she went outside to smoke a cigarette. She had three beers in her possession and “had already drank 3 beers prior to coming back to the Emergency Room for the 3<sup>rd</sup> time.” She went in to use the bathroom and when she came out, a security guard was “dumping” her beer out. She alleged that the guard “started screaming” at her and told her to leave the property. She stated that she walked over, got her bag, and told him that she was entering detox. She claimed the guard approached her, poked her in the “shoulder area,” and “said oh yes you are leaving.” The guard called other security guards and the Albany police arrived. According to the complainant, she explained what went on and assumed the police also asked her to leave. When she refused, she was arrested. She stated that she was “sitting on the sidewalk while the police and security guards sorted things out.” She stated that she was very upset with the security guard and didn’t want to see him, so she kept standing up and asking the officers if she could leave. The complainant alleged the officers “kept sitting [her] back down.” According to the complainant, she “guess[ed] the last time they asked [her] to sit down [she] wouldn’t and a police officer grabbed [her] and threw [her] down face first into the sidewalk.” She alleged that since her hands were cuffed she could not protect herself from the fall. EMS arrived and restrained her in a blanket because she “was getting somewhat obnoxious.” She was then transported to the Albany Medical Center. The complainant claimed that while she was being restrained, her left leg was twisted severely. She also alleged that she sustained “serious injuries” from the incident. According to the complainant, she received stitches on the left side of her forehead, had “road rash” down the whole side of her face and ear, and had a tooth knocked out of her dentures. She stated that she now has a lump to the right side of her nose with numbness and tingling on

the right side of her face, and she has severe pain from her knee to her foot.

*A monitor was assigned.*

2. Four (4) new complaints for review

Chairman Cox noted that there were four (4) new complaints for review.

**CPRB No. 12-03/OPS No. C03-214** (Presented by Barbara Gaige)

Ms. Gaige read the complainant's statement. According to Ms. Gaige, the complaint was about a structure fire at 91 Swinton Avenue in September 1, 2001. It was determined to be an arson. A firefighter who fell from the second floor was very seriously injured.

The building was rented to the girlfriend of the complainant at the time. She was interviewed and asked for an attorney. Subsequent to that, the complainant's then girlfriend and the complainant had a falling out, and she filed a harassment complaint against the complainant. The complainant spoke with a detective about the harassment complaint, and while on the phone he stated that he knew something about the fire. The complainant agreed to meet with the detective. During the questioning, the complainant stated he knew how and why the fire was started and was given his Miranda warnings. The complainant admitted that his girlfriend started the fire for insurance money, but denied he had any involvement. The complainant's girlfriend had rented a storage area and he had assisted her in moving 8 to 10 boxes to the area before the fire.

On May 22<sup>nd</sup>, the complainant and the complainant's ex-girlfriend were at the Colonie Town Court on the harassment complaint. The Albany detectives asked the complainant and his ex-girlfriend to go back to the Albany Police Department (APD) to talk about the fire. The complainant's ex-girlfriend did not agree to go. She already had an attorney whom she retained, so she was not taken to the station. The complainant and his girlfriend offered to go. They both went without cuffs and Miranda warnings were given to both at that time.

The complainant's ex-girlfriend informed the complainant that her landlord told her she would have to move out of her apartment because he had relatives coming up from Florida who were going to be moving into the apartment that she was in.

Prior to the filing with the CPRB, the complainant pled to an arson, five to ten years, and agreed to testify against his ex-girlfriend. The complainant's ex-girlfriend had a jury trial and was found guilty. During the trial, the complainant admitted to being present and assisting in lighting the fire.

The Office of Professional Standards (OPS) made a preliminary finding of “*unfounded* – where the review shows that the act or acts complained [of] did not occur or were misconstrued.”

Ms. Gaige stated that she was not positive as to what the complaint was. She noted that the complainant did have all the necessary warnings given to him and he did voluntarily go to the station on both occasions. She then moved to accept the finding of OPS as “*unfounded*” as the Board’s finding. The motion was seconded by Paul Weafer and carried unanimously.

**CPRB No. 13-03/OPS No. C03-215** (Presented by Barbara Gaige)

Ms. Gaige read the complaint. On 12/21/02 an officer was dispatched to 324 Second Street for a group selling drugs. Between 5/19/02 and 12/21/02, there had been 31 calls to this address for selling drugs, group annoyances, or to check a subject. An officer approached the complainant, who was sitting in the car. The complainant said he was waiting for someone at 322 Second Street. The complainant gave the officer an incorrect name and an incorrect birth date. The complainant did this because he was wanted on a New York State parole violation. The officer went back to his car and the complainant drove off. There was a pursuit. About a half mile into Colonie, there was an accident and six people were injured. The complainant felt the police should not have pursued him.

The complainant was indicted in January 2003 by a Grand Jury. The police officer pursued the complainant because the officer believed that the complainant did not have authorization to have the car. The complainant did not have a registration or a driver’s license.

It was recommended by the Office of Professional Standards that the case be closed as “*exonerated* – where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper.” The investigation showed that the officer was dispatched to the area for people selling drugs. There had been a number of calls to the area. The complainant had given a wrong name and wrong birth date, and had lied in an attempt to conceal the fact that he was wanted by parole. The complainant fled the scene and was pursued in compliance with policy.

Ms. Gaige moved to accept the OPS’s finding of “*exonerated.*” Vice-Chairman Herman Thomas seconded the motion.

Michael Whiteman commented that he understood that as to the stop that occurred, with everything that went on between the police officer and the complainant, it sounded like there was no basis for the complaint. He added that it sounded ill coming from the complainant that the police officer engaged in the high speed chase given that the complainant was the one who initiated the chase.

Mr. Whiteman stated that he does not know if, independent of the complainant's complaint, the chase was the appropriate conduct for the police officer in those circumstances. He noted that in the absence of information as to the propriety of the chase, he did not feel that the Board should express an opinion one way or another as to the chase or that aspect of the complaint.

Ms. Gaige stated that the only thing contained in the file was that the officer pursued the complainant because he questioned the complainant's possession of the car. Mr. Whiteman responded that he had no doubt that the reason for the stop was appropriate. He added, however, that unless there is some report that says that the OPS investigated all of the circumstances and concluded that it was appropriate for the police officer to engage in the chase at those speeds, then the Board should not say anything about those aspects. He commented that there was nothing in the report about the propriety of the chase.

Commander Stephen Reilly stated that in NYS, police are authorized to pursue for crimes. Mr. Whiteman stated that he did not want to comment on whether or not the chase was prudent. Mr. Whiteman stated that he understood that it is policy, if not at least a guideline, that the speeds and the conditions in which an officer should continue need to be considered in relation to what is at stake. Mr. Whiteman stated that there is not enough information available to conclude whether it was proper or improper for the police officer to pursue the complainant initially, or to continue the chase as the officer did.

Paul Weafer asked Commander Reilly whether the police officer was capable of learning who the complainant was since he had given a false name, whether the officer knew that the complainant was a parole violator at that point, and what level of crime or suspected level of crime would the Albany Police chase an individual up Central Avenue at high speeds.

Commander Reilly responded that it is not broken down into levels of crimes. An officer can begin a pursuit in an attempt to stop the vehicle. The officer is authorized to pursue. He added that unfortunately at the end of these pursuits, the officer learns that the driver of the vehicle had a suspended license.

Mr. Whiteman asked whether the OPS knew, in fact, whether the chase reached speeds of 100 miles per hour. Detective Sergeant Steven Krokoff responded that this was alleged by the complainant. He added that neither the OPS's investigation nor the Colonie Police Department's investigation revealed that fact.

Mr. Weafer inquired as to what point the police will abandon a high speed chase to protect pedestrians. Commander Reilly responded that this is within the officer's judgment, and added that at the point the officer realizes that it is not serious, he or she should abandon the chase. He added that once the officer knows that the chase isn't prudent, then the officer should cease the pursuit.

Mr. Whitman commented that if there were anything to show the chase was prudent, he would find “*exonerated*” on the way the chase was conducted. In the absence of information as to the nature of the chase, he felt he could not comment and would have to abstain.

Ms. Gaige commented that the chase was started because of suspicious behavior of the complainant and the fact that the complainant fled the police. Mr. Whiteman added that the reason for the pursuit did not trouble him, but rather the nature of the pursuit, noting that he was concerned about whether the pursuit was conducted appropriately. He does not feel that the Board should comment on the chase after its initiation.

Ms. Gaige renewed her motion that the case be closed with a finding of “*exonerated*.” Vice-Chairman Thomas seconded the motion.

Manuel Alguero asked whether there was anything in the Standard Operating Procedures (SOP) about chases or pursuits. Commander Reilly responded that there was, but added that he did not know the section off the top of his head.

Judith Mazza noted that she was not clear as to what the complaint was. Ms. Gaige responded that the complaint was that the complainant should have never been pursued. Mr. Whiteman stated that he felt that there is a weakness in the procedures where sometimes the Board is left not knowing what the complaint is. Mr. Weafer asked whether it was the obligation of the Board to “fill in the lines” when a complainant cannot state the nature of the complaint. Mr. Whiteman responded that it was not the Board’s duty to try to determine the nature of the complaint, but to try to make inquiries to find out what the person is complaining about and what is really troubling the complainant.

The Board engaged in an at-length discussion about the nature of the complaint and the propriety of the pursuit beyond the initial stop and the start of the pursuit.

Commander Reilly stated that the actual pursuit fell within the guidelines of the SOP and within NYS guidelines. He also added that the people who were injured did not file complaints and that the current discussion seems somewhat outside of what is relevant in this complaint.

A vote was taken on Barbara Gaige’s renewed motion of “*exonerated*.” Chairman Cox, Barbara Gaige, Judith Mazza, Vice-Chairman Thomas, and Paul Weafer voted in favor. Manuel Alguero and Michael Whiteman voted in favor of “*exonerated*” as to the conduct of the stop and the initiation of the pursuit, but abstained from commenting on the nature of the chase.

**CPRB No. 15-03/OPS No. C03-240 and CPRB No. 16-03/OPS No. C03-241**  
(Presented by Judith Mazza)

Ms. Mazza summarized the complaints. She noted that there were two complaints, but that they would be reviewed and heard as one. She added that the Board had received one report from the Office of Professional Standards.

The complaints involved a domestic dispute in an apartment between the female complainant and the male complainant. The female complainant's mother, who lives in the basement apartment, called 911 during the domestic dispute because she was concerned about her daughter. Both complainants alleged that excessive force was used. They also complained of being arrested when they were simply having an argument in their apartment. The female complainant alleged that she was injured; her wrists were scraped and she was taken to St. Peter's ER for treatment.

At the time of the call, police officers arrived at the scene and knocked on the door. The officers heard a female voice inside of the apartment say "get off me." One of the officers pounded on the front door while a second officer tried to get into the apartment from the back. An officer had almost broken down the door when the female complainant came to the door. She was only wearing a T-shirt at the time and was described as being agitated. The officer requested her name, to which she replied "no problem." The officers wanted to enter the apartment, however, a dog was present. One of the officer's drew his gun for protection, however, the male complainant restrained the dog. The officer then put his gun away. The female complainant proceeded to curse and yell at the officers. She was subsequently arrested for obstruction.

Following her arrest, the female complainant tried to grab a pair of pants and put them on. She did get her pants on, but they would not stay up. The male complainant began yelling at the officers and questioning what they were doing with the female complainant as the officers escorted her down the stairs. He proceeded to follow the officers and the female complainant down the stairs and outside of the building. The female complainant claimed that the officers pushed her into a puddle of water outside of her apartment building.

In addition to the two officers already at the scene, two more officers arrived. A witness corroborated the officers' story and stated that two complainants were very angry, and were yelling, screaming, uncooperative, and agitated. The witness also stated that the male complainant was trying to help the female complainant with her pants and was not trying to get her out of the police car.

It was reported that the male complainant was resisting the officers. As a result he was "maced" and arrested. Shortly thereafter, he was cleaned up and brought to the station. The female complainant was given an appearance ticket and was

allowed to leave. The male complainant was arrested for obstructing governmental administration and the female complainant bailed him out.

According to Ms. Mazza, the basic complaint was that the officers should not have been there to begin with. She commented that the officers were called for a domestic. The female complainant admitted that she was totally uncooperative from the beginning of the incident. Both complainants claim that they were falsely, inappropriately, and unjustifiably arrested.

Ms. Mazza noted that a monitor, Joel Pierre-Louis, was assigned to the complaint and asked Mr. Pierre-Louis to comment.

Joel Pierre-Louis was recognized and noted that he had prepared and submitted a detailed report to the Board. He reported that he sat in on all of the interviews, reviewed all of the facts and documents presented to him, and sat in on the questioning of the complainant.

According to Mr. Pierre-Louis, the female complainant was uncooperative by her own admission. He noted that the key witness corroborated the police officer's testimony. The officer tried as best as the officer could to help lead her down the stairs. As to her falling in the water, Mr. Pierre-Louis commented that this issue was unclear. However, from what the complainant, the officers, and the witness stated, it appears as though she fell. The only issue remaining was not allowing the female complainant to put on clothing before leading her outside.

There were three charges in the complaints: 1) improper arrest, 2) excessive force, and 3) sarcastic comments/poor attitudes. As to the improper arrest, both complainants were warned that if they continued to act as they were, they would be arrested and it is within the police discretion to arrest. It didn't appear from the evidence that the arrest was improper. Both complainants were given opportunities to cooperate and failed to do so. As to the excessive force, the female complainant stated that the cuffs were too tight. However, the complainant was described as a large woman and this may have caused the injuries that she claimed occurred. As to the sarcastic comments and poor attitudes, this charge was uncorroborated.

Ms. Mazza made a motion to adopt the findings of the OPS.

Paul Weafer noted that that the police officers were called because the mother was concerned for her daughter.

Chairman Cox inquired as to what a "Priority-1" domestic call was. Commander Reilly responded that "Priority-1" calls are serious domestic calls.

Ms. Mazza explained the discretionary aspect of the arrest as she understood it from the investigation. Commander Reilly commented that in a domestic

situation, he is inclined to arrest to separate the combatants so long as there is a legitimate basis for the arrest. Michael Whiteman added that there was a legitimate basis for the female complainant's arrest. She was obstructing governmental justice and refused to give her name. Commander Reilly added that the officers did not want a more serious situation to evolve.

Paul Weafer inquired about the department's policy on clothing in this type of situation. Detective Sergeant Krokoff replied that the female complainant was given an opportunity to put on pants. Commander Reilly added that the officers should allow an opportunity for a person to get clothing.

Mr. Pierre-Louis commented on the officer's discretion in arresting the complainants. According to Mr. Pierre-Louis, the officers arrested the complainants not because of the domestic dispute but because of their refusal to cooperate. The female complainant was warned that she would be placed under arrest if she did not provide the officers with the needed information. The male complainant was arrested for trying to pull up female complainant's pants after being given a number of directives to not interfere.

Manuel Alguero inquired about the warnings, and asked if the police officers already determined that no one was in danger when the warnings were given. He added that he would like a map of how the officers exercised discretion with the warnings.

Ms. Mazza responded that from the reports and taped interviews, it appears as though the female complainant was clearly uncooperative and the male complainant's biggest involvement was his trying to put on her pants, not his trying to prevent her from being arrested. In this case, the officers did not know who was in danger.

Ms. Mazza noted that the OPS made the following findings on the complaints: 1) "**exonerated**" as to arrest authority and procedures because although the acts took place, they were proper, 2) "**exonerated**" as to the excessive use of force, and 3) "**not sustained**" as to the sarcastic comments and poor attitudes. None of the witnesses could corroborate the claim that the police officers were laughing at or making fun of the female complainant. According to the monitor, it was alleged that while the complainant's were at the police station, an officer commented, "don't worry you'll be out in time for the buffet."

It was noted that the complainant's mother stated that her daughter gave the police officers a hard time.

Dr. Alguero drew attention to Section A-7 of the SOPs which reads that pursuant to Section 140-10 of the New York State Criminal Procedure Law, officers shall not threaten to affect an arrest for the purpose of discouraging police intervention. According to Commander Reilly, this section applies to those cases where the

officer says, “If I have to come back again, I’m going to arrest you,” and added that Dr. Alguero is misapplying this section to the complaints.

Michael Whiteman commented that the Board needs to look at the end and determine how it got there. He added that the Board should look at whether there are any alternative routes, why the whole incident evolved in the way it did, and whether anything could have been done differently. He noted that domestic violence complaints are volatile.

Mr. Whiteman then commented on the charge of false impersonation. He stated that on the face of the complaint, it does not appear that the female complainant is committing the crime of false impersonation. According to Mr. Whiteman, his understanding of false impersonation is the giving of false information for the purpose of misleading. When the female complainant told the officers that her name was “police officer 1 and police officer 2” she was not misleading.

Mr. Pierre-Louis directed Mr. Whiteman to page 4 of his report where he indicated that the female complainant did in fact give several false names, which she admitted.

Ms. Gaige added that she believed the police did not have any other choice than to arrest because of the volatile situation.

Commander Reilly added that it was important to note that the female complainant’s mother was the person who called the police.

Ms. Mazza stated that the male complainant never gave a false name; his crime was that he was trying to help the female complainant. She added that the male complainant, not the female complainant, made the allegations regarding the comments at the station.

Commander Reilly added that the female complainant was arrested, questioned, and was able to immediately leave the station.

Ms. Mazza noted that she had two questions that were troubling her: 1) not allowing the female complainant to dress before she went outside and 2) the use of the mace on the male complainant, which appeared to her to be unnecessary or at least questionable given that the witnesses said he was not trying to get the female complainant out of the police car, but simply helping her put her pants on. She added that she was unsure as to how to address these complaints.

Paul Weafer suggested bifurcating the allegations as to each complaint.

Mr. Whiteman questioned whether throughout the event there was only two officers present. Ms. Mazza replied that there were eventually four officers at the scene. Mr. Pierre-Louis commented that two officers responded initially and two

officers arrived later. Mr. Whiteman added that as he understood the complaint, at the time the female complainant was arrested there were two officers.

Dr. Alguero asked if any of the officers observed the physical violence in the apartment. Ms. Mazza replied that the officers did not have a chance to; that when they arrived, the female complainant was immediately uncooperative and began yelling at them. Dr. Alguero stated that he thought that the officers were responding to physical violence. Ms. Mazza replied that the officers heard a woman yell “get off me, get off me” when they arrived at the apartment.

According to the monitor, after 10 minutes of knocking and ringing the door bell, the officers started to kick the door. It was then that the female complainant opened the door. As to the female complainant’s complaint, Ms. Mazza stated that the officers tried several means to get in, but couldn’t.

As to the female complainant’s complaint, the following findings were made by the Board.

Abuse of Arrest Authority and Procedures - Ms. Mazza stated that the OPS made a finding of “*exonerated*” as to the abuse of authority and procedures. She then moved to accept OPS’s finding. Vice-Chairman Thomas seconded the motion. The motion carried unanimously.

Excessive Use of Force - Ms. Mazza moved to accept the OPS’s finding of “*exonerated*” as to the use of force, noting that the female complainant’s allegations were that her cuffs were too tight and that she was thrown into a puddle. Paul Weafer seconded the motion. The motion carried with Mr. Alguero abstaining.

Sarcastic Comments/Poor Attitudes – Ms. Mazza stated that she was not sure the female complainant made this allegation in her complaint. Mr. Pierre-Louis noted that this allegation was brought up by the male complainant during the course of the investigation and the female complainant corroborated the male complainant’s statement.

As to the male complainant’s complaint, Ms. Mazza questioned the use of mace and added that she would “*sustain*” this allegation in his complaint.

Paul Weafer noted that on page 6 of the monitor’s report, the witness reported that on five to eight occasions, the male complainant disregarded directives given by the police officers and refused to comply. He added that at no time was the male complainant treated in an abusive or violent manner. In addition, the male complainant was resisting arrest.

Ms. Mazza commented that the male complainant was helping the female complainant with her pants and not trying to prevent her arrest. She noted that

this was a contradiction in the case, and added that she felt the use of “mace” was an overreaction. She stated that her recommendation as to this allegation would be “*sustained*.” Mr. Whiteman commented that on the basis of what Ms. Mazza stated, there seems to be a long way from “*exonerated*” to “*sustained*.” Mr. Whiteman added that there was a conflict in the testimony, between the officers and the witnesses; however, even if the Board believes the witnesses, it cannot be sure that the officers did not act appropriately and would likely not go to the extreme of making a finding of “*sustained*.” Mr. Alguero read the definitions of “*exonerated*” and “*sustained*” from the Board’s legislation.

Ms. Mazza agreed with Mr. Whiteman that no one was attacked in the situation and there were no weapons. She stated that maybe the finding should not be “*sustained*,” but there may have been a better route.

Mr. Whiteman stated that maybe the situation should never have happened, but that the officers may have felt threatened after giving the directives to the male complainant and he continued to do what he was doing.

Ms. Mazza added that it appears that the male complainant was interfering. According to the monitor, the male complainant was issued a warning that he would be placed under arrest and he said “go ahead.”

Mr. Weafer commented that this was an unfortunate circumstance; however, the male complainant was given several directions to refrain from his conduct, even if he was being chivalrous.

Sergeant Krokoff stated that one of the issues was OC spray, and added that in the force continuum, OC is used after verbal commands have failed.

As to the male complainant’s complaint, the following findings were made by the Board.

Abuse of Arrest Authority and Procedures – Ms. Mazza moved to accept the OPS’s finding of “*exonerated*.” Paul Weafer seconded the motion. The motion carried 6-1, with Dr. Alguero abstaining.

Excessive Use of Force - Ms. Mazza discussed the use of the OC spray and moved for the findings of not sustained, commenting that she wasn’t sure what the correct findings would be. The motion failed.

Commander Reilly commented on the witness’s statement that the male complainant was resisting the officers, and added that he did not understand the Board’s concern regarding this allegation.

Paul Weafer then moved to accept the OPS's finding of "*exonerated.*" Barbara Gaige seconded the motion. The motion carried 5-2, with Dr. Alguero and Ms. Mazza voting against.

Sarcastic Comments/Poor Attitudes – Ms. Mazza moved to accept the OPS's finding of "*not sustained.*" Ms. Gaige seconded the motion, and the motion carried unanimously.

Mr. Weafer commended the monitor, Joel Pierre-Louis, on the thoroughness of his report.

B. *NACOLE Conference Report*

Barbara Gaige stated that the conference was excellent. She commented that the Board often focuses on the last seconds of an incident when the Board should focus, instead, on what could have been done to change the end result. She added that she would like to circulate the "How to Review Reports from Internal Affairs" information that was disseminated at the conference.

Michael Whiteman noted that this was the third NACOLE Conference that he has attended, and urged the City of Albany to send the management of the police department to future conferences. He added that he thinks it would be valuable for the Union and the Corporation Counsel to attend as well. He commented that the conference offered vast amounts of information, including when force is excessive, when a witness is credible, and mediation information. In addition, the mediation information and programs discussed were similar to the ideas that the Union president had discussed with the Board. Mr. Whiteman reported that next year's meeting will be more accessible because it will be held in Chicago. The following year is still open for a location. He commented that the NACOLE Board believes that there is still an open offer from Albany.

C. *Appointment of two new members to the Committee on Complaint Review for November 2003*

The following Board members were appointed to the Committee on Complaint Review for November 2003: Manuel Alguero, Barbara Gaige, Herman Thomas, Paul Weafer, and Michael Whiteman.

D. *Approval of Third Quarterly Report*

The Board's Third Quarterly Report for 2003 was reviewed. Barbara Gaige moved to accept the report. Manuel Alguero seconded the motion. The motion carried unanimously.

E. Approval of Correspondence

*Biased-Based Policing Policy Letter*

A follow-up letter to the Commissioner regarding the police department's bias-based policing policy was reviewed. Barbara Gaige moved to approve the follow-up letter. Manuel Alguero seconded the motion. The motion carried unanimously.

Ms. Gaige also stated that the Commissioner promised that he would address the Board in regards to the shooting in June and added that the Commissioner has not yet done so.

*Letter to Complainant*

A letter drafted to a complainant regarding his recent correspondence seeking information relating to his complaint was review. Chairman Cox moved to accept the letter. Barbara Gaige seconded the motion. The motion carried unanimously.

F. *Policy Recommendations*

The Board discussed the need for a policy recommendation committee to follow-up on outstanding policy recommendations/requests. Chairman Cox noted that he would like to appoint a committee to handle all policy recommendations and follow-ups. Ms. Gaige asked Chairman Cox what the Committee would be charged with doing. Chairman Cox responded that the Committee would be empowered to proactively follow-up on policy recommendations and requests made by the Board.

Barbara Gaige, Judith Mazza, and Paul Weafer were appointed as members of this new committee. Chairman Cox commented that he will appoint a chair to the committee before next month's Board meeting.

G. *Board Business*

1. New Complainant Findings Letter

Chairman Cox stated that in the Board's packets, each member should have found a new complainant findings letter that better explains the Board's process for determining their findings. Chairman Cox moved to accept the new letter. Barbara Gaige seconded the motion. The motion carried unanimously.

Mr. Alguero offered to translate the letter.

## 2. Board Appointments/Re-appointments

Chairman Cox reported that terms of four members would expire at the end of October: Marilyn Hammond, Judith Mazza, Michael Whiteman, and Paul Weafer. Chairman Cox inquired as to which members would be interested in re-appointment.

Mr. Weafer stated that he sent a letter to Mayor Gerald Jennings stating that he no longer wished to continue to serve as a Board Member, but would remain on the Board until the Mayor has found a replacement.

Chairman Cox stated that he would like to send a letter requesting the re-appointment of the other members and that he would like to arrange a meeting with the Mayor and Common Council regarding the one new appointment and the three re-appointments.

Mr. Whiteman added that there was an urgency to re-appoint; however the panel will remain as it stands until new appointments and/or reappointments are made.

### H. *Report from the GLC*

Justina Cintrón Perino gave the report.

#### Status of Complaints

It was reported that there were 26 active complaints, 96 complaints that had been closed and six complaints that were in the process of being closed. It was reported that four complaints remain suspended. Of the 26 active complaints, seven remain in mediation. It was reported that a total of 139 complaints have been filed to date.

#### Mediation

Karleen Karlson updated the Board on mediation and recommended that the Board close the seven cases currently in mediation, and direct its efforts toward breaking the “log jam” in the mediation program to help it move forward. Barbara Gaige suggested that the cases in mediation be addressed in the upcoming meetings. Paul Weafer added that he read Officer Teller’s comments and thought that they were worthwhile and questioned how mediation got into the legislation.

Ms. Karlson stated that the Commissioner supported mediation. Judith Mazza noted that the Union does not support mediation as it exists now.

Ms. Gaige suggested that the Board implement a system to review the complaint before it is investigated. The Board discussed changes in the law and a possible review of the complaints at intake by the GLC and OPS.

## Training

It was reported that Board training sessions have been scheduled for October 27<sup>th</sup> from 6-8 p.m. and December 22<sup>nd</sup> from 6-8 p.m. at the law school.

### I. *Report from OPS*

Commander Reilly stated that he had no statistics to offer this month, but that he would have statistics to report at next month's meeting. He added that the OPS has been extremely busy addressing many different issues appearing in the news.

### V. **Public Comment**

The floor was opened for public comment. However, no public comment was offered or received.

### VI. **Adjournment**

Chairman Kenneth Cox moved to adjourn the meeting at 8:12 p.m. Paul Weafer seconded the motion. The motion carried unanimously.

Respectfully Submitted,

Michael Whiteman  
Secretary