

City of Albany
Citizens' Police Review Board
Albany Public Library, Washington Avenue (HBH Room)
March 8, 2004
6:00 p.m. - 8:00 p.m.

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

Absent: Kenneth Cox and Barbara Gaige.

I. Call to Order & Roll Call

Vice-Chairman Herman Thomas called the meeting to order at 6:22 p.m. Vice-Chairman Thomas noted that a quorum of the Board was not yet present, but that the seventh Board member would be arriving shortly. Vice-Chairman Thomas started the meeting with the reports from the Office of Professional Standards (OPS) and the Government Law Center (GLC).

II. Approval of the Agenda

The agenda was reviewed. Manuel Alguero moved to approve the agenda. Paul Weafer seconded the motion, and the motion carried unanimously.

III. Approval of February 3, 2004 Public Hearing Minutes and the February 2004 Meeting Minutes

The February 3, 2004 Public Hearing Minutes were reviewed. Michael Whiteman moved to approve the minutes. Judith Mazza seconded the motion, and the motion carried unanimously.

The February 2004 Meeting Minutes were reviewed. Mr. Whiteman moved to approve the minutes. Ms. Mazza seconded the motion. Dr. Manuel Alguero stated that with respect to page twelve of the minutes, the report of the OPS indicated that the witness who was interviewed said she saw the complainant resisting arrest. However, Dr. Alguero stated that during his presentation of the complaint, he commented that the OPS had indicated that the witness did not observe the complainant resisting arrest. Mr. Whiteman moved to approve the minutes with Dr. Alguero's recommended revisions. Ms. Mazza seconded the motion, and the motion carried unanimously.

IV. New Business

A. *New Complaints*

1. Two (2) new complaints were received since 2/9/04 meeting

Judith Mazza read the summaries of the new complaints.

CPRB No. 3-04. The complainant alleged that on Sunday, February 1, 2004 at approximately 1:15 a.m., he and his disabled brother, were attempting to enter Jillian’s Restaurant. The complainant alleged that he was denied access to the restaurant because he was wrongfully accused of being intoxicated. As the complainant stood outside the restaurant, two officers approached him with an “unprofessional attitude,” and told him to “put [his] hands up.” When the complainant asked the officers whether he was under arrest, they did not reply. The complainant alleged that his pockets were searched, as well as the waistband of his pants. While the complainant was being searched, a second officer “knocked” the complainant’s brother down. The brother fell straight back, and injured his right hand. According to the complainant, the officers left his brother lying on the ground. The complainant alleged that after the officers completed their search and determined that he and his brother were no longer a threat, the officers said “they were just doing their jobs and that [they] should be on [their] way.” A monitor was appointed.

CPRB No. 4-04. The complainant alleged that on Saturday, November 15, 2003, at 9:15 a.m., he was driving down Sheridan Avenue while attempting to find the library parking lot. As he could not find the lot, the complainant decided to turn around. The complainant, realizing that he was driving the wrong way on a one way street, alleged that he immediately pulled to the side of the road. He then noticed a police car rushing towards him with the lights flashing. According to the complainant, two officers approached his car and were hostile in their “questioning/talking” to him. The officers “forcibly asked” the complainant if this was his car and if he was intoxicated or under the influence of any drugs. The complainant responded that this was his car, and that he was not under the influence of drugs or alcohol. The complainant was then instructed to exit his vehicle, and the officers conducted a search of the complainant, including searching his pockets, backpack, and car. While searching his bag, the officers found a flyer for a film about protests in Miami. The complainant stated that the officer did not return the flyer, which he believed to be a threatening act by the officer. He also stated that the officers made a number of inappropriate comments. After the complainant’s keys were returned to him, he alleged the officer said sarcastically, “welcome to Albany!” A monitor was appointed.

2. Two (2) new complaints for review

CPRB No. 25-03/OPS No. C03-604

Vice-Chairman Herman Thomas stated that CPRB 25-03/C03-604 would be reviewed at the April 2004 Board meeting.

CPRB No. 29-03/OPS No. C03-716 (Presented by Judith Mazza)

Judith Mazza summarized the complaint. The complainant alleged that he was in his apartment, when two officers knocked on his door and entered his apartment uninvited. The complainant stated that he protested the officers entering his apartment, and requested that they show him a warrant. The officers asked the complainant for identification as proof that he lived in the apartment. The officers then asked the complainant if he knew a particular woman they were looking for. The complainant responded that he did not know the woman, and asked the officers to leave his home. The officers complied with the complainant's request and left. The complainant stated that in his opinion the officers acted unprofessionally.

Ms. Mazza stated that during the OPS's investigation, interviews were conducted with the officers, the complainant, and the building manager of the complainant's apartment complex. It was reported that the building manager initially called the officers to the apartment building because of alleged illegal activity occurring in the building. Ms. Mazza stated that there were no independent witnesses to corroborate the incident between the officers and the complainant. In their interviews with the OPS, the officers alleged that they were invited into the complainant's apartment. It was also reported that there was another individual in the complainant's apartment, while the officers were present. The officers stated that they did not ask the individual to identify herself, nor did they question her. According to the OPS's report, when the complainant requested that the officers leave his home, they complied. Ms. Mazza stated that the OPS made a preliminary finding of "*not sustained*," as there were insufficient facts to determine whether the events of the incident occurred as the complainant or officers recollected.

Ms. Mazza noted that the complainant was present, and asked if he would like to address the Board. The complainant was recognized. He stated that he has been living in his current apartment for approximately eight years, and has worked at a local nursing home for ten years. The complainant stated that the day after Thanksgiving of 2003, he was at home, when he noticed the two target officers standing in the lobby of his

building, stopping individuals as they were entering and leaving the building. The complainant stated that at approximately 5:30, he observed the two officers standing against the wall outside of his apartment. When the officers knocked, the complainant answered and asked the officers why they were knocking on his door. He alleged that Officer A then entered his apartment. The complainant stated that is aware of the law, and once the officers cross his doorstep, they need a warrant. The complainant stated that he told the officers they were not invited into his apartment, that no one in his apartment called the police, and no complaint had been filed. The complainant alleged that when he again questioned the officers as to why they were at his apartment, Officer B pushed him aside and entered the apartment. The officers asked the complainant for identification, to which he responded that he did not have to show them identification because they were in his home. The complainant showed the officers a picture of himself with Willie Nelson. The complainant alleged that he asked the officers to leave his apartment, and they complied. The complainant stated that after the officers left his apartment, he spoke with an individual at the OPS. When the complainant was interviewed by the detective at the OPS, he stated that he was very professional, and commended the detective on his high standards.

Ms. Mazza moved to adopt the OPS's preliminary finding of "***not sustained***" because of insufficient evidence to corroborate either the complainant's or the officers' version of the events as they happened.

Paul Weafer asked the complainant whether the two officers in his apartment were young, or whether they appeared to be "seasoned" officers. Mr. Weafer added that he was inquiring into this issue because there may be an issue of improper training if the officers are young. The complainant responded that he believed the officers to be approximately thirty years old.

Michael Whiteman questioned whether the complainant had a guest in his apartment when the officers entered. The complainant responded that there was a young woman in his apartment at the time of the incident. Mr. Whiteman stated that the complainant chose not to disclose the woman's identity. The complainant stated that neither of the officers asked the woman her name, although she was sitting in his apartment.

Ms. Mazza restated her motion to adopt the OPS's preliminary finding of "***not sustained***." Mr. Whiteman seconded the motion. The motion failed in a 3-4 vote.

Mr. Weafer stated that he believed this case would be appropriate for mediation. He added that it may be beneficial for both the complainant and the officers to sit down in a non-hostile environment to discuss the events. The complainant stated that he would be willing to go to mediation.

Mr. Weafer moved that the complaint be submitted to the Albany Police Department for mediation so long as the complainant is willing to attend. The complainant stated that he will attend a mediation session, but asked that it be scheduled on one of his days off from work. Marilyn Hammond seconded Mr. Weafer's motion to refer the complaint to mediation.

Manuel Alguero stated that he believed the OPS's investigation was incomplete because there was an unidentified individual who witnessed the incident. Dr. Alguero moved to refer the complaint back to the OPS for further investigation.

Commander Stephen Reilly stated that the complainant refused to disclose the identity of the woman who was in his apartment when the officers entered. He added that it is the complainant's right to refuse to provide the OPS with that information. The complainant stated that he was not willing to provide the woman's name to the OPS. Commander Reilly stated that if a witness is unwilling to speak with them, there is little else they can do. He added that the OPS interviewed both the officers involved with the incident and the complainant. The OPS also attempted to identify the witness who observed the incident.

Dr. Alguero stated that it was his opinion that the OPS's investigation was incomplete, and should be sent back for further investigation. Mr. Weafer stated that at the time of the incident, it was not appropriate for the officers to ask the woman's name. Mr. Weafer added that the complainant knew who was in his house with him, and therefore the inquiries as to the identity of the woman should be addressed to him, rather than the officers or the OPS. Ms. Mazza added that the OPS did a complete investigation and there is nothing further they can do.

Chief Robert Wolfgang stated that there was no legitimate reason for the officers to ask the woman's name while they were in the complainant's apartment. Mr. Weafer stated that he recommended the complaint for mediation because the complainant has taken the time to address the Board regarding his allegation that officers entered his home without his permission.

Mr. Weafer moved to refer the complaint to mediation. Ms. Hammond seconded the motion. The motion carried in a 6-1 vote with Dr. Alguero opposed.

B. *Appointment of two new members to the Committee on Complaint Review for April 2004.*

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

C. *Reports*

The 2004 First Quarterly Report was reviewed. Michael Whiteman moved to approve the Report. The motion was seconded by Judith Mazza, and carried unanimously.

D. *Report from the GLC*

Government Law Center Staff Attorney Renee Hebert gave the report.

Status of Complaints

It was reported that the Board has 15 active complaints, and received two new complainants since the February 9, 2004 meeting. The Board also has four complaints which remain suspended, three from 2001 and one from 2002. To date, the Board has closed 128 complaints, and has received a total of 147 complaints.

Policy Review/Recommendations

It was reported that a mediation session was held on February 19, 2004 between Commissioner Nielsen and complainant CPRB No. 3-02. The mediation was scheduled so that the Commissioner could discuss concerns raised by the complainant regarding an officer's behavior towards her son. It was reported that the mediation was successful and that all of the complainant's concerns were heard and addressed by the Commissioner.

It was reported that the GLC received a non-confidential copy of the Albany Police Department's Standard Operating Procedures (SOP). The SOP will be held at the GLC at Albany Law School. Anyone interested in reviewing the SOP may contact the GLC at (518) 445-2329 to schedule an appointment.

Reports

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

Training

It was reported that the follow-up training to the Board's January 27, 2004 training on the Albany Police Department's use of force and pursuit policies and procedures has been scheduled for March 20, 2004. The session will be conducted by Assistant Chief Paula Breen.

It was reported that brochures were provided to the members of the CPRB regarding the Albany Citizen Police Academy. The trainings are being held on Tuesday nights from 6:00 pm until 9:00 pm. The training will continue for thirteen weeks.

It was reported that ride-alongs for Board members has been tentatively scheduled for Wednesday, March 31, 2004 and Thursday, April 15, 2004.

Outreach

It was reported that a member of the Action and Program Commission of Churches contacted the Board regarding having members speak at its April 1, 2004 meeting. It was requested that the members speak to the role and function of the Board, and how the Board has been progressing since its establishment in 2001.

E. *Report from the OPS*

Paul Weafer stated that for the years 2001-2003, the APD has made 27,655 arrests, and has received over 426,000 calls for service. Mr. Weafer added that if the number of complaints filed with the Board is divided by the number of arrests made for the years 2001-2003, the ration of complaints filed to arrests made is only five-tenths of one percent.

V. **Public Comment**

Vice-Chairman Herman Thomas opened the meeting for public comment.

Dr. Alice Green was recognized. Dr. Green stated that Chief Robert Wolfgang announced that he is retiring from the Albany Police Department, and that she is disappointed that he will be leaving. She added, however, that she is concerned that

Chief Wolfgang was being used as a scapegoat for recent problems in the Albany Police Department. Dr. Green stated that throughout the years, she has found him to be very professional, decent, and honorable person. She added that the public needs to know that Chief Wolfgang is not being used as the scapegoat, and the Department is not using his retirement as the answer to the recent problems that have occurred within the police department.

Dr. Green asked the Board to comment on the status of the complaint she filed regarding the shooting of David Scaringe. She stated that the complaint was filed over two months ago, and there has been no communication as to how her complaint is progressing. Dr. Green added that at the time she filed her complaint, she made a request to the Mayor and the Commissioner, not discontinue the progress of the Board in reviewing her complaint, although she recognizes they have the authority to suspend the complaint from review. Dr. Green stated that the community does not want to wait until a civil lawsuit reaches its conclusion for the Board to review her complaint. She stated that she would like to know whether the actions of the officers involved in the Scaringe incident acted within the scope of the policies and procedures of the Department, particularly the policies regarding use of force and hot pursuits.

Dr. Green questioned whether the Board would be issuing the minutes from the Board's February 2004 Public Hearing.

With respect to the issues of the Albany Police Department's use of force, racial profiling, and strip search policies, Dr. Green questioned why these policies were labeled confidential. She stated that there was never any real discussion about the policies, and then asked the Board what they intended to do with respect to reviewing the Department's policies on use of force and racial profiling.

Dr. Green commented that with respect to the Board's subpoena power, there have been a number of recommendations. She added that there have also been comments and recommendations with respect to budgetary issues and staffing issues for the Board. Dr. Green asked the Board whether they would be making changes to Board policies and/or making recommendations to the Albany City Common Council. Dr. Green asked whether the public would be able to comment or participate in making the recommended changes.

Melanie Trimble from the New York Civil Liberties Union (NYCLU) was recognized. Ms. Trimble stated that NYCLU participated in the establishment of the Board, and she is proud that the Board has remained in existence, especially now, when the City of Albany needs the Board's help. She added that the NYCLU supported the Center for Law and Justice in filing their complaint with the Board regarding the Scaringe shooting. Ms. Trimble encouraged the Board not to wait until a civil suit has been settled before taking action, because the suit could take years to be resolved.

Ms. Trimble encouraged the Board to improve their investigatory power, and asked the Common Council to give the Board subpoena power, and address Board budget and funding issues. Ms. Trimble noted that there are problems associated with the Board. She stated that at tonight's meeting, a credible complainant was present and stated his version of the incident. However, Ms. Trimble stated that the OPS took the side of the officers and found their version of events to be more credible. She added that the Board needs to conduct an independent investigation to determine whether the officer or the complainant is telling the truth.

Darlene, a member of the community, was recognized. Darlene stated that there is a foundational problem with the Albany Police Department. She stated that according to the New York State Constitution, all New York State officers are supposed to take an oath to the state and federal Constitution. The Public Officers Law, Section 10, states that all officers should take an oath. However, Darlene stated that according to information dated July 12, 2002, Chief Robert Wolfgang never took an oath. She added that according to an article published in the Times Union, a significant number of judges have not taken their oaths. Darlene concluded by stating that people will not be accountable for their actions until you hold them to be. She stated that there is no accountability for individuals until they have taken an oath to the Constitution.

Vice-Chairman Thomas stated that the Board would consider all of the questions raised by Dr. Green and would address them at a later date.

VI. Adjournment

Vice-Chairman Herman Thomas adjourned the meeting at 7:10 p.m.

Respectfully Submitted,

Michael Whiteman
Secretary