

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

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

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

The meeting called to order at 6:08 p.m. by Chairman Kenneth Cox.

II. **Approval of Agenda**

The agenda was reviewed. Chairman Cox moved to approve the agenda. The motion was seconded by Dr. Manuel Alguero. The motion carried unanimously.

III. **Approval of the December 2002 Meeting Minutes**

The minutes were reviewed. Michael Whiteman moved to accept the December 2002 meeting minutes. Paul Weafer seconded the motion. The motion carried unanimously.

IV. **Old Business**

Karleen Karlson, the CPRB's Mediation Program Coordinator, gave a follow-up report of the outstanding cases that had been referred to mediation. Four cases were reported.

CPRB No. 30-01/OPS No. C01-428. Ms. Karlson reported that this complaint was not approved for mediation by the Police Department and is being returned to the Board for review and a finding. Manuel Alguero moved to table the complaint and place it on the agenda for the February meeting. Paul Weafer seconded the motion. The motion carried unanimously.

CPRB No. 7-02/OPS No. C02-88. Ms. Karlson noted that this complaint involved the incident with the day care facility. She reported that there was an informal mediation and several successful follow-up meetings. According to Ms. Karlson, the issues have been resolved. Paul Weafer moved to make a finding of "mediated" with respect to this complaint. Herman Thomas and Barbara Gaige seconded the motion. The motion carried unanimously.

CPRB No. 32–02/OPS No. C02-301. Ms. Karlson noted that this complaint involved an auto accident in which the complainant observed a police officer interacting with the female driver involved in the accident. She reported that she had sent the minutes of the meeting to the complainant and had contacted the complainant by mail and by telephone regarding her participation in mediation. According to Ms. Karlson, the complainant never responded to her correspondence or called her back. Judith Mazza moved to accept the finding of OPS and make a finding of “unfounded.”

Manuel Alguero inquired about further attempts to contact the complainant. Karleen Karlson reported that she had contact with the complainant on three occasions, but the complainant has not made an effort to contact her to initiate the process of mediation. Paul Weafer commented that if the complainant does not wish to pursue the mediation, then there is nothing more the Board can do.

Marilyn Hammond seconded the motion. The motion carried 8 -1. Dr. Alguero voted against the motion.

CPRB No. 41–02/OPS No. C02-355. Ms. Karlson noted that this complaint was not appropriate for mediation because the officers involved in the complaint cannot be readily identified. She commented that before a complaint is sent to mediation, the Board must have a sense of who the participants will be.

Manuel Alguero moved to table the complaint and place it on the agenda for the February meeting. Paul Weafer seconded the motion. The motion carried unanimously.

V. New Business

A. *New Complaints*

1. Paul Weafer reported that three (3) new complaints had been received by the Board since the December meeting. He noted the following with respect to the three complaints:

CPRB No. 70-03. This complaint involved an incident on a CDTA bus, where the driver called the police because of alleged the abusive behavior of the complainant. A monitor was appointed based upon the complaint and the complainant’s statement that there was an alleged violation of civil rights.

CPRB No. 71-03. The complaint relates to rudeness. No monitor was appointed.

CPRB No. 72-03. The complaint involved rudeness and harassment. No monitor was appointed.

2. Paul Weafer reported that there were three (3) complaints for review.

CPRB No. 39-02/OPS No. C02-302. The complaint was presented by Paul Weafer. Mr. Weafer noted that the complainant was present and that this complaint had originally been presented at the November meeting. A summary of the complaint was given. The complaint alleged that an off-duty officer, while driving, gave her an obscene gesture, to which she returned. The officer was following extremely close to her vehicle and she called 911. The state police directed her to go to the Colonie Police Department. She said that the officer was following very closely to her bumper the entire time and that she was extremely upset.

The 911 tapes verify the accuracy of her statement; she appeared to be upset when she made the call. The officer also made a call into the station. At the Colonie Police Department, the complainant was ticketed for improper lane change.

Mr. Weafer noted that he had spoken with Commander Anthony Bruno about this complaint and it was suggested that the complaint be referred to mediation. Mr. Weafer added that if the complainant was willing, this complaint would be appropriate for mediation because both parties would benefit from mediation. It was reported that the complainant was amenable to mediation, after consulting with Karleen Karlson. Paul Weafer then moved to refer the complaint to mediation. Judith Mazza seconded the motion. The motion carried unanimously.

Mr. Weafer commented that this complaint is similar to a complaint that the Board received involving an incident with an off-duty officer at the Crossgates Mall. As was the case in the Crossgates incident, the officer involved in this complaint failed to file an incident report as required by the Department. Mr. Weafer added that this ought to be considered in any discipline imposed by the Police Department.

CPRB No. 40-02/OPS No. C02-333. The complaint was presented by Paul Weafer. Mr. Weafer noted that the Chairman would not participate in the discussion and review of this complaint.

According to Mr. Weafer, this complaint was the “sister” complaint to another complaint reviewed by the Board at its November meeting. The related complainant involved an incident in which this complainant was having an argument with his girlfriend outside of his home, when he saw a police cruiser pull up. At the time, the complainant’s car was double parked. The complainant left to move his car. The complainant did not have his seatbelt on when he moved his car. The officer in the cruiser ran the complainant’s plate and found a scofflaw violation.

After moving his vehicle, the complainant began to walk back toward his girlfriend when the officer directed that he stop. The complainant alleged that he did not know that it was an officer who had asked him to stop. However, the record indicated that he did know that the directive came from the officer. When

the complainant failed to stop, the officer grabbed him and a fight ensued. In the related complaint, the mother became involved in the scuffle between the officer and her son, this complainant. The investigative reports revealed that the mother was on the officer's back, reaching and fighting the officer while the officer was fighting with the son.

According to Mr. Weafer, the fact pattern of the related complaint heard in November is the same fact patter of this complaint. He noted that in the related complaint, the Board voted to accept the Police Department's finding of "exonerated."

Paul Weafer then moved to accept OPS's finding and make a finding of "exonerated" with respect to this complaint. Herman Thomas seconded the motion. The motion carried unanimously.

CPRB No. 50-02/OPS No. C02-420. The complaint was presented by Michael Whiteman. Mr. Whiteman noted that the complainant was present. Mr. Whiteman summarized the complaint, commenting that the complaint alleged four things.

First, the complainant, the owner of the car, alleged that a friend was driving her car and that the friend was driving east on Central Avenue. The driver had her blinker on to make a left hand turn. There was a police car behind her car in the same lane. She turned left and the squad car with no lights or sirens on pulled around her to the left at the same time, resulting in a collision. Second, the complainant alleged that her friend was told that no citation would be issued, but a citation was issued at a later date. Third, the complainant claimed the friend surrendered her license and it was not returned until a later date. Fourth, it was alleged that the complainant could not get a copy of the accident report until three months after the accident.

It appeared, from the investigative report, that OPS found and interviewed one witness who confirmed that the emergency lights were on. The officer stated that he was responding to a Priority 2 call with the lights and siren on. According to Mr. Whiteman, there is some basis for believing that the accident was caused by the action of the driver of the private vehicle because the officer's statement and the witness's statement match. Mr. Whiteman added that there was no evidence of a discussion with the second alleged eye witness.

As to the ticket, OPS responded that it was within the discretion and the authority of the police officer to issue the ticket. There was no official response to the claim that the driver was told that she would not be ticketed.

As to the allegation that the license was withheld and not returned, the explanation that was furnished was that a lieutenant, not identified, learned of the complaint three months after the incident. According to the investigative information, the lieutenant inquired about the license. It was reported that the officer who took the accident report had found the license in his brief case. It appears that there was confusion at the scene and the license was taken and handed to this officer who had not taken the license at the scene and did not

realize that he had it in his briefcase. The license has since been returned to the driver.

There is a sufficient explanation in the file as to why it took three months to produce the accident report. However, there is no indication that this explanation was furnished to the complainant. According to the investigative report, the data office was backlogged and the report was shuffled around inadvertently.

The complainant was recognized. She explained that the driver of the car was her daughter. According to the complainant, there were three officers involved. She added that a lawsuit has been filed; she has filed a notice of claim against the City, and that her daughter will be going to court on the citation.

Michael Whiteman commented that the Board cannot determine who is at fault for the accident or whether the person who received the citation is guilty or not guilty. According to Mr. Whiteman, these matters are not to be decided by the Board and any discussion would be outside the scope of the Board's authority. He added that the Board may address whether the officer made a promise and breached that promise, whether the license was unjustifiably withheld and whether there was an undue delay in furnishing the accident report.

According to the complainant, Officer A failed to use his or her headlights and intentionally hit her car. She commented that the report, as written, is not accurate. Officer B confiscated her daughter's license and did not return it as promised. The driver of my car did not receive a citation until one month later. Officer C withheld the accident report for one month.

The driver, the complainant's daughter, was recognized. According to the driver, there were no witnesses, it was just the officer and herself at the scene. She commented that the only witness could have been the other officer who was driving in the other car. The Board asked why her license was taken at the scene. She responded that she did not know. The Board asked if she was taken to the hospital. She replied that she was.

A comment was made that her license was probably requested before she was taken to the hospital. The officer was also taken to the hospital. Another officer had her license and must have handed it to the officer who found it in his brief case.

Commander Bruno added that he didn't think the license was inappropriately confiscated. The Board asked Commander Bruno if the police would normally return the license under these circumstances. He replied that the police would give the license back. He added that there was no reason to withhold the license; it was just a confusing scene. He also commented that it is not out of the ordinary to issue a ticket later and a summons might not always be issued right away. The Board asked Commander Bruno if that was because the police might do an accident reconstruction. He replied that it was.

With respect to the allegation that the driver was improperly issued a citation, it was reported that OPS made a preliminary finding of "unfounded." With respect to the allegation regarding the unjustifiable withholding of the driver's license, it was reported that OPS made a preliminary finding of

“unfounded.” With respect to the allegation regarding the undue delay in furnishing the accident report, it was reported that OPS made a preliminary finding of “unfounded.”

According to Mr. Whiteman, there appears to be credible explanations for the three events complained of although explanations were not provided as they should have been. He commented that he believed the finding to be credible. Mr. Whiteman added that it seems that the complainant and her daughter have other recourse with respect to the other issues presented.

Dr. Alguero commented that although he does not believe that the action on the part of the police officers was deliberate, he has difficulty making a finding of “unfounded” because of the officers’ failure to follow procedures. He believes that the problem wasn’t deliberate but that there seemed to be confusion and that explanations were not properly given.

Michael Whiteman moved to accept OPS’s preliminary findings and make a finding of “unfounded” as to the three allegations. Judith Mazza seconded the motion. A vote was taken on the motion. The motion failed in a 4-5 vote. Barbara Gaige, Judith Mazza, Paul Weafer and Michael Whiteman voted in favor and Manuel Alguero, Chairman Cox, Marilyn Hammond, Herman Thomas and Eleanor Thompson voted against.

Michael Whiteman asked those members who voted against to express their concerns. Marilyn Hammond commented that she thought the complaint would be appropriate for mediation. However, Karleen Karlson responded that this complaint was not mediation appropriate. Vice-Chairman Herman Thomas noted his concern with the delay in reporting and in locating the license. Dr. Alguero commented that he was also concerned with the delay in furnishing the report and the issuance of the citation after the driver was informed that one would not be issued.

Dr. Manuel stated that there is a need for OPS to look at the delays again. There was a break down and misunderstanding on the part of the complainant and OPS should bring to the attention of the officers that while it wasn’t deliberate it was a problem. Chairman Cox agreed, commenting that he is also unsettled with a finding of “unfounded.”

Michael Whiteman inquired as to whether it was worth referring the complaint back to OPS for further investigation to determine what efforts were made to communicate with the complainant regarding the issuance of the citation, the withholding of the driver’s license, and the delay in furnishing the report; and where the report was lost - with the police officers or with the administrative office.

Dr. Alguero moved to return the complaint to OPS for further investigation, adding that the Board does not believe that the acts were deliberate, but rather were due to confusion and administrative missteps that need to be reviewed and requesting that the police department issue a clarification of what the procedures are in similar circumstances so that harm will be avoided in the future. Herman Thomas seconded the motion. The motion carried 7-2, with Barbara Gaige and Paul Weafer in opposition.

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

The following Board members were appointed to the Committee on Complaint Review for the February meeting: Manuel Alguero, Barbara Gaige, Judith Mazza, Herman Thomas and Paul Weafer. After announcing that Paul Weafer had concluded his term as Committee Chair, Barbara Gaige was appointed Chair of the Committee. She accepted the appointment.

C. *Approval of 2002 Fourth Quarterly Report*

The fourth quarter report for 2002 was reviewed. Barbara Gaige moved to accept the report. Manuel Alguero seconded the motion. The motion carried unanimously.

D. *Report from the GLC*

Staff Attorney Justina Cintrón gave the report. It was reported that the Board had 34 active complaints, 77 closed complaints and 4 that remain suspended. Of the 34 active complaints, 7 have been referred to mediation. According to Ms. Cintrón, there have been a total of 115 complaints filed with the Board since the Board began reviewing complaints in May of 2001. She then directed the Board's attention to the summary of new cases filed, which was prepared by the GLC and forwarded to the Board at the start of the meeting.

It was reported that Joel Pierre-Louis, an attorney, has been approved by the Common Council to serve as a Board monitor/investigator. Ms. Cintrón added that a monitor training/orientation session had been scheduled for January 27th from 6 to 8 p.m. at the law school. According to Ms. Cintrón, the training session will serve as an orientation for the new monitor/investigator and a reorientation for the monitors/investigators currently employed by the Board. She noted that the session is mandatory for all monitors and that OPS has been invited to participate. Board members were asked to be present and invited to participate in the development of the agenda.

Board members who attended the NACOLE Conference were reminded to submit their receipts for reimbursement. It was reported that the Center would be submitting a proposal to host the 2004 conference, and that the Board has been given copies of the proposal for its review. Ms. Cintrón noted that the Mayor would be submitting a letter in support and that the Center would be submitting a package of information furnished by the Albany County Convention and Visitor's Bureau with the proposal.

It was reported that the GLC has prepared a press release regarding the Board's attendance at the NACOLE Conference. Board members who attended the

conference were asked to submit a comment or quote to be included with the article.

It was reported that reappointments are being made for the expired terms of Barbara Gaige, Herman Thomas and Eleanor Thompson. Ms. Cintrón noted that she had been in communication with Barbara Samel, Counsel to the Common Council, who had indicated that Barbara Gaige would be appointed to another 3-year term. It was reported that the reappointments of Herman Thomas and Eleanor Thompson are pending.

The Board's training schedule was reviewed and discussed. It was noted that the monitors' training would take place on the 27th of January. March 24th and March 31st were identified for a training on racial profiling and May 3rd, 17th, 24th and 31st were identified for a joint CPRB/APD training session. It was decided that the racial profiling session would be held on March 31st and the joint CPRB/APD training session would be held on May 17th.

It was reported that the Board's community outreach/education meetings for the Spring are still being coordinated. Ms. Cintrón noted that she would report back when the schedule of meetings has been finalized.

Kyle McCauley was introduced as the new CPRB intern. Ms. Cintrón noted that she is first year law student at Albany Law and has a background in Criminal Justice.

D. *Report from OPS*

Commander Anthony Bruno gave the report. According to the Commander, OPS is still continuing its efforts to move into the new building across from headquarters on Henry Johnson Boulevard.

VI. **Public Comment**

Chairman Cox opened the floor for public comment. Dr. Alice Green was recognized. Ms. Green commented that on Christmas Eve, there was a shooting and a man was killed. She asked the Board to become involved and inquired as to whether the Board sees a role in the shooting incident even if the Board does not get a complaint.

Assistant Corporation Counsel, Todd Burnham, responded that a complaint must be filed before the Board could take an active role or to make a policy recommendation.

Dr. Manuel commented that according to the Times Union article that was included in their packets, the Commissioner has promised to send the case to

the Board after it has been concluded. Commander Bruno added that he believed it to be the intention of the Commissioner to have OPS present a report to the Board for review and comment.

Barbara Gaige commented that Dr. Green should note that the Board has no investigatory power, only monitoring power. After the grand jury convenes, then the Board may review, but it has no power to investigate.

VII. **Adjournment**

The meeting was adjourned at 7:40 p.m.

Respectfully Submitted,

Michael Whiteman
Secretary