

City of Albany
Citizens' Police Review Board
Minutes of 11/11/02 Meeting
Albany Public Library, HBH Room

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

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

The meeting was called to order by Chairman Kenneth Cox at 6:10pm.

II. **Approval of Agenda**

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

III. **Approval of Meeting Minutes**

Meeting minutes of September 2002 and October 2002 were delayed until the next meeting.

IV. **New Business**

A. *New Complaints*

Paul Weafer reported that five (5) new complaints have been received since the 10/7/02 meeting. Four monitors have been appointed for the five (5) new complaints.

B. Nine (9) new complaints for review

1. **CPRB No. 17-02, OPS No. C02-282** (presented by B. Gaige)

This case involved an incident that occurred more than six months before the complaint was filed, but the Board agreed to review it. The complainant explained in his complaint that he was picking up his son at the mother's home, and when he parked, APD ordered him to get back into the car. His license plates were in the wrong place, and he did not have his driver's license. The officer crumpled the insurance card and threw the keys on the ground. Officer called for back-up and removed the passenger from the car. The complainant remembered that his license was in the trunk and asked the police to let him produce it. He was put into the paddy wagon and went from City to Albany County. The complainant received a series of tickets.

Barbara Gaige reviewed records at OPS and the monitor's report. She reviewed the account in the officer's statement. The passenger did not respond to OPS's requests for a witness statement. One witness did come forward, no others were found.

OPS said use of force was unfounded. The complainant did not request or receive medical attention. Paperwork did not indicate any force. Officer admitted to twisting his arm.

Call handling. OPS said it was unfounded. There was no profiling since the stop was made due to license plate issue.

Barbara moved to find both allegations unfounded. All approved.

2. **CPRB No. 39-02, OPS No. C02-302** (presented by Paul Weafer)

Complaint occurred in June 2002. The complainant alleges she was on I-87, honked her horn to warn another car that he was too close. The person driving car put his arm up at her, and kept putting on his brakes. She moved to another lane and passed on the inside, and saluted the other driver back. The person showed a badge she thinks, but was not sure. The complainant didn't think she did anything wrong, then the person stayed on her bumper and she was followed close on 787 and Northway. She was nervous. She called the State Police on 911 cell phone. She went up to Exit 4, the person was still following her, on her way to Colonie Police Department. When she pulled into the Colonie Police Department, the person did not come out right away, but his van was still there. Then the person banged on her window.

Paul Weafer noted that the 911 tape was not available to him or to the monitor in this case (who was not present at the meeting). The complainant was present and Paul Weafer asked her questions about when she called 9-11 (she responded when she got onto I-90/Northway). Paul said he thinks it is important that monitor, he and OPS listen to the tape. The complainant alleges she couldn't see license plate because he was so close. Then she got a ticket from the officer who was an APD officer. The ticket was issued in Colonie at the APD officer's request for improper lane change. Paul said he clocked the travel time at more than 7 miles. The complainant said she is to appear in Colonie this month. She admits to the lane change, but said she was fearful for her life. Paul Weafer asked complainant whether the officer's windows were tinted. She said yes, and she couldn't tell for sure if he was holding up a badge. Paul Weafer said the officer stated he was three car lengths behind at all times. The complainant said this was not true.

Paul said the 9-11 related statements didn't jive. Paul asked about a violation of the SOP. The officer didn't file a statement with the Chief of Police notifying him that there was an off duty incident. Commander Bruno said in an off duty incident, a report should be filed and one was not here.

Herman Thomas asked about the ticket for the lane change. Paul asked whether the officer would have followed her to Rexford if she didn't get off the exit. Paul asked her whether Colonie Police told her she did not have to pull over for her own safety, and she said yes.

Paul moved that the case be adjourned until December so the 9-11 tape could be reviewed. Manuel Alguero seconded. All approved.

Motion to adjourn #3 to December. Ken Cox said he will recuse himself from that review. Herman Thomas seconded. All approved.

3. **CPRB No. 41-02, OPS No. C02-355** (presented by B. Gaige)

A monitor, Al Lawrence was appointed in this case. The incident occurred on July 7th, complaint alleges excessive force and improper call handling. Alleges that her daughters had gone to a party at a Club, and her children called her since other mothers and children were present who had been in a fight. Police were trying to break-up a fight. Alleges officers were too aggressive and used unnecessary force. They used a billy club on her 15 year old and she took her to the hospital for x-rays. A witness described the incident like a riot. Crowd estimates were 75 to 300 kids and 14 officers. An employee of the Club said the police were overrun by the crowd and did the best they could. On July 29th, the 15 year old gave a statement saying she did not see the officer as she was hit from the back. Descriptions of the officers did not match. Club owner said the crowd was unruly and disrespectful, no one from the Club thought the officers were inappropriate. All officers denied use of clubs and spray. Crowd failed to follow instructions to disperse. X-rays did not show any damage. Medical reports did not show scratches.

The complainant was present. She said she had called APD regarding the first incident where a mother of another child was fighting with her child. She made her kids stay home Saturday. She let them go a cousin's graduation party on Sunday with instructions to call her if anything happened. She approached an officer on the scene and said she had an incident report about what had happened, and as she is talking to police officer, they could see crowd moving towards her kids. She got in the middle to keep her kids out of it. She was upset that officers did not try to stop it before she got there. The incident went on for a week. Who is going to take of the parents? No one, so she went to IA.

Al Lawrence concluded that investigation was thoroughly and professionally done. Other than one witness everyone else was interviewed.

Manuel asked whether this could have been preventable.

Barbara recommended a mediation. She said the complainant had concerns about how process works and why things took so much time. The Complainant said she was not there to fight and rejects those allegations.

Commander Bruno said nature of complaint was use of force and call handling. Complainant said her daughter has swelling on the knee and she just had another CAT Scan for swelling on the knee. Herman Thomas asked why, if there no fracture did they give her a brace and a pair of crutches? Chairman Cox asked why the officer hit her daughter. Complainant said the officer wasn't trying to get her kids, because she was putting them in the car. She doesn't know why the officer was using a baton. Manuel asked whether baton was use of excessive force in this situation? Commander Bruno responded that there were 2 groups on different sides of the street and then they started to fight. If police moved the crowds from the street, he said we would be here on a different issue...violation of civil rights because they have the right to be on the street. He said things happened pretty quickly. Complainant disagreed about quickness. She said the melee could have been prevented.

Michael supported Barbara's suggestion for mediation. This seems to be a situation out of control. We are looking at the still picture, but not the motion picture of what happened. Commander Bruno said the question of use of a baton was in question, the officer denied it. Michael said it could have been anyone. But the fact remains she went to the hospital. The issue here is much more crowd control and people's perceptions of being abused. He said this isn't the forum to sort this out. But a broad discussion in the mediation context could be helpful to get to how or why it happened. Chairman Cox asked the Complainant if mediation would be acceptable. Judith Mazza said she agrees with Michael Whiteman but there is a longer history here and there needs to be a better way for her and her children to interact with the police. It is about relationships and communication. Marilyn agreed. Barbara moved to send the case to mediation. Manuel reminded that the police have to agree to mediate. Marilyn seconded. All approved.

4. **CPRB No. 42-02, OPS No. C02-352** (presented by Herman Thomas)

Complainant was a young lady who was stopped on Quail Street. Alleged that officers thought she fit the description of someone who had stolen money from someone else. She said it was not her. Officer questioned complainant about her true identity. Complainant was charged with criminal impersonation. She was searched and found to have 2 bags of marijuana. She gave OPS her driver's license. She uses another name than is on her license.

Herman asked Commander Bruno whether a partial name given is a crime of impersonation. Commander Bruno responded that there are two statutes in the Penal Law that address this. Yes, could be a violation of the law. Michael asked how many prosecutions there have been under this statute? Commander Bruno said several but he didn't know specifically. He said in this case you have to look at the totality of the situation. She was allegedly involved in a larceny, she didn't give a right name, and the person she was alleged to have stolen from appears and says he now doesn't want to press charges. Then she changes her name. There is a history behind it. Michael asks what is the basis for saying this

since it is not in the report. Complaint alleges false arrest...that she should not have been arrested. Commander Bruno said the complainant has been arrested 10 times in the last 50 contacts. Herman Thomas pointed out that this was her first complaint. Judith Mazza asked why the report notes that a witness was interviewed but there is nothing about what was said. He responded that witness just confirmed they were walking down the street.

Herman Thomas recommended that the complaint for false arrest be sustained. Judith Mazza seconded the motion. OPS recommended that complaint be exonerated. Michael said it sounds contextual and he wasn't there. Paul asked what would happen if it went back to P.D. Michael said he skeptical of this kind of conduct by the police e.g., bootstrapping. But, he agrees with Paul. Judith Mazza asked whether the Board is responding to the statute or whether the other incident as to why she was stopped. She doesn't seem to be complaining about being stopped. All in favor of finding the complaint sustained 5 in favor (Alguero, Mazza, Thomas, Cox, Hammond) and 3 against (Weafer, Whiteman, Gaige), and 1 abstention (Thompson).

Paul asked that a training session for the board focus on these types of laws.

5. **CPRB No. 43-02, OPS No. C02-356** (presented by Marilyn Hammond)

This complaint involved a domestic dispute. Call went out as a person annoying and not as a domestic dispute. Officer did not take names of witnesses. Father went to station and said he had children. Officer failed to follow-up. Call was handled in an improper way. Dispatcher did not handle call in accordance with standard operating procedure.

Call handling was recommended as sustained by OPS and by Marilyn Hammond.

As to use of excessive force, complainant said she suffers no physical injuries, but medical records show otherwise. She feels complainant was really upset because of her children and that is why officers had to use force to restrain her. OPS said use of force was unfounded. She agrees.

Michael Whiteman said that this is another case where if we focus on the last act, you don't get the motion picture. If there hadn't been bad call handling, there probably wouldn't have been the other events. He recommends that the second half go to mediation (excessive force), and that the first half be sustained (call handling). Manuel Alguero seconded. All were in favor. Motion carried.

Paul Weafer moved that consideration of training and policy about how to handle this be addressed. Manuel Alguero seconded. All approved.

6. **CPRB No. 47-02, OPS No. C02-374** (presented by Manuel Alguero)

Manuel started by saying that he has tried 3 or 4 times to reach Commissioner Neilson to let him know that he spoke with someone who had a positive interaction with the APD.

He was not able to get through.

This complaint has to deal with rudeness. The complainant said she has severe arthritis. There was a knock at the door and a man appeared at her door demanded she move her car that was parked in her own private driveway. He asked for her keys so he could move the car. She said no. A couple of hours later more knocks and she didn't answer, but called the police department. The dispatcher wouldn't help her. Told her she would have her arrested for calling 9-11. An officer appeared and again asked her to move the car. He told her he would have her car towed and arrest her if she didn't move it. She said her car was parked legally in her driveway. Officer was rude and did not treat her with respect. He gave her a ticket. OPS found the complaint to be unfounded. The car was blocking the public sidewalk. Complainant admitted to this because there was not enough room in the driveway. Complainant feels the officer treated this way because she is black. The next door neighbor said the driveway is used 50-50 by both neighboring owners. They agreed tenants wouldn't use it. This implies that the complainant is a tenant, not an owner.

Manuel recommended that the complaint that she was given a ticket and that it was biased based, should be unfounded. Paul Weafer seconded. Michael asked how OPS knew that the man who purported to be the owner of one parcel or the other, was he the owner? Commander Bruno said he was the owner, he pays the taxes and the complainant is not the owner. She was parked blocking the sidewalk. A vote was taken and all approved.

7. **CPRB No. 48-02, OPS No. C02-373** (presented by Herman Thomas)

Complaint is about loss of property. After being booked they took his belongings and he complained that a diamond ring he had was missing. He didn't sign for it because it wasn't there. On the tape you could see the ring on his finger. He took it off and put it on the bench, the videotape showed it was there. Another gentleman came in later and picked up the ring. Commander Bruno called the person who took the ring, and got it back.

Herman Thomas recommend that investigation be closed with no finding. Judith Mazza seconded the motion. Albany County Sheriff Department found the ring and Commander got it back from a civilian employee. Al Lawrence was the monitor on the case. The gist of the complaint was that he didn't get his ring back. Paul Weafer congratulated the Commander for doing a thorough search. A vote was taken, all approved.

8. **CPRB No. 51-02, OPS No. C02-393** (presented by Marilyn Hammond)

Complaint alleged officer issued traffic tickets but would not answer her questions. She was from Colorado and she alleges she didn't understand the procedure. Records show the officer was working the radar and complainant was going 51 mph and ran a red light. Officer claimed he was courteous at all times and that complainant refused to take 3 tickets issued (which included driving without insurance). He left them on her windshield.

Marilyn Hammond moved that the complaint be ruled exonerated. The officer followed SOP and acted properly. Manuel Alguero seconded the motion. A vote was taken and all approved.

9. **CPRB No. 52-02, OPS No. C02-411** (presented by Manuel Alguero)

Complainant sent a letter to the Commissioner which is the basis of the complaint. Allegation is that complainant is being stopped at Department stores in Albany and that she is the victim of computer tampering in her residence. The Complainant was present and said that she has suffered theft, trespass and computer tampering in locked rooms in the City of Albany every place that she lives here. She is tired with the police calling for intervention every time she complains. She is complaining about police procedure every time she makes a complaint and trying to force upon her a mental health issue that does not exist. She alleged that one particular officer insulted her twice in front of the mobile crisis unit. The officer lied and failed to take complaint seriously.

OPS recommended that the complaint be closed as no basis for further investigation.

Michael Whiteman moved that this matter be discussed in Executive Session to discuss sensitive personal matters. Paul seconded. All approved.

C. *Appointment of two new members to the Committee on Complaint Review for December 2002*

Chairman Kenneth Cox appointed Eleanor Thompson and Michael Whiteman to the Committee for December. Marilyn Hammond and Herman Thomas have been dropped for the next meeting.

D. *Report from the GLC*

Justina Cintron reported on status of complaints. There are currently 108 files, 38 active, 66 closed and 4 suspended. Five received since last meeting. 7 of the 9 members attended the 3 and ½ day NACOLE conference. There were 150 people from all over the country at the conference. Justina reported that reappointments for Thomas, Thompson and Gaige will be discussed at a

meeting with the Mayor scheduled for Nov. 19th at 3pm. She announced that the draft fourth quarterly report will be out shortly, as well as annual report for the Board's review.

E. *Report from OPS*

Commander Bruno reported that Sergeant Connelly has been in trial. In December he will be going to a 5 day discipline seminar. NYC IA school will be attended by all investigators from OPS. There was discussion between the Board and Commander Bruno regarding early warning software. Michael Whiteman said although he was glad that Commander Bruno was at a conference during NACOLE, it would have been great if members of OPS could have attended NACOLE. He suggested that maybe in the future there be a joint conference.

Todd Burnham from the Corporation Counsel's office asked the Board to consider: 1) When OPS receives complaints, there is a certain scope to the complaint and the Board may be looking into things that were not part of the complaint to begin with. Mr. Burnham is concerned that this will be viewed negatively by the Union. 2) He is concerned with the Board investigating themselves complaints especially without advising OPS. If Board members have those concerns, these should be brought back to OPS. Give them an opportunity to research.

Paul Weafer said that although generally he would agree with that, since the monitor was not here tonight, he wanted to see what occurred for credibility. He thinks that as citizens they can look at these things. Mr. Burnham said he thinks that the Board is acting outside the scope of his authority. Maybe it is the manner in which information is shared and statements made.

A member of the public said she thinks the Board should be able to do it. Chairman Cox said he learned that some boards are reviewing boards and some have investigatory power. He said he will speak more about it later within the NACOLE context.

Paul Weafer said that the monitors don't always do a good job. The Board was concerned here that there were two 9-11 tapes and the monitor didn't make an effort to listen to the tapes.

VI. **Public Comment**

Public comment from Officer Jim Teller. He said it is inappropriate for the Board to give witnesses/complainants head motion and facial expressions that they may be in agreement with the complainants.

A member of the public asked about the appointment of a monitor and why she didn't know there was one appointed to her case. She thought she would get help from the Law School or someone else. She felt that no one investigated her

credibility. Judith Mazza explained the role of the monitor...which is to review the investigation by OPS, not to conduct their own investigation. Citizen said her complaint was not investigated thoroughly. Judith Mazza said the list of witnesses is what gets looked at. The Board does not have the role of investigator. The member of the public asked who investigates on her behalf? There needs to be a neutral party to assist. Judith responded that the Board does not have that power. Todd Burnham responded that right now there is no mechanism.

The Board moved into Executive Session at 8:20pm to discuss complaint CPRB 52-02 with the complainant. Complainant asked whether the Board is taking the complaint seriously. Manuel explained yes and that is why they moved to Executive Session. Manuel reviewed the allegations in the letter to the Commissioner. Complainant said on May 12th she was robbed of her wallet...in her bedroom. It was taken out of her bag. Her bedroom is locked. Her roommate was there. Her roommate left before she realized her coin purse was removed. It was later found in the library. Her roommate took it. She called the police to report it. They did not want to believe her. Most recently she has written papers that have been removed from her locked room. She is not crazy, she is reporting facts. She is alone in the City, a scholar, a recluse, who is completely normal, but she is being abused. She needs someone to help her to solve the problem. Herman asked her whether someone has the key to her apartment. She responded not that she knows specifically, but people can get keys. She didn't give it to anyone. The May 12th incident involved \$80 in her coin purse. She thinks she appears to be an easy target because she is alone. She said the officer insulted her by asking about a mental health history. She wanted the officer to pay attention to the alleged crime.

Michael Whiteman asked Commander Bruno what an officer would need in this type of situation to move forward with an investigation. Commander Bruno responded that they look for corroboration, solve-ability factors. If none are present, the officer might not continue with an investigation. With respect to the May 12th incident, the complainant said that now she knows it was most likely her roommate, then she didn't suspect her because she trusted her. She moved out at the end of May. Manuel inquired about the computer tampering. She said someone changed her resume. Manuel asked whether she has changed her locks. She said no. Manuel asked how the police can be accountable for this when there is no evidence. The complainant said it is the Police Department's job to solve the crime.

Manuel recommended that the Board finding a finding to concur with OPS's recommendation. Herman Thomas seconded. Commander Bruno gave her his card and said he would be happy to talk with her. All approved.

VII. **Adjournment**

The meeting was adjourned at 8:40pm.

Respectfully Submitted,

Michael Whiteman
Secretary