

City of Albany
Citizens' Police Review Board
Albany Public Library, Washington Avenue (HBH Room)
February 9, 2004
6:00 p.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

Chairman Kenneth Cox called the meeting to order at 6:09 p.m. Chairman Cox noted that a quorum of the Board was present.

II. Approval of the Agenda

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

III. Approval of January 12, 2004 Meeting Minutes

The minutes were reviewed. Chairman Cox made a motion to approve the January 2004 meeting minutes. Vice-Chairman Herman Thomas seconded the motion, and the motion carried unanimously.

IV. New Business

A. *New Complaints*

1. Two (2) new complaints were received since 1/12/04 meeting

Barbara Gaige read the summaries of the new complaints.

CPRB No. 1-04. The complainant alleged that on New Year's Eve, 2003, two (2) Albany City police officers fired eight (8) shots at a car driven by Mr. Daniel Reed at the corner of Lark Street and State Street in Albany. David R.A. Scaringe was shot and killed by a stray police bullet as he walked into the intersection where the two (2) officers were firing. Another individual, Shawn Brozowski, was reportedly grazed by one of the officer's bullets. According to the complainant, "a number of Center Square residents and visitors witnessed the incident." The complainant stated that her concern is "whether police actions were consistent with police policies governing the use of deadly force and police chases." A monitor was appointed.

CPRB No. 2-04. The complainant alleged that on August 13, 2002, at approximately 4:00 a.m., he was in the Denny's restaurant on Western Avenue in Guilderland when his car was damaged in the parking lot. The complainant reported that the windshield wipers were removed from the back and front of his car, and that his hub cap was dented. According to the complainant, an Albany City police officer, who was "getting food on his break," was in the restaurant during the incident, and witnessed the incident. The complainant alleged that the damage to his car was caused by a friend of the Albany City police officer. He further alleged that the officer should have called the Guilderland Police Department when the officer witnessed the incident, but instead, did nothing to report the incident committed by his friend. No monitor was appointed.

Judith Mazza questioned whether the date of the alleged incident, August 13, 2002, was in fact the correct date as reported in the complaint, or whether the incident occurred in August of 2003. Barbara Gaige responded that August 2002 was the correct date.

Ms. Gaige stated that too much time had elapsed between the date of the alleged incident and the filing of the complaint for the Board to review. Ms. Gaige, therefore made a motion for the Board not to review CPRB 2-04. Vice-Chairman Herman Thomas seconded the motion, and the motion carried unanimously.

2. Five (5) new complaints for review

CPRB No. 6-03/OPS No. C03-62 (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint. The complainant alleged that while he was incarcerated at the Albany County Jail, his ex-girlfriend stole and cashed two of his checks. The complainant alleged that the Department ignored his complaint regarding the stolen checks because he was incarcerated at the time of filing. Ms. Hammond stated that there were communication difficulties with respect to this complaint. When Ms. Hammond reviewed the OPS's records and letters that were sent to Commander Bruno, she stated that the complainant learned through the District Attorney and the court that the person who stole his checks was arrested.

Ms. Hammond made a motion to adopt the OPS's preliminary finding of "**unfounded.**" Paul Weafer seconded the motion and the motion carried unanimously.

CPRB No. 21-03/OPS No. C03-392 (Presented by Judith Mazza)

Judith Mazza summarized the complaint, and noted that a monitor was appointed. The complainant alleged that she was present while a friend was being arrested. During the incident, the complainant alleged that the officers used profanity and informed her that if she did not move away from the scene of the incident, she would be arrested. The complainant alleged that an officer told her she was under arrest and threw her against a brick building two or three times. As the officer attempted to get the complainant's hands behind her back, she informed him that she was pregnant. According to the complainant, the officer responded that he did not care. The complainant alleged that because of the way she was treated by the officer, she had to go to the hospital after she was given an appearance ticket and released by the police.

Ms. Mazza stated that she went to the OPS and reviewed the report. According to the pictures of the complainant included in the report, there were abrasions to her shoulder. The complainant also claimed that her hands were swollen because of the handcuffs. The complainant stated she went to the hospital the evening of her arrest to seek treatment. She further alleged that she stayed overnight in the hospital, connected to a fetal monitor. Ms. Mazza stated that although she was unable to obtain hospital records, the complainant did have discharge papers from her stay at the hospital. Ms. Mazza questioned whether the HIPPA regulations prevented the release of the complainant's hospital records, or whether the hospital did not have records of the complainant being treated there.

Ms. Mazza stated that according to the OPS's files, attempts to interview witnesses to the incident were unsuccessful. Officers tried to contact witnesses in the neighborhood of the incident, but were unable to locate anyone at home. There were, however, numerous people at the scene of the incident.

Ms. Mazza stated that officers initially arrived at the scene of the incident to arrest an individual for drug possession. During the drug possession arrest, another individual arrived at the scene who had an outstanding warrant for his arrest. As the officers arrested the individual with the outstanding warrant, the complainant was inquiring as to why he was being arrested. The officers informed the complainant and others at the scene to move away from the area because they were interfering with the arrest, as the gentleman was not secured at that point in time. A large number of people began congregating at the scene of the incident. In order to prevent further uprising, the officers told people to move from the area.

Some of the individuals who did not respond to the officers' instructions were arrested. One of the individuals arrested was the complainant. Ms. Mazza stated that the complainant was put against the side of a building, and due to her resisting arrest, she suffered an abrasion to her shoulder.

The complainant alleged that as she was put into a police car, she lost a shoe. She further alleged that an officer threw her shoe at her while she was in the back of the police car. It was reported by one of the officers that a shoe was found, and he placed it on the floor of the police car. The officer stated that by the time the complainant was placed in the transport wagon, she had the shoe on her foot. The complainant was given an appearance ticket and released by the police department the night of her arrest.

Richard Lenihan, the monitor appointed to the complaint, stated that approximately sixty or seventy people were present at the scene of the incident. He added that he reviewed the photographs of the injuries sustained by the complainant, and it appeared the pictures "are what they are." Mr. Lenihan added that with respect to the HIPPA regulations, hospitals tend to err on the side of caution and not release patient information. With respect to witnesses, Mr. Lenihan stated that the Albany Police Department did due diligence in attempts to question people in the neighborhood of the incident. One witness stated that the police behavior was "rough" in that the officer(s) were using profane language. Mr. Lenihan concluded that there did not appear to be any injuries to the complainant's wrists from the handcuffs as she alleged.

Paul Weafer inquired as to whether Mr. Lenihan took notice of the injuries suffered by the complainant. Mr. Lenihan responded that the injury to the complainant's shoulder appeared to be scabbed over. Ms. Mazza noted that the police stated that the complainant's injuries appeared consistent with a scrape and not being slammed against a wall.

Ms. Mazza moved to agree with the OPS's preliminary finding of "*exonerated*" as to the call handling allegation, where the complainant was arrested because she refused to abide by orders from the police to remove herself from the scene, and she continued to use profanity towards the officers as they were working to secure the area. Ms. Mazza also moved to accept the OPS's preliminary finding of "*exonerated*" as to the use of force allegation, where the complainant resisted arrest, had to be restrained, did not cooperate with the police, and received the scrape on her shoulder. Marilyn Hammond seconded the motion, and the motion carried unanimously.

CPRB No. 23-03/OPS No. C03-564 (Presented by Barbara Gaige)

Barbara Gaige summarized the complaint. Ms. Gaige stated that the incident occurred on September 3, 2003, and was filed with the Board on September 16, 2003. The complainant alleged that at approximately 12:15 a.m., she was sitting in her black GMC Yukon on Lark Street, speaking to her cousin who was standing outside of the vehicle. While they were speaking, four police units surrounded her vehicle. The complainant alleged that she was pulled from her vehicle by a female officer, her hands were placed on top of her head, she was patted down, her breasts were examined twice, and the officer reached down the back of her pants. The complainant further alleged that her legs were kicked apart and the officer searched between her legs. According to the complainant, the officers told her that they were looking for a red SUV with two women with ponytails inside.

Ms. Gaige stated that she went to the OPS, reviewed the records, and listened to the tape of the initial phone call to the APD. According to the tape, there was a woman with a handgun on Orange Street, approximately ten or fifteen feet from Lark Street. The caller on the tape identified the woman with the handgun as brown, wearing a ponytail, and standing beside a red SUV that said "Trailblazer" on the front. Ms. Gaige added that she listened to the dispatch tape which alerted officers that they were looking for a black female with a ponytail and a handgun in the vicinity of Lark and Orange Streets, standing next to a red SUV Trailblazer.

Ms. Gaige stated she reviewed the transcripts of statements made from three officers and a detective, in addition to medical records that were made available to her. Ms. Gaige stated that when the dispatch initially went out to all officers, an officer at Lark and Orange Streets responded that he did not see anything, but that he would check the area. A detective who was also in the vicinity, stated that he wanted to stop and speak with a black female who had braids pulled into a ponytail, and was leaning into a black SUV at the corner of Lark and Spruce Streets. Ms. Gaige stated that according to the OPS report, the detective stated that the female standing by the car backed away in a suspicious manner. Ms. Gaige added, however, that she could not find this statement in the transcription.

Ms. Gaige stated that the female on the sidewalk was asked to move to the front of the car. While one officer and the detective were speaking with her, a second officer approached the complainant and asked her to step outside of the vehicle. The complainant then reached into her purse with her right hand, while the officer held her left wrist. The officer instructed

the complainant not to touch her purse.

During her conversation with the OPS, the complainant alleged that while the officer was holding her left wrist, her right shoulder was injured. After the complainant had exited her vehicle, the officer placed the complainant's hands on top of her head and held them there while she checked the complainant for weapons. In her complaint, the complainant alleged that at this time, her right shoulder was injured. Ms. Gaige noted that there was a discrepancy as to when the complainant suffered the injury to her shoulder. Ms. Gaige stated that the officer who conducted the search of the complainant stated that she carefully checked the bra area, around the breast, and the waistband of the complainant's pants, because this is traditionally where women hide weapons.

Ms. Gaige stated that she reviewed the complainant's follow-up medical evaluations, including a chiropractic evaluation and treatment, an orthopedic evaluation and treatment, an MRI, and an arthrogram which indicated a three to four millimeter partial tear of the rotator cuff. Ms. Gaige noted that the age of the injury was not indicated in the reports, and that the arthrogram and MRI were done in November.

Ms. Gaige stated that the incident lasted approximately eight to ten minutes, and no arrests were made. She added that the complainant identified two witnesses to the incident in her complaint: the woman who was leaning into her car talking and her daughter. Ms. Gaige stated that although the OPS scheduled interviews with both witnesses, neither witness arrived for their scheduled meeting. Ms. Gaige added that the witnesses were uncooperative and did not reschedule another interview with the OPS, nor did they have any conversations with detectives from the OPS.

Ms. Gaige reported that the OPS listed the allegations in the complaint in three parts. The first allegation was for call handling, whether the officers were procedurally correct in stopping the complainant. The second allegation of call handling was whether the officers were procedurally correct in removing the complainant from her vehicle. Third, the complainant alleged excessive use of force. Ms. Gaige noted that with respect to both call handling allegations, the OPS made preliminary findings of "*exonerated*."

Joel Pierre-Louis, the monitor appointed to the complaint, stated that there were discrepancies with respect to the incident. The officers were looking for a red Trailblazer SUV. However, they searched the complainant

driving a black GMC Yukon SUV. The officers were also informed that they were looking for a woman with a ponytail. Neither the complainant nor the woman she was speaking with had a ponytail. The woman leaning into the complainant's vehicle had her hair in braids. Mr. Pierre-Louis stated that he was concerned because the vehicle's color and model was clearly identified to the officers. Mr. Pierre-Louis noted that according to case law, in order to invoke the "stop and frisk" procedure cited in CPLR 140.50, the circumstances must provide the police with suspicion concerning criminal activity, thus providing a the police with reasonable cause to arrest. Mr. Pierre-Louis stated that it is his opinion that due to the clear distinction of the colors and models of the vehicles, he does not believe that this would lead a reasonable police officer, under CPLR 140.50, to stop the complainant.

Mr. Pierre-Louis stated that he disagreed with the OPS's preliminary findings of "*exonerated*" as to the call handling allegations. He added that based upon the evidence, the officers stop of the complainant was unjustified, and the subsequent search of the complainant was also impermissible. Mr. Pierre-Louis commented that the authority to stop, question and detain an individual does not carry with it authority to conduct a search of the individual. He added that a search is not Constitutionally permissible unless a reasonable standard of suspicion is found. If suspicion is reasonable, the search is limited to the patting down of clothes to detect a weapon. Mr. Pierre-Louis stated that in his opinion, the search of the complainant was unjustified, impermissible, and not supported by the record.

Mr. Pierre-Louis stated that with respect to the injury the complainant alleged she suffered as a result of the incident, he did not find proof in the record that she sustained the injury due to any contact with members of the APD. He stated, therefore, that he concurred with the OPS's preliminary finding of "*not sustained*" as to the use of force allegation.

Ms. Gaige commented that the OPS conducted a very thorough investigation of this complainant, including canvassing the neighborhood looking for witnesses, and attempting to get the witnesses that the complainant had identified to meet for an interview.

Judith Mazza stated that when the officers initially approached the woman standing outside of the complainant's vehicle, she backed away from the car. The officer stated the woman's behavior was suspicious. Ms. Mazza

commented that it was her opinion that it may be a natural reaction to back away as several police units approach you. Commander Stephen Reilly stated that he did not know the exact definition of “suspicious,” but added that police officers have discretion in terms of saying what they deem to be suspicious behavior.

Ms. Gaige made a motion to find “*sustained*” as to the call handling allegation that the complainant was improperly stopped by police officers. The motion was seconded by Dr. Manuel Alguero, and the motion carried unanimously.

Ms. Gaige made a motion to find “*sustained*” as to the call handling allegation that the complainant was improperly removed from her vehicle. Ms. Mazza seconded the motion, and the motion carried unanimously.

Ms. Gaige moved to adopt the OPS’s preliminary finding of “*not sustained*” as to the use of force allegation. Dr. Alguero seconded the motion, and the motion carried unanimously.

CPRB No. 24-03/OPS No. C03-575 (Presented by Dr. Manuel Alguero)

Dr. Manuel Alguero read the complaint: “On the date of 9/12/03 I was standing outside of my friends car talking. When he flag the police over to his car to ask about something he needed to know. When they came over they scream put the bat down. My friend said theres no problem where just talking they continue to scream. One of the officers had his hand on the gun. So I dropped the bat. The officer ask me why did I have the bat. I told him I am about to bring it in the house. I was so nervous when he asked me my name I said William Smith. The one of the officers grab my arm when another officer went for his cuffs so I started walking away when they jumped on my back. I scream I am not resisting. They slammed me on the ground and while I was lying there a officer drop his knee in the side of my head. They did not read me any rights which they were suppose to. When I got downtown to Division Two they told me I had weed and they gave me a ticket for operating a vehicle with a suspended licence and I was not near the car and they did not see me driving a car so I don’t know where they got this information from and they towed the car away which is my stepfather car.”

Dr. Alguero stated that in the complaint, filed on September 18, 2003, there were two allegations. The first allegation was arrest authority and procedure, and the second allegation alleged use of force. Dr. Alguero noted that a monitor was appointed to the complaint. The complainant

was arrested and charged with operating a motor vehicle with a suspended license, however, he alleged that the officers never saw him operating the vehicle. The complainant was also charged with resisting arrest and illegal possession of marijuana.

Dr. Alguero stated that an investigation was conducted by the OPS, including: interviews with the complainant, interviews with witnesses, departmental paperwork was obtained, and interviews with officers at the scene of the incident were conducted.

Dr. Alguero stated that the OPS made preliminary findings of “*exonerated*” - where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper” as to the arrest authority and procedure allegation, and “*exonerated*” as to the use of force allegation because the “investigation shows that some amount of force was used in placing the complainant under arrest, due to the fact the complainant admitted he did not cooperate and decided that he was not going to be arrested.” Dr. Alguero noted that the OPS report stated that prior to being approached by the officers, the complainant admitted that he had just driven home from work and parked his vehicle across the street. While checking the complainant’s identification, the officers learned that his license was suspended. Dr. Alguero stated that according to the NYS Criminal Procedure Law article 140.10, police may arrest a person for a crime if there is reasonable cause to believe, whether or not the crime was committed in his presence. Dr. Alguero stated that the complainant’s arrest for unlawful possession of marijuana was a result of an inventory search of the complainant’s vehicle subsequent to his arrest.

With respect to the use of force allegation, Dr. Alguero stated that the OPS made a preliminary finding of “*exonerated.*” The OPS’s investigation reported that some amount of force was used in placing the complainant under arrest due to the fact that he admitted he did not cooperate with the officers because he did not want to be arrested.

Dr. Alguero stated that a female witness was interviewed by a detective from the OPS. The detective was unable, however, to secure the witness’ signature on the statement.

The monitor appointed to the complaint, George Kleinmeier, provided a transcript from an interview conducted between an officer and the complainant, in his report. Dr. Alguero read a portion of the interview:

Complainant: “Why you harassing me. I’m just coming from

work..”

Officer: “You just pulled up, right?”

Complainant: “Yeah, just now. I was headed in.”

Officer: “I thought you said you only had a permit, you need someone with you to drive.”

Complainant: “I was just comin from work.”

Dr. Alguero stated that he went to the OPS and reviewed the case file, including the transcripts of two interviews conducted with officers at the scene of the incident. Dr. Alguero made a motion to concur with the OPS’s preliminary finding of “*exonerated*” as to the arrest authority allegation. Paul Weafer seconded the motion, and the motion carried unanimously.

Dr. Alguero stated that with respect to the arrest procedure allegation, the complainant alleged his individual rights were violated because his Miranda Rights were not read to him at the time of his arrest. Dr. Alguero noted that on the APD’s report, the boxes indicating the complaint received his Miranda warnings were not marked as being read. He added that the OPS did not address the Miranda issue in their investigation of the complaint. Dr. Alguero stated that he recommended a finding of “*sustained*” as to the arrest procedure allegation of the complaint.

Barbara Gaige requested clarification as to Dr. Alguero’s motions on the allegations. Dr. Alguero responded that he moved to find “*exonerated*” as to the arrest authority allegation because the complainant was arrested for operating a motor vehicle with a suspended license. Ms. Gaige added that the OPS did not address the civil rights issue in their report. She stated that there are two conditions which must be met before an individual’s Miranda warnings must be given: arrest and interrogation. Ms. Gaige questioned whether the Board had enough information to make a determination as to whether or not the complainant’s Miranda warnings were read. Dr. Alguero stated that the individual was not told by the officers that he was under arrest, and that there is no one to corroborate whether or not the Miranda warnings were given to the complainant.

Mr. Kleinmeier commented that the issue of Miranda warnings had been addressed in prior complaints. He added that the boxes on the form indicating whether or not Miranda rights have been read are often blank because the booking officer reads the individual their rights and fills out the information on the computer.

Michael Whiteman questioned whether it is Department policy that

Miranda warnings are not given until the arrested individual is brought before the booking officer. Commander Stephen Reilly responded that the Miranda rights are read to the individual either by the booking officer or the officer questioning the suspect. He added that custody and interrogation are needed in order for there to be a need to issue someone their Miranda rights. Commander Reilly noted, however, that if an individual confesses of their own free will, and not during an interrogation or questioning by officers, then no Miranda warnings are needed. Mr. Whiteman commented that if an arresting officer is going to interrogate an individual, then that person should be given their Miranda warnings by the officer. However, he added that it is not clear in the complaint whether the officers were questioning the complainant before or after his arrest. Mr. Whiteman stated that the Board cannot rely on the absence of a box being checked on a form to mean that the complainant's Miranda warnings were or were not given.

Judith Mazza asked whether it is custom to read an individual their Miranda warnings when they are taken into custody, arrested on the street, or placed in a police car. Commander Reilly responded that if an officer has probable cause to believe an individual committed a crime and the officer places that individual under arrest, he cannot question that individual without reading the individual their Miranda rights. Mr. Whiteman stated that if an individual has been taken into custody and has not received their Miranda rights, the officer should not continue with questioning.

Dr. Alguero stated that as the OPS's report did not address the complainant's allegation of a violation of individual rights, he could not concur with the OPS's finding of "*exonerated*" as to the arrest procedure allegation. Dr. Alguero recommended that the Board make a finding of "*sustained*" as to this allegation.

Dr. Alguero stated that with respect to the baseball bat the complainant was holding, the officers had discretion to ascertain whether or not the bat was a weapon. He added that the officers believed the complainant's friend was being menaced. Dr. Alguero stated that neither the APD, the CPRB, nor the monitor know the identity of the individual who initially flagged down the officer. Mr. Kleinmeier stated that according to the officer's statement, upon his arrival at the scene of the incident, it appeared that the complainant was menacing the other party.

Dr. Alguero again noted that the officers did not speak with the individual who was allegedly being menaced by the complainant. It is unclear

whether that individual was in fact being menaced with the bat.

With respect to the arrest procedure allegation that the complainant's individual rights were violated, Dr. Alguero made a motion to find "*sustained*." There was no second to the motion, and the motion failed.

Ms. Gaige made a motion to find "*exonerated*" as to the arrest authority and procedure allegation as originally stated in the OPS's report. Paul Weafer seconded the motion.

Mr. Whiteman stated that he would like to know the identity of the witness in the vehicle who originally flagged down the officer. Dr. Alguero responded that the witness was not interviewed by the OPS, and his identity is not known.

Chairman Kenneth Cox stated that Ms. Gaige made a motion to find "*exonerated*" as to the arrest procedure allegation, and it was seconded by Mr. Weafer. The motion failed, with Mr. Whiteman abstaining from the vote.

Ms. Mazza made a motion to send the complaint back to the OPS for further investigation of the witness in the vehicle who initially flagged down the officer, and who the officers believed was being menaced by the complainant. Michael Whiteman seconded the motion. The motion carried in an 8-1 vote, with Dr. Alguero opposed.

Dr. Alguero stated that with respect to the use of force allegation in the complaint, a female witness stated during an interview with the OPS that she did not see the complainant resisting arrest. Dr. Alguero also stated that an officer, present at the scene of the incident, was unable to corroborate or refute the allegation of use of force because he alleged he had his back turned to the incident and was returning to his vehicle to check on his police dog. Dr. Alguero stated that it appeared there were more than two officers involved with the incident, however, the OPS only conducted interviews with two of the officers that were at the scene.

Dr. Alguero made a motion to send the use of force allegation back to the OPS for further investigation. He requested that the OPS conduct interviews with all officers that were present at the incident alleged in the complaint. Ms. Mazza seconded the motion, and the motion carried in an 8-1 vote, with Mr. Weafer opposed.

CPRB No. 26-03/OPS No. C03-590 (Presented by Eleanor Thompson)

Eleanor Thompson summarized the complaint. The incident alleged in the complaint occurred during the summer of 2003. The complainant alleged that she was outside the emergency room of the hospital waiting to get into a detoxification unit. While she was outside, the complainant became engaged in a verbal exchange with a security officer. The APD were called, and an officer arrived at the scene. The complainant stated that she assumed the officer asked her to leave the premises, she refused. The complainant was also asked to sit down by the officer several times, but she refused to comply, and was subsequently arrested. The complainant further alleged that when she refused to comply with the officers instructions to sit down, the officer threw her face first into the sidewalk. As a result of the incident, the complainant sustained injuries to her face, including road rash down the side of her face and ear, a tooth knocked loose, and a lump on the side of her nose. The complainant added that she was twisted while being restrained on a gurney to be transported to the hospital for treatment of the lacerations she received during the fall. Ms. Thompson stated that the complainant was admittedly intoxicated during the incident, and had difficulty recalling certain events. The complainant also admitted that she was drinking beer on the hospital's property, and was told by hospital security to leave the premises, but refused to comply. The complainant was handcuffed, uncooperative, and refused to listen to the police officer. Eventually, the complainant had to be restrained due to the fact that she would not comply with the officer's instructions.

Ms. Thompson stated that the complainant has filed a notice of claim against the City of Albany for the injuries she sustained during the incident. Ms. Thompson also stated that all parties were interviewed and investigated by the OPS during the investigation.

The monitor assigned to the complainant, Al Lawrence, stated that there was a video tape of the incident at the hospital. However, the tape took still photos, which he deemed to be relatively inconclusive in making a determination. He added that the tape does show that the complainant fell down a number of times when there was no one surrounding her. Mr. Lawrence noted that the complainant admitted she had been drinking and was somewhat obnoxious. He added that there is no one to substantiate the complainant's allegations.

Ms. Thompson made a motion to concur with the OPS's preliminary finding of "*unfounded* - where the review shows that the act or acts complained [of] did not occur or were misconstrued." Barbara Gaige seconded the motion, and the motion carried unanimously.

B. *Report from the Albany Police Department (APD)*

Chairman Cox stated that the Board was pleased to have Commissioner John Nielsen and Chief Robert Wolfgang in attendance. Chairman Cox stated since the Board's January 12, 2004 meeting, the members of the Board submitted to the APD a memorandum of outstanding policy requests/recommendations, participated in a training session, and held a public hearing. Chairman Cox also announced that Jennifer Cottrell is the new Corporation Counsel for the Board.

Ms. Cottrell presented the report from the Albany Police Department (APD) responding to all of the outstanding policy requests and recommendations made by the Board. Ms. Cottrell reported that two memorandums were provided to the Board. The first memorandum addressed eleven (11) requests and recommendations made by the Board to the APD in a January 12, 2004 memorandum. The second memorandum provided written responses from the APD to four items addressed in a memorandum dated January 20, 2004, from Chairman Cox to Mayor Gerald Jennings. Ms. Cottrell stated that the Board would be provided with Appendices to the two memorandums at a later time.

The Board requested that Ms. Cottrell read the memorandums for the record. The following is a list of responses provided by the APD to the Board's January 12, 2004 policy request/recommendation memorandum:

Request 1: The adoption and implementation of a policy prohibiting bias-based policing.

Response: The Albany City Police Department has responded to the Community Police Review Board's request to implement a policy prohibiting bias-based policing in its Standard Operating Procedures and did adopt and implement such policy in October of 2002. This policy supplements the basic training and annual training every officer receives regarding bias-based policing. Confidential copies are provided in Appendix "A".

Request 2: The adoption and implementation of a policy regarding police officer contact with Plaintiffs who have filed suit against the officer or the City.

Response: The Albany City Police Department has numerous policies regarding police officer interaction and communication with citizens, victims, suspects and prisoners. These policies would govern police interaction with all citizens, whether in litigation or not, depending upon the particular facts and circumstances.

Request 3: The adoption and implementation of a policy regarding police involvement in retrieving personal property in Landlord/Tenant disputes.

Response: The Albany City Police Department has responded to the Community Police Review Board's request in May of 2002 by drafting a policy regarding Landlord/Tenant disputes. Further, Albany City Police officers are provided with informational materials regarding Landlord/Tenant disputes. Confidential copies are provided in Appendix "B".

Request 4: The adoption and implementation of a firm policy regarding strip searches.

Response: The Albany City Police Department has responded to the Community Police Review Board's request by providing a copy of the current strip-search policy that has been in place since March 1998, and revised October 1998. The Albany City Police Department has made physical changes to the strip-search area to ensure privacy and safety. The physical changes include: removing plumbing from the strip-search area to prevent the destruction of possible evidence, searching prisoners in a private cell, out of the viewing area of other prisoners and ensuring that no cameras are placed within the strip-search area. Confidential copies are provided in Appendix "C".

Request 5: The adoption and implementation of a policy regarding securing and moving personal property in Booking.

Response: The Albany City Police Department has responded to the Community Review Board's request by providing a copy of the current personal property policy that has been in place since October 2002. Confidential copies are provided in Appendix "D".

Request 6: Providing a non-confidential copy of the current Albany City Police Department's Standard Operating Procedures for public viewing.

Response: To ensure the safety of citizens and police officers, certain portions of the Standard Operating Procedure have been deemed confidential and not subject to disclosure or FOIL. Requests for specific provisions of the current Albany City Police Department's Standard Operation Procedures may be made to the Albany City

Clerk under the Freedom of Information Law (FOIL). FOIL requests must be made in writing and there is a copy charge of \$.25 per page. FOIL requests can be submitted to the City Clerk at Room 202 City Hall, Albany, New York 12207.

Request 7: The revision and/or training of Albany City Police Officers regarding pat-down searches.

Response: The Albany City Police Department has responded to the Community Review Board's request by providing a copy of the current pat-down and frisk search procedures that has been in place since March 1998 and revised October 1998. In addition, a pat-down search refresher memorandum was provided to all police officers in December 2003. This refresher memorandum supplements the basic training and annual training every officer receives regarding pat-down searches. Further, the Albany Police Department provides officers with periodic legal updates regarding pat-down searches. Confidential copies are provided in Appendix "E".

Request 8: The FOIL request and report regarding the December 24, 2002 incident.

Response: The Albany City Police Department has responded to the Community Review Board's request with the oral report of Commissioner Nielsen regarding the December 24, 2002 incident. The Commissioner has responded to the Board and disclosed all information he is legally permitted to disclose. The FOIL request has been responded to by the City Clerk and the City Clerk is awaiting arrangements by Mr. Mayo's mother to pick up the FOIL documents. Further requests for information will be responded to if legally permitted.

Request 9: The review of the Albany City Police Department's policy regarding handcuffing minors during the execution of a search warrant.

Response: The Albany City Police Department has responded to the Community Review Board's request to review the current policy of handcuffing all persons during the execution of a search warrant and has determined that for safety and preservation of evidence reasons, there will be no exception to the current policy for minors.

Request 10: The request that an updated report be provided regarding Anjanette Ingram.

Response: The Albany City Police Department is in receipt of the Board's letter dated January 27, 2004 regarding Anjanette Ingram. Albany Law School's Government Law Center will schedule a meeting between Anjanette Ingram and Commissioner Nielsen in the near future.

Request 11: A response to the Community Review Board's letter dated December 18, 2003.

Response: The Albany City Police Department is in receipt of the Board's letter dated December 18, 2003 and has taken the recommendations contained therein under advisement.

The following is a list of responses provided to Chairman Cox's January 20, 2004 letter:

Request 1: Provide written responses to policy requests and recommendations memorandum dated January 12, 2004.

Response: The Albany City Police Department has provided a written response to each and every item specified in the January 12, 2004 memorandum.

Request 2: Provide data and information regarding the total number of police officers involved in complaints and the discipline imposed.

Response: The Albany City Police Department's Office of Professional Standards compiles statistical information in quarterly and annual reports. The most recent reports will be provided at the February 9, 2004 meeting.

Request 3: Request that the Government Law Center assist in the gathering of information regarding Albany Police Department's "hot pursuit" and "use of force" policies.

Response: The Albany City Police Department has responded to this request by providing the current vehicle pursuit policy which has been in place since March 1998 and revised October 1998. The City of Albany Police Department has responded to this request by providing a copy of the current use of deadly physical force policy

in place since March 1998 and revised October 1998. The City of Albany has further responded to this request by providing the use of force regarding firearms policy revised December 2003. A training seminar will be scheduled in the near future for members of the Board. Confidential copies are attached as Appendix "A".

Request 4: Request for data regarding the number of "hot pursuits" in the City of Albany and the number of times a police officer has fired a gun.

Response: The Albany City Police Department acknowledges this request and requests further clarification regarding information sought.

Judith Mazza stated that with regards to the fourth request of the January 12, 2004 memorandum, the Board has requested that a non-confidential copy of the APD's Standard Operating Procedures (SOP) with respect to all sections subject to FOIL, be placed at the Government Law Center and in the library. Ms. Cottrell responded that it is the City's opinion that requests for the SOP must be made through FOIL. Michael Whiteman added that the Board is not requesting confidential portions of the SOP be made available to the public, but would like to make non-confidential sections available to the public.

Dr. Manuel Alguero stated that with respect to the second request of the January 20, 2004 memorandum, providing data and information regarding the total number of police officers involved in complaints and the discipline imposed, the City stated that the statistics would be compiled in annual reports and would be provided to the Board. Dr. Alguero asked whether there was an anticipated date as to when these reports would be available.

Ms. Cottrell stated that with respect to the Board's requests regarding "hot pursuits," there are no policies in the SOP relating to this topic. Ms. Cottrell stated that the APD has "vehicular pursuit" policies in the SOP, and questioned whether this was what the Board was referring to. The Board agreed that they were referring to "vehicular pursuits" when making the request on the "hot pursuit" policy.

Ms. Cottrell stated that the APD also needs clarification as to the Board's policy request for the number of times officers have fired weapons. Chairman Cox responded that the Board is requesting the number of times officers have fired weapons in the street, not on a range.

Mr. Whiteman stated that with respect to the response provided by the APD to the second request of the Board's January 12, 2004 memorandum, the Board has received a number of complaints from individuals regarding harassment from

officers who are involved in litigation with. Mr. Whiteman stated that the Board would like to know if there is a policy that governs police officers who are involved in litigation with members of the community, with respect to officer behavior that might be viewed by a community member as threatening or intimidating.

Chairman Cox stated that the Board would review the memorandums provided by the APD and provide clarification to policy requests as requested, and follow-up with the responses provided by the APD if necessary. Chairman Cox thanked the APD for providing written responses to all of the Board's requests.

C. *Appointment of two new members to the Committee on Complaint Review for March 2004.*

The following Board members were appointed to serve on the Committee on Complaint Review for March 2004: Manuel Alguero, Barbara Gaige, Marilyn Hammond, Judith Mazza, and Paul Weafer.

D. *Report from the GLC*

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

Status of Complaints

It was reported that the Board has 17 active complaints, and has received two new complainants since the January 12, 2004 meeting. The Board also has four complaints which remain suspended, three from 2001 and one from 2002. It was reported that the GLC forwarded correspondence to the Corporation Counsel's Office regarding the status of the four suspended complaints, and will follow-up with Corporation Counsel on this issue. To date, the Board has closed 124 complaints, and has received a total of 145 complaints.

Policy Review/Recommendations

It was reported that a letter to Commissioner John Nielsen regarding police officer behavior and the fostering of better police-community relations was reviewed and approved by the Board at the January 12, 2004 meeting. It was reported that when all of the Board members have signed the letter, the GLC will forward the letter to the Commissioner.

Correspondence

It was reported that responses have not yet been received to letters that had been

forwarded to the Corporation Counsel. The GLC reported that they would follow-up with the Corporation Counsel regarding these letters.

Reports

It was reported that the First Quarterly Report of 2004 and the 2003 Third Annual Report are currently being prepared, and, upon completion, will be forwarded to the Board for review and approval.

Training

It was reported that Board members would be receiving notice of possible dates to participate in the ride-alongs. It was reported, per the request of the Chairman of the Board, that a date would be scheduled for several members of the Board to participate in ride-alongs on the same night.

It was also reported that a training on use of force and pursuit policies would be scheduled with Commander Paula Breen as a follow-up to the Board's January 27, 2004 training on these issues. It was reported that memorandum was provided to members of the Board for review, regarding questions for Commander Breen that were developed at the January 27, 2004 training. The GLC will be forwarding a list of possible dates for the training to the members of the Board. Each member was asked to select dates they would be available to attend the training.

E. *Report from the OPS*

Commander Stephen Reilly reported that the 2003 annual report was complete. It was reported that during 2003, the APD received 141,592 calls, and 9,340 arrests were made. It was also reported that 71 complaints were made during 2003, representing approximately .05% of the total calls for service received by the APD.

V. Public Comment

Chairman Cox opened the meeting for public comment.

Michael O'Brien, Common Council member from the twelfth ward was recognized. Mr. O'Brien stated that he disagreed with the fact that a FOIL request must be made in order to obtain non-confidential APD policies. He commented that the city of Albany is not so financially burdened that they must require individuals to pay \$.25 per page for a copy of the policy. Mr. O'Brien added that the policy should be available to the public through the library at Albany Law School, and the public library on Washington Avenue.

Dominick Calsolaro, Common Council member from the first ward was recognized. Mr. Calsolaro commented that the public should not have to make FOIL requests in order to obtain APD policies. Mr. Calsolaro also commented that with respect to gun violence, the APD should make information available. Specifically, the APD should report statistics as to shootings in Albany. He added that according to the New York Times, every time one of the 40,000 officers of the New York City Police Department fires their weapon, it is reported to the public. Mr. Calsolaro stated that the city of Albany spends more money per capita on the police department than any other city in the state of New York. Mr. Calsolaro concluded by stating that the people of the city of Albany pay taxes, and therefore have a right to know what is happening with the police department.

Aaron Mair was recognized. Mr. Mair stated that he was a member of the Arbor Hill Conservatives. He stated that the APD should be able to report on specific data, and that with technology, it should not be difficult to separate this data. Mr. Mair recommended that the APD hire individuals from the community to enter the data into a system in order to make it available to the public. He added that data can be sorted by crime, such as burglary and assault. Therefore, information could be provided regarding various classes of crimes that occur. Mr. Mair also commented that institutions such as RPI, SUNY, and Siena could assist the Department in putting information together in a meaningful way. He stated that having these statistics could help both the Board and the City do their jobs, and give residents of the city of Albany a clear picture of where the “hot spots” are.

Mr. Mair also commented that with respect to the issue of charging \$.25 per page in order to copy a policy document, charges could be less. He stated that the library only charges \$.10 per page to make copies. Mr. Mair added that making the policies available electronically could save on copying charges.

Mr. Mair stated that the incident regarding the firing of Commander Christian D’Alessandro from the APD was unjust and unfair. He added that Commander D’Alessandro has stood by the community, and is only guilty of one thing, doing his job. Mr. Mair stated that the city of Albany has special budgets and monies coming from the federal government to increase law enforcement and overtime. He stated that it is his opinion that this money should be tracked, and therefore, the justice department and the FBI needs to partake in this investigation.

Mr. Mair stated that he hopes the Board asks the right questions and calls upon national law enforcement because there are federal monies that have been misused by the police department.

Muhammad Abdule, was recognized. He stated that he was from the first ward, and that he agreed with Mr. Mair regarding the importance of police integrity. Mr. Abdule stated that often, when the police and the community interact, it is viewed as African-Americans versus the police, or the police versus African-Americans. He added that some officers

should receive special training in sensitivity, so that interactions between the police department and the community do not create “us against them” situations. Mr. Abdule made a request to the Common Council, the CPRB, and the community to stop looking at issues as black or white. He commented that these groups need to work together. Mr. Abdule concluded by stating that he supports Commander D’Alessandro, although he does not know him personally. He added that there needs to be more officers with a good mentality. Mr. Abdule stated that “the community should be working together, and color should mean nothing.”

Isla Roona was recognized. Ms. Roona stated that there should be an outside investigation of the events that are currently occurring within the Albany Police Department. Ms. Roona recommended that the investigation be conducted by someone outside of the city of Albany, because in her opinion, the District Attorney could not act impartially with respect to the situation involving Commander D’Alessandro.

Ms. Roona stated that there are federal funds which go to the Albany Police Department. She added, however, that she would like to know where those funds go and what they are used for. Ms. Roona stated that as taxpayers, the people of Albany deserve to know where the money is being spent, how it is being spent, and why it is being spent.

Charles Toohey, from the Center for Law and Justice was recognized. Mr. Toohey stated that the Board should ask about data that is available on police stops, and racial and ethnic backgrounds of the community members that are stopped. Mr. Toohey also questioned why the Department did not have the press conference regarding racial profiling as indicated.

A woman from the community who did not identify herself was recognized. The woman stated that this was the first time she has attended a CPRB meeting. The woman stated that she had made a few observations during the course of the meeting. First, she stated that at times it can be difficult to hear the members of the Board when they speak. Second, with respect to the first complaint that the Board reviewed, the Board concurred with the OPS’s preliminary finding of “*exonerated*,” but also made the comment that they believed there to be a lack of communication. The woman stated that lack of communication is a very serious issue, and questioned what would be done as a result of the Board’s determination.

The woman stated that she is a resident of Arbor Hill, and that she has seen an improvement of North Swan Street. She added, however, that she is grieved over what has happened in the Albany Police Department. She stated that she has been going to Common Council meetings for the past three months, and there will be a caucus of the Common Council held on Wednesday night. The woman concluded by saying that Commander D’Alessandro is a model of leadership in the community, and that she is outraged at the way he has been treated.

VI. Adjournment

Chairman Cox moved to adjourn the meeting at 8:09 p.m. The motion was seconded by Vice Chairman Herman Thomas, and the motion carried unanimously.

Respectfully Submitted,

Michael Whiteman
Secretary