

**City of Albany  
Citizens' Police Review Board  
Community Room  
200 Henry Johnson Blvd.  
November 10, 2003  
6:00 p.m. - 8:00 p.m.**

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

**Absent:** Eleanor Thompson and Michael Whiteman.

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

Chairman Kenneth Cox called the meeting to order at 6:05 p.m. Roll call was taken. It was noted that although two members 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. Barbara Gaige seconded the motion. The motion carried unanimously.

**III. Approval of October 13, 2003 Meeting Minutes**

Chairman Cox made a motion to approve the October minutes. Manuel Alguero seconded the motion, and the motion carried unanimously.

**IV. Old Business**

**A. *Complaints Referred to Mediation***

Barbara Gaige noted that there were seven (7) cases that were set for mediation. Ms. Gaige reported that the Board intended to move forward with reviewing the investigations and rendering findings for these cases over the next few months.

**CPRB No. 36-02/OPS No. C02-291 (Presented by Barbara Gaige)**

Ms. Gaige summarized the complaint. On June 3, 2002, the complainant parked his car at the corner of Grand Street and Park Street. He observed officers talking to some men on the street. In order to get home, the complainant walked past the driver's door of the police canine vehicle, which caused the canine dog to start barking. The complainant alleged that as he continued to walk, he heard an officer call him an "a\*\*hole," and was later shoved by one of the officers. The

Office of Professional Standards (OPS) conducted interviews with the officers at the scene, the complainant, and one of the males who was being questioned by the officers. The complainant alleged that he walked by the police canine vehicle because there was no sidewalk. An officer stated that the complainant's act of walking past the vehicle would cause the dog to bark and, therefore, would prompt the handler of the dog to approach the complainant.

It was recommended by the OPS that the case be closed as “*not sustained* - where the review fails to disclose sufficient facts to prove or disprove the allegation[s].”

Ms. Gaige moved to accept the finding of the OPS of “*not sustained*.” Vice-Chairman Herman Thomas seconded the motion. The motion carried unanimously.

**CPRB No. 33-02/OPS No. C02-319** (Presented by Barbara Gaige)

Ms. Gaige summarized the complaint. The complaint was filed by woman who alleged that her fifteen year old nephew was assaulted by police officers. The complainant was not present when the officers allegedly assaulted her nephew. The nephew did not require medical attention after the incident. According to the complainant, the police department received a phone call from the state police regarding a man with a gun on Lexington Avenue. The perpetrator was allegedly wearing a white shirt and blue jeans. The complainant alleged that when the police arrived on the scene, her nephew was sitting on the street, wearing clothes that matched those of the perpetrator. As the police approached the nephew, he got up and ran. The officers then handcuffed the nephew. In attempting to handcuff the nephew, one officer hit him in the head. Witnesses to the incident alleged that the nephew was hit five or more times. The complainant alleged that her nephew was hit twice, and the officer alleged that he was hit only once.

The OPS made a preliminary finding of “*exonerated* - where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper.” According to the investigation conducted by the OPS, the nephew fit the description of the individual they were looking for, and he took off running when the officers arrived on the scene. During the course of the interview, the nephew admitted he had marijuana in his possession when the officers arrived, and that is why he began running. The officers at the scene frisked the nephew, and although they did not find a gun, they did find marijuana and bags for packaging. According to the OPS's preliminary report, it was proper procedure for the police officers to use force in trying to handcuff the nephew whom they had reason to believe had a weapon.

George Kleinmeier, the monitor appointed to investigate the complaint, clarified that only one witness said that the nephew was hit five or more times. Mr.

Kleinmeier stated that the OPS had tried to contact other witnesses listed in the complaint, but most could not be reached.

Ms. Gaige moved to accept the OPS's finding of "*exonerated.*"

Judith Mazza inquired as to why the young man was hit if he was handcuffed. Manuel Alguero asked whether the young man was flailing and kicking. Ms. Gaige responded that the answers to their questions are not known because the police were responding to a call for a man with a gun. In addition, the young man was refusing to cooperate with the officers.

Dr. Alguero asked whether the young man's actions were like those of someone hiding a weapon. Mr. Kleinmeier responded that the young man ran from the officers who were responding to a call about an individual with a gun. He continued on to say that when the young man fell on the ground, the officers' said, "let me see your hands," and that the young man would not show them his hands. The officers tried to forcibly get the young man's hands, but he resisted, and that is why the officers used force to restrain him.

Ms. Gaige again moved to accept the OPS's preliminary finding of "*exonerated.*" Paul Weafer seconded the motion. The motion carried unanimously.

## V. **New Business**

### A. *New Complaints*

#### 1. One (1) new complaint was received since 10/13/03 meeting

Barbara Gaige read a summary of the complaint.

**CPRB No. 27-03.** The complainant alleged that on August 31, 2003, he was falsely arrested for criminal trespass. The complainant alleged that he had the permission of the current owner of the property to protect and clean out the remaining possessions that were left for him. According to the complainant, the current owners were selling the property to Prudential Homes. The new owners were to begin owning the land as of September 2, 2003. The arrest occurred on August 31, 2003. Therefore, according to the complainant, he had the permission of the current owner to be on the property and there was no trespass. Six (6) officers were on the scene and questioning the complainant as to why he was on the property. The complainant told the officers he had been given keys to the house by the owners who had just left. The complainant gave the keys to one of the officers who determined that the keys did in fact open both locks on the house. The complainant told the officers that he was at the house to retrieve some possessions belonging to him. The officers informed the complainant that he was

under arrest. When the complainant questioned the officers as to why the arrest was being made and whether or not the officers had spoken to the owners, the arresting officers said they were speaking with the owners and they wanted the complainant arrested. The complainant alleged that when he inquired further into his arrest, he was told the arrest was based on a phone call to the police from the current owner's sister claiming to have power of attorney over the property. The complainant alleged that this information is untrue. When the complainant was arrested, he had left his stereo and CDs outside of the house. The complainant asked the officer if he would secure his belongings since he was being arrested. After the arrest, the complainant inquired about his belongings and was told by the officer that he was not able to secure the possessions, but said "it's dark now, hopefully your stuff is still there." The complainant noted that his stereo and CDs were not there when he returned to the property, and the rest of his belongings were locked inside the house. As of October 16, 2003, the complainant alleged he could still not retrieve his possessions that were inside of the home. The complainant spoke to an officer on October 1, 2003 about claiming his belongings from inside the house. The complainant was told that if he tried to get his "stuff" he would be arrested. *A monitor was assigned.*

2. Five (5) new complaints for review

**CPRB No. 5-03/OPS No. C03-126** (Presented by Paul Weafer)

Mr. Weafer summarized the complaint. On January 4, 2003, the complainant was arrested for disorderly conduct. At 8:00 p.m. that evening, the police department issued a snow curfew. An officer was dispatched to Myrtle Avenue to see that cars in violation of the curfew were either moved or towed. The complainant was in his car, attempting to make a left hand turn onto Myrtle Avenue from South Main Street in order to get to his home. The complainant alleged that the officer had positioned his police car so that he was blocking the entrance to Myrtle Avenue, going east.

Mr. Weafer commented that he understood this is Standard Operating Procedure (SOP) for police to close a street in a snow emergency. Mr. Weafer then asked Commander Stephen Reilly if the following was an accurate statement: "if you have a snow emergency and if you have to clear the streets so the emergency vehicles can get down the street or if the plows can't get down the street, do you block off access to the street?" Commander Reilly responded that Mr. Weafer's statement was correct.

The complainant alleged that he was in his car at the intersection for three to five minutes watching a police officer assist a motorist dig out his car in order to move it for the snow emergency. The complainant alleged that he got out of his car, approached the officer, and asked if he could please move the police vehicle so

that he could get to his home. The officer responded that he could not move the vehicle because he was helping another motorist, and asked if the complainant could please go wait in his vehicle. The complainant alleged that he returned to his car in the intersection, and waited between two and five minutes. According to the complainant, if he could have driven down Myrtle Avenue, he could have parked his car in the driveway of his home. The complainant also stated that there was still one available legal parking spot on Myrtle Avenue, but it was being blocked by the police car. All other cars on the complainant's block of Myrtle Avenue, he alleged, had moved to the curfew permitted south side of the street.

The complainant continued to sit in his car in the intersection for another three to five minutes. By this time, the complainant alleged traffic was backing up in both directions on South Main Street. Again, the complainant got out of his car, approached the officer, and asked him if there was an emergency, and if not, could he please move his car. The officer responded by saying there was no emergency, and requested that the complainant please go back to his car and wait. The complainant returned to his car, and waited another three to five minutes.

The complainant alleged that after waiting for the officer for approximately nine to fifteen minutes, traffic was backed up, and cars were trying to pass him in the intersection from both directions. The complainant also noted that "the side roads [were] a mess and cars [were] almost hitting each other and me." According to the complainant, the situation was "ridiculous," so he again got out of his car and asked the officer to move the police vehicle. The officer responded that the complainant should go back to his own car and wait. The complainant then asked the officer for his name and badge number. The complainant alleged that the officer became infuriated at this point, gave his name and badge number, and told the complainant to go back to his car and leave the area. When the complainant got back in his car, he realized that he may not have the correct information. He proceeded to roll down the window and asked the officer to come to his car to give him the correct badge number and name. The complainant alleged that this last request is what caused the officer to arrest him for disorderly conduct. According to the complainant, the officer also threatened to arrest him for resisting arrest because the complainant had his car doors locked, and when the officer attempted to open the door, his hand slipped and he almost fell on the ice. The complainant was handcuffed, arrested for disorderly conduct, placed in the back of the police car for twenty minutes, and given an appearance ticket.

Albert Lawrence was the monitor assigned to this complaint. It was reported that Mr. Lawrence did an extensive review of the matter, including interviewing a number of witnesses who observed the incident. In the car with the complainant at the time of the incident were his daughter and her friend.

Mr. Weafer noted that there was an allegation in Mr. Lawrence's report that the complainant had moved his car directly into the intersection. Mr. Lawrence responded by saying that this is what the target officer testified to.

Mr. Weafer inquired as to whether "it is SOP to block [an] entrance to a street where there are violations going on so that [the officers] can move the cars from the non-curfew violated side, correct?" Mr. Weafer added, "if a fire truck or ambulance went down there or another car went down there and got stuck in the snow, no one would be able to get down the street, right?" Commander Reilly responded that Mr. Weafer's statements were correct.

Mr. Weafer noted that there was a statement by the duty Sergeant that he had dispatched the officer to the scene for the express purpose of clearing the street. The complainant acknowledged that he could have driven around the police car or parked in the one remaining spot on Myrtle Avenue. Mr. Weafer noted that the complainant stayed in the intersection approximately fifteen minutes, while traffic was trying to get past him, because he wanted the police officer to move his vehicle.

Mr. Lawrence stated that the only real witness to the exchange between the officer and the complainant was the motorist who was being assisted by the officer. The motorist corroborated the officer's version of the incident, saying that the officer remained calm while the complainant was agitated.

Mr. Weafer noted that in his review of the complaint, he questioned why the complainant, who lives only four houses from the intersection, did not drive around the police car and take the last parking space rather than block traffic at the intersection for as long as he did.

Mr. Weafer asked Mr. Lawrence if his recommendation was to support the preliminary findings made by the OPS. Mr. Lawrence responded that the investigation was complete, and that there was no further information to substantiate the complainant's version of the incident.

Mr. Weafer noted that there were two elements to this complaint: 1) arrest procedure and 2) call handling.

Mr. Weafer moved to accept the OPS's preliminary findings of "*exonerated*" with respect to arrest procedure, and "*unfounded*" as to call handling. Vice-Chairman Thomas seconded the motion.

Dr. Alguero asked whether the complainant was attempting to go to his house or into a garage. Mr. Weafer responded that the complainant has a driveway leading to his house, and that the police car was purposely/intentionally blocking the

entrance to Myrtle Avenue in order to clear cars for the snow curfew.

Dr. Alguero inquired as to whether or not it is standard procedure for an officer to assist an individual to get to his house when they live on a street that is being blocked off by police vehicles. Commander Reilly responded that if an officer is in a position to assist, he/she will.

Dr. Alguero noted that the officer did not ask the complainant how far he was from his residence. Dr. Alguero stated that if the officer had asked the complainant this question, he would have learned that the individual wanted to get to his driveway, and therefore would have not been blocking traffic.

Mr. Weafer added that according to Mr. Lawrence's report, when the complainant returned to his vehicle the second time, he told his daughter and her friend to "walk to his home because he was going to be there for awhile." The complainant then moved his car into the intersection, making it more difficult for traffic to pass. Mr. Weafer stated that if the complainant had just pulled around the officer's car, there was an available parking spot.

Commander Reilly said that the officer stated he advised the complainant he would assist him after he was done completing his task, and told the complainant to return to his car until then.

Dr. Alguero stated that the exchange between the complainant and the officer did not call for an arrest because the complainant wanted to go home.

Mr. Weafer stated that the complainant was asked three or four times to move his car. The complainant refused, and in so doing, he made a dangerous situation more dangerous.

Chairman Cox noted that Mr. Weafer had made a motion to accept the preliminary findings of the OPS, and Vice-Chairman Thomas seconded the motion. The motion carried 6-1 with all present members of the Board in favor, except Dr. Alguero who opposed.

**CPRB No. 14-03/OPS No. C03-216 (Presented by Barbara Gaige)**

Ms. Gaige read the complainant's statement. The complainant was proceeding south on Broadway towards the right shoulder of the road. As the complainant moved her car left, she collided with another vehicle. At the scene of the accident, the complainant stated that she was moving her car to the left to be closer to the yellow line. In a subsequent statement, the complainant alleged that she was making a left turn onto Van Wert Street, but decided not to and drove back onto Broadway. According to the driver of the vehicle involved in the

accident with the complainant (hereinafter “the other driver”), the complainant was driving off to the right of the road and was going to make a U-turn when she hit him. According to the photographs, the damage to both cars was consistent with the allegations of the other driver.

*The complainant alleged, that after the accident occurred, she saw the other driver “[get] out of his car stumbling and smelling of liquor...” The other driver tried to convince the complainant to leave the scene of the accident. The complainant then alleged that the other driver began eating breath mints, and vomited in the street as he was returning to his car. When the officer arrived at the scene, the complainant assumed that the officer was conducting a sobriety test or Breathalyzer on the other driver. The officer then allowed the other driver to call for a ride home. When the complainant questioned the officer as to why the other driver was allowed to leave without receiving a sobriety test, she alleged the officer responded, “We don’t have that kind of technology in Albany. You watch too much TV.” When the complainant received the accident report the following week, she alleged the officer had “falsified the accident report” regarding the damage done to both cars. The complainant alleged the officer knew that the other driver had been drinking, and yet he allowed the other driver to leave without determining whether he was in fact intoxicated.<sup>1</sup>*

When the officer arrived at the scene, he did not believe the other driver to be intoxicated and did not report smelling alcohol on him. The officer stated that the other driver carried on a very cooperative conversation with him. However, there was an individual in the complainant’s car who was grossly intoxicated. According to the other driver, it was the complainant’s passenger who vomited in the street, not him. Additional factors associated with the incident, were friends of the complainant who had arrived in additional cars. The officer apparently had his portable radio with him, but the battery was dead, so he was unable to call for assistance. Ms. Gaige noted that there was a hostile situation evolving.

During an investigation into the incident, the front seat passenger in the complainant’s vehicle was questioned as to the events of the accident, and corroborated the complainant’s story. The intoxicated passenger in complainant’s car was unable to be contacted by the OPS. A passenger in a vehicle not involved with the accident, also corroborated the complainant’s version of the incident. These witnesses stated that they had seen the other driver drinking at Club Matrix and staggering while trying to walk.

George Kleinmeier was the monitor assigned to this complaint. Mr. Kleinmeier

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<sup>1</sup> The above paragraph is a summary of the allegations written by the complainant in her complaint. While this summary was not provided during the November 10, 2003 Board meeting, it has been included in these minutes in an effort to provide a context within which the Board reviewed and discussed this complaint.

commented that the witnesses claimed they remembered the other driver because he had asked one of the girls to dance, and that he was the “tallest guy in the club.”

Mr. Kleinmeier stated that he does not believe there is any question that the accident was the fault of the complainant. But, he did question why the officer did not conduct tests to determine whether or not the other driver was in fact intoxicated as the witnesses claimed he was.

Ms. Gaige made a motion to accept the findings of the OPS which were: “*unfounded*” for call handling and “*not sustained*” as to conduct. Ms. Gaige added that the officer’s battery was dead and there was a motor vehicle accident with a very intoxicated person at the scene. It was also noted that the intoxicated person was hostile. Ms. Gaige said that based on the situation, it seems the officer should not have handled the incident by himself and should have called for backup. She said that perhaps the issue before them was a training issue.

Ms. Gaige moved to accept the OPS’s findings with the suggestion that the officer be trained/counseled regarding requesting assistance for a situation such as this. The motion was seconded by Paul Weafer.

Judith Mazza questioned why both drivers were not given a Breathalyzer test. She stated that the complainant clearly hit the other driver which could have resulted in serious injury. Ms. Mazza stated she would accept the findings of the OPS, but still questioned why both drivers were not given sobriety tests.

Manuel Alguero noted that the complainant claims there was alcohol involved with the accident. Vice-Chairman Herman Thomas stated that one of the passengers in the complainant’s car was intoxicated. Dr. Alguero questioned whether the Board can conclude that the investigation properly addressed the issue of alcohol. Ms. Gaige replied that the Board did not know, but the officer should have counseling regarding the appropriate times to utilize Breathalyzers.

Dr. Alguero asked whether the OPS addressed the claim. Ms. Gaige stated that the investigation fails to disclose sufficient facts to prove or disprove the allegations made. The officer did not believe the other driver to be intoxicated, but now it cannot be determined whether he was or was not.

Mr. Weafer commented that he was in support of the recommendation of training for the officer. He stated that one of the passengers in the complainant’s car was abusive, obviously intoxicated, and could have been arrested. The other driver, claimed that the complainant’s passenger vomited in the street. Another witness identified the other driver as the individual who vomited.

Commander Stephen Reilly stated that police officers are trained in the academy. Ultimately, the officer did not determine that the other driver was intoxicated.

Mr. Weafer replied that the officer made a discretionary call. However, Mr. Weafer questioned why the officer did not call for help when there were so many conflicting reports of who was intoxicated at the scene. Commander Reilly replied that this was a judgment call by the officer.

Ms. Gaige expressed concern that there was an intoxicated person at the scene of the accident and that two additional cars arrived at the scene of the incident. The whole group could have become hostile. Despite this, the officer did not call for backup.

Mr. Weafer added that the complainant stated that the details of the report were erroneously filed by the officer. However, Mr. Kleinmeier's investigation determined that details of the report were correct, and there were accompanying pictures.

Chairman Cox stated that there was a motion on the floor that had been seconded. A vote was then taken. The motion passed unanimously.

With respect to the training recommendation, Government Law Center Staff Attorney Justina Cintrón Perino inquired as to whether or not the Board wanted a separate letter drafted that addressed the training/counseling recommendation. The Board responded that a separate letter should be sent to the Commissioner.

Ms. Gaige commented that when the letter goes to the Commissioner, a suggestion should be made that the Board expressed concern over the fact that the officer did not request assistance at the scene. She added that the recommended training/counseling should be for this officer, not all officers.

It was determined that the letter would contain two parts: 1) the first part would address the Board's concerns about the situation, and 2) the second part would recommend that this officer be counseled/trained as to how to handle this type of situation in the future.

**CPRB No. 17-03/OPS No. C03-264** (Presented by Vice-Chairman Herman Thomas)

Vice-Chairman Thomas summarized the complaint. On the day of the incident, the police department had identified certain locations as "emergency no parking" zones because demonstrations were expected. The complainant parked his car in a restricted zone, and was subsequently towed. The complainant then went to the Traffic Bureau to obtain a copy of the towing slip. The complainant alleged that

the copy of the slip he received was illegible, other than a signature at the bottom. The complainant asked the officer for a legible slip, but was refused. The complainant alleged that he made this request several times, but was eventually advised by the officer, "I guess the short answer is no." He then asked to speak with the officer's supervisor and was advised that there was no supervisor present and that the officer was unable to contact one. The officer gave the complainant the name of the traffic safety supervisor.

Vice-Chairman Thomas stated that he went to the OPS and looked at the report. He commented that he was shown the green copy of the towing slip, signed by the tow company. Vice-Chairman Thomas said there are three slips: a white slip, a green slip, and a pink slip. According to Vice-Chairman Thomas, the slip he was shown was "not readable." The complainant's slip contained nothing about what happened or where the car was. Vice-Chairman Thomas said that he could understand why the complainant needed to be able to read the slip.

Vice-Chairman Thomas stated that the complainant's second allegation was that he did not think he had to pay for the towing or to get his car back. There were signs posted stating that there would be an event and that cars parked in this restricted area would be towed. Vice-Chairman Thomas commented that the vehicle was properly towed.

Vice-Chairman Thomas noted that there were arrangements made for the complainant to speak with a supervisor. He was provided with the supervisor's name and phone number. The complainant was also provided with the phone number of Corporation Counsel if he chose to request his money back for the towing, or make a report.

Assistant Corporation Counsel Todd Burnham, Esq. commented that if the towing was improper, the complainant could get his money back. But, in this situation, there were signs posted that this was an emergency, no parking zone.

Vice-Chairman Thomas questioned whether there was a way to obtain a clearer copy of the towing slip. Mr. Burnham replied that the tow operator had the clear copy and the officer himself did not have a legible one. Barbara Gaige added that the report stated that the complainant could get the original copy of the slip from the tow operator.

Vice-Chairman Thomas made a motion that the case be closed as "*exonerated*." Marilyn Hammond seconded the motion, and the motion carried unanimously.

**CPRB No. 20-03/OPS No. C03-379** (Presented by Vice-Chairman Herman Thomas)

Vice-Chairman Thomas summarized the complaint. The complainant was in her car and was attempting to leave when she backed into a parked car in the space behind her. An officer observed the incident and asked the complainant to turn off her car and exit the vehicle to look at the damage she had done. When the complainant exited her car, the officer took her car keys and went to find the owner of the parked car. The officer located the owner of the car and brought him to assess the damage to his vehicle. The car owner informed the officer that the damage to the car had previously existed, and “everything was fine.” The officer returned the keys to the complainant and told her she could leave.

According to Paul Weafer, the complainant alleged that when she returned to her vehicle to leave the scene of the incident, she realized that she had turned her car off while it was in drive and this caused damage to the vehicle.

Vice-Chairman Thomas stated that the complainant was able to drive the car away from the incident, but she alleged, eight hours later, that the car was not operating properly.

Mr. Weafer stated that the complainant alleged she was so nervous when the officer instructed her to exit the vehicle that she left the car in drive when she turned it off.

Dr. Alguero inquired as to what the complaint was. Vice-Chairman Thomas replied that eight hours after the incident with the officer, the complainant’s vehicle was not operating properly, and she had to have it towed to a garage.

Vice-Chairman Thomas reported that the OPS made a preliminary finding of “*exonerated*,” and made a motion that the case be closed as “*exonerated*.” The motion was seconded by Judith Mazza, and the motion carried unanimously.

**CPRB No. 22-03/OPS No. C03-355 (Presented by Manuel Alguero)**

Dr. Alguero summarized the complaint. The complainant was arrested and charged with arson in the second degree. After the complainant confessed to the arson, he entered a plea bargain. Presently, the complainant is in prison. The complainant alleged that he did not receive his Miranda Warnings when he was arrested. Additionally, he alleged that his request for an attorney to be present while he was being questioned about the arson was denied. The complainant suggested that his behavior of setting fire to the property was influenced by alcohol.

Dr. Alguero reported that the preliminary finding of the OPS was “*unfounded*.” He also noted that in the statement taken by the police department, the complainant had initialed that he had read the Miranda Warnings and that they

were read to him. The preliminary finding by the OPS further indicated that the allegations raised by the complainant should have been addressed by the complainant's attorney in a court proceeding or suppression hearing.

Dr. Alguero questioned whether the OPS addressed the right to an attorney issue. He also commented that he did not know about the timing of when the complainant was supposed to have read his Miranda Warnings or when he initialed the statement saying he read his Miranda Warnings.

George Kleinmeier was assigned as the monitor for this complaint. Mr. Kleinmeier noted that at number 48 of the arrest report, labeled "Miranda," there is the word "no" in the box. Number 49 of the report reads, "Miranda by," number 50 reads, "Miranda date," and number 51 reads, "Miranda time." The boxes by these three numbers were all blank.

Dr. Alguero stated that the detective said she was not questioned about the blank boxes. The detective did say that many times the individual being arrested is taken right to the booking area.

Dr. Alguero stated that it did not appear to him that the OPS addressed the issue of whether or not the rights of the attorney were denied. The finding by the OPS merely states that the complainant should have addressed this issue in court.

The complainant alleged that after he confessed to the arson, he was asked to sign the Miranda form, acknowledging that he knew his rights and that they were read to him. Dr. Alguero commented that he did not know if the Miranda Warnings were in fact read to the complainant at the time of the arrest.

Dr. Alguero stated that he would not recommend accepting the findings of the OPS because there are still facts and issues that were unclear with respect to this complaint. He noted that the Board is concerned with whether there was a proper handling of the case with respect to the request for an attorney and the reading of the Miranda Warnings. Dr. Alguero said that he did not think these complaints were answered adequately by the OPS.

Assistant Corporation Counsel Todd Burnham commented that he is concerned that the Board may be hearing a case that should have had a suppression hearing, but did not. Mr. Burnham expressed concern about the Board getting involved in "second guessing" situations similar to this, because it is impossible to say what time Miranda Warnings were given.

Paul Weafer noted that the complainant had a higher court decided whether proper Miranda rights were issued or not.

Mr. Burnham stated that he would like to speak to the Corporation Counsel about this issue. He also commented that addressing these issues exposes the Board to civil liability and that a criminal court has already accepted the plea. Mr. Burnham advised the Board not to hear this case, and added that he was going to verify this with the Corporation Counsel's Office.

Barbara Gaige then made a motion to table the case pending a report back from Mr. Burnham. The motion was seconded by Vice-Chairman Herman Thomas. The motion carried unanimously.

B. *Appointment of two new members to the Committee on Complaint Review for December 2003*

The following Board members were appointed to the Committee on Complaint Review for December 2003: Barbara Gaige, Marilyn Hammond, Judith Mazza, Eleanor Thompson, and Michael Whiteman.

Manuel Alguero stated that if Ms. Thompson is unable to serve on the Committee for December, he would fill her position.

C. *Approval of October 2003 Minutes*

Judith Mazza inquired about the status of a recent letter submitted to the Corporation Counsel's Office by the Government Law Center, seeking a written opinion regarding public disclosure of the Board's monthly meeting minutes.

Ms. Mazza commented that the Board's meeting minutes should be made available to the public.

Assistant Corporation Counsel Todd Burnham stated that if someone wanted the minutes from a meeting, they would have to pay for a transcription or certification. However, if the minutes are certified, then a FOIL request should be made.

Government Law Center Staff Attorney Justina Cintrón Perino commented that when the Board's meeting minutes for the Board are prepared, they are prepared in summary form and are not a verbatim transcription.

There was discussion of posting approved minutes online. Ms. Mazza made a motion to post the minutes on the Board's Website after they have been approved by the Board.

Paul Weafer suggested a one month period of time for the Board to review and amend the minutes. Ms. Mazza replied that the Board should adjust the minutes

before approving them.

It was decided that draft minutes would be forwarded to each member of the Board for comment in advance of each scheduled monthly meeting.

Ms. Mazza reaffirmed her motion that once approved, the minutes should be available to the public online. Mr. Weafer seconded the motion, and the motion carried unanimously.

Approval of the October 2003 meeting minutes was tabled until the December 2003 monthly meeting.

D. *Policy Recommendations*

It was reported that two (2) signatures were required before the GLC could send the Board's follow-up letter to the Commissioner regarding the Department's Bias-Based Policing Policy.

The Board was asked to provide the GLC with information regarding its new Policy Review/Recommendations Committee. It was reported that there are three members currently on the Committee: Barbara Gaige, Judith Mazza, and Paul Weafer. Paul Weafer noted that he no longer wished to serve on the Committee.

E. *Report from the GLC*

Government Law Center Staff Attorney Justina Cintrón Perino gave the report.

Status of Complaints

It was reported that a total of 140 complaints have been filed to date, 105 of which have been closed, and four (4) complaints of which remain suspended. It was reported that seven (7) complaints were previously referred to mediation. Based on the recommendation of Karleen Karlson, the Board addressed two mediation cases during this meeting, and will hear the remaining five (5) cases at its next two meetings.

Old Business

It was reported that the GLC had been in communication with several members of the Board regarding CPRB No. 7-03. The Board made a finding as to one allegation in the complaint, but did not have the opportunity to address the second allegation. It was reported that CPRB No. 7-03 will be heard at the December 2003 meeting. Vice-Chairman Thomas will present the second allegation at the meeting so that the Board can render its finding.

## Communication with Complainants

It was reported that the GLC received phone calls from a complainant requesting information regarding the findings the Board made with respect to her complaint. The GLC would like advice from the Board as to how to handle this request and other similar telephone calls. It was noted that the GLC staff are not members of the Board, and therefore it is difficult for the staff to speak on behalf of the Board when explaining CPRB finding(s) to a complainant.

It was reported that Barbara Gaige has often handled these calls. It was suggested that the Board decide whether it would like to circulate responsibility for addressing such calls amongst the members, or if the calls should be directed to the Chair of the Board and/or the Chair of the Committee on Complaint Review.

Marilyn Hammond inquired as to whether these phone calls are being made after the Board has already made its findings on a complaint. In response, it was reported that the phone calls generally occur when a complainant receives the findings letter and does not clearly understand the explanation for the findings. The complainant usually is looking to speak with a member of the Board who can explain the findings. It is often a situation where the complainant does not come to the meeting at which his/her complaint is reviewed by the Board.

The Board was then asked whether it still intended to address and explain the findings to complainants who did not attend the meeting. It was noted that the complainant is given advanced notice of the meeting at which his/her complaint will be reviewed by the Board, including the time and location of the meeting.

Dr. Alguero commented that it is his opinion that whichever member of the Board responds to these cases should make clear to the complainant that the function of the Board is not to pass judgment upon the officer but only upon the investigation of the OPS. He noted that many complainants do not fully understand the function of the Board. Some complainants believe the Board is a “judge and jury,” which it is not. The role of the Board is to pass judgment on the findings of the OPS, not on the conduct of the officer. Dr. Alguero suggested this be the premise of the calls with the complainants.

Chairman Cox commented that he believes the complainant calls should be directed to Ms. Gaige, Vice-Chairman Thomas, or himself. He stated that the Board has addressed similar concerns in the past, and phone calls between the complainants and the Board members generally “smooth out uncertainties” complainants have. Chairman Cox recommended that complainant calls should initially begin with Ms. Gaige as the Chair of the Committee on Complaint Review. After Ms. Gaige has received the calls, she may determine how to address the situations from there.

Ms. Gaige stated that of the complainants she has called in the past with similar concerns, it has only taken a moment to speak with them and clarify the function of the Board.

Ms. Mazza made a motion to have the Chair of the Committee on Complaint Review address complainant calls. Dr. Alguero seconded the motion. The motion carried unanimously.

### Correspondence

Ms. Cintrón Perino reported that a revision was made to the complainant findings letter, and a copy was distributed to the members of the Board for review. The Board was asked to report any suggested changes/alterations to the GLC.

### Mediation

It was reported that copies of a letter written by Barbara Gaige to the Commissioner were distributed to members of the Board for their review. The letter seeks the status of a complaint referred to mediation that the Commissioner had agreed to follow-up on. Ms. Gaige drafted the letter, however, it was signed by both Ms. Gaige and Chairman Cox.

### Training

It was reported that a training session for Board members would be held on November 24, 2003 from 6:00 p.m. - 8:00 p.m. at Albany Law School. While Barbara Gaige and Michael Whiteman were asked to help facilitate the session, Mr. Whiteman would not be available to assist due to a scheduling conflict. Ms. Gaige agreed to help facilitate the session. The GLC agreed to send a training reminder to Board members.

Chairman Cox requested that members of the Policy Review/Recommendations Committee meet prior to the training or immediately after the training. Ms. Mazza suggested the Committee meet at 5:30 p.m. at Albany Law School.

### Board Appointments/Re-appointments

It was reported that the GLC received a telephone call from Common Council President Helen DesFosses, explaining that the Council was in the process of re-appointing Judith Mazza and Michael Whiteman to the Board. It was reported that the GLC had not yet heard from the Mayor's Office regarding the re-appointment of Marilyn Hammond or the appointment of Paul Weafer's replacement.

Paul Weafer noted that he sent a letter to Mayor Jennings, but that the Board should give the Mayor time to address it.

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GLC Staff

Ms. Cintrón Perino introduced Renee Hebert as the new staff attorney working with the GLC. It was reported that Ms. Hebert will be working with the Board while Ms. Cintrón Perino is on maternity leave.

It was also reported that Karleen Karlson, the Board's Mediation Coordinator, had ended her employment with the GLC, but, would be working with the Board as a mediation consultant for its program.

F. *Report from the OPS*

Commander Reilly reported that in October 2003, he and Sergeant Steven Korkroff attended an Internal Affairs Conference in Phoenix, Arizona.

Mr. Weafer inquired as to whether or not the subject of police review boards was raised at the conference. Commander Reilly replied that he did not recall that topic being addressed.

Commander Reilly verbally presented the OPS's quarterly report of calls from July 2003 to September 2003. He reported there were 37,987 calls for service, 2,690 arrests, and five (5) new complaints. Commander Reilly also reported that the OPS is doing a lot of proactive policing.

**VI. Public Comment**

Chairman Cox opened the meeting for public comment.

Travis Durfee was recognized. Mr. Durfee introduced himself, and stated that he was a reporter from the Metroland interested in the work of the Board.

Melanie Trimble from the New York Civil Liberties Union (NYCLU) was recognized. She commented that when the Board decides to move forward with policy recommendations, it should please contact the NYCLU for assistance with any lobbying efforts.

**VII. Adjournment**

Chairman Cox moved to adjourn the meeting at 7:46 p.m.

Respectfully Submitted,

Michael Whiteman  
Secretary