

**City of Albany
Citizens' Police Review Board
Albany Law School
Dean Alexander Moot Courtroom (Room 421)
July 26, 2004
6:00 p.m. - 8:00 p.m.**

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

Absent: Eleanor Thompson

I. Call to Order & Roll Call

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

II. Approval of the Agenda

The agenda was reviewed. Chairman Cox made a motion to approve the agenda. Barbara Gaige seconded the motion. The motion carried unanimously.

III. Approval of May 24, 2004 Meeting Minutes

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

IV. Old Business

A. *Further Investigation*

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

Manuel Alguero stated that this was a case that the Board had already presented and reviewed. He commented that he went to the Office of Professional Standards (OPS) and read the record. He noted that the case involved an interaction with officers where the complainant was arrested and complained of excessive use of force and unlawful arrest. The OPS recommended that the investigation be closed as follows: 1) arrest authority and procedures - "exonerated – where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper," and 2) use of force - "exonerated – where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper."

Dr. Alguero offered the following summary of the complaint. Initially, the officers were called out of service when they were flagged down by a party. The complainant gave the

officers a false name and he was charged with aggravated unlicensed operation of a motor vehicle. The OPS's investigation concluded that the officers' actions were both lawful and proper because the complainant said he had just driven his vehicle and he admitted saying that during his interview and statement. The officers learned that that the complainant's license was suspended, and the complainant said he knew of the suspension.

As a result of the questions raised during the presentation of the case and the review of the record, a letter was sent to the OPS. A response was given addressed to the Board's Chairman from the OPS. The letter was read. Dr. Alguero noted the following questions as posed by the Board: 1) "Who was the individual in the vehicle that initially flagged down the officer(s) to the scene of the incident, and 'appeared to be menaced, by the complainant with a bat?' Why was this individual never identified and interviewed by either the APD or the OPS?" and 2) Why were only two officers at the scene of the incident interviewed? Why weren't interviews conducted by the OPS with the other officers who were present?"

The following responses were read by Dr. Alguero. With respect to the first question, the OPS submitted the following response:

The officers on the scene did in fact speak to the subject regarding him possibly being menaced and learned that he was not in fact being menaced as they assumed to have been occurring. The officer on the scene recalled having arrested the subject in the past, however, the officer did not recall the subject's name nor did the officer take the subject's name. OPS made several attempts to learn the information of the subject from the complainant, [], who stated it was a friend of his, however he refused to come forward with the information pertaining to the person's name and contact information. This information was included in the OPS confidential report and was accessible to the board member who reviewed the investigation.

With respect to the second question, the OPS submitted the following response:

The target officer was interviewed, the other officers on the scene correspondence was received from them. When the complainant was interviewed he admitted in his own statement that he resisted his lawful arrested and attempted to flee the scene and sustained no injuries to support excessive force by his own admission.

Dr. Alguero also read the conclusion of the monitor, who noted that he did not find fault with the investigation conducted by the OPS.

Based on the responses given by the OPS, Dr. Alguero commented that he still remained unclear as to why the incident happened.

Chairman Cox questioned whether or not Dr. Alguero was still unclear given the monitor's comments. Dr. Alguero responded that he was.

Judith Mazza noted that the complainant would not identify the witness. Barbara Gaige added that it is very common for officers to give written instead of verbal statements.

Dr. Alguero commented that there was no evidence that the Miranda rights were issued and there was a witness that said the complainant wasn't resisting arrest. Ms. Gaige, Ms. Mazza, and Marilyn Hammond clarified that the complainant admitted in his statement that he resisted arrest. Dr. Alguero disagreed, and reported that the witness stated the complainant did not resist arrest.

Dr. Alguero noted his continued concern with respect to several issues related to the complaint. He commented that the complainant claimed his Miranda rights weren't given. He reported that the officers were presumably flagged down because the complainant had a bat, but it was determined that there was no one being menaced.

Chairman Cox asked Dr. Alguero what he would like to see as an outcome for this complaint. Dr. Alguero replied that he agreed with the finding of the OPS as to arrest authority, but could not recommend a finding of "exonerated" as to the Miranda/violation of individual rights issue. He added that he would recommend "ineffective policy or training."

Detective Sergeant Eric Cook explained that Miranda rights are only required to be read when the person is in custody and is being questioned. Det. Sgt. Cook noted that the complainant was not being questioned because the officer was an eyewitness to the events and the complainant was arrested based upon the officer's direct observations.

Dr. Alguero stated that when the complainant was first approached, he was asked to drop the bat and did drop the bat. However, he was arrested for menacing when he was not menacing. Dr. Alguero questioned why further action was needed after the complainant complied.

Ms. Gaige responded that this was one of those incidents that escalated. She explained that while the complainant did put the bat down, he gave a false name. She further explained that the complainant admitted to driving the car and, thus, came the unlicensed operation. None of these events were related to the bat or the menacing. According to Ms. Gaige, Miranda requires that the complainant be in custody and be interrogated to apply. In this case, the officers never questioned the complainant. Moreover, Ms. Gaige added that the complainant was not arrested until after the officers learned of his suspended license.

Dr. Alguero stated that the complainant was told he was being arrested and he proceeded to walk away. He added, however, that the complainant was not engaging in any belligerent acts, so he questioned why the officers needed to escalate the situation to the point where the officers used force. Ms. Gaige commented that the officers used the force necessary to stop him from walking away.

Paul Weafer asked Dr. Alguero to make a recommendation so that it may be put to a vote.

Dr. Alguero commented that he did not agree with the OPS's finding of exonerated, and moved to return the complaint to the OPS for further investigation of the Miranda issue and the use of force issue.

Michael Whiteman commented that it was not clear in his memory as to what questions were asked of the OPS. Dr. Alguero responded that the complaint was returned to the OPS for further investigation of the Miranda issue and the use of force issue.

Based upon a review of the Board's minutes from the February 9, 2004 meeting, Government Law Center (GLC) staff reported that the complaint was returned to the OPS for further investigation to allow an opportunity for the OPS to identify and interview the witness who was allegedly being menaced by the complainant and to explain why other officers at the scene were not questioned.

Dr. Alguero commented that the Miranda rights issue should have been raised.

GLC staff responded that a vote taken to return the Miranda rights issue to the OPS for further investigation had failed. The questions presented to the OPS for further investigation were those voted on and approved by the Board.

Paul Weafer noted that there was no second to Dr. Alguero's motion, and moved to accept the OPS's findings of "exonerated" as to the two unconcluded matters. Barbara Gaige seconded the motion. The motion carried 7-1, with Dr. Alguero opposed.

V. New Business

A. *New Complaints*

1. Five (5) new complaints received since 5/24/04 meeting

Barbara Gaige reported that five (5) new complaints had been received by the Board since its May meeting. Ms. Gaige read a summary of each complaint.

CPRB No. 11-04

The complainant alleged that he called a female friend and asked for a ride. When the complainant got in his friend's car, he was holding her 18-month-old son on his lap. The friend stopped the vehicle in a small lot between a school and a diner on Central Avenue, and an officer pulled behind the car. The complainant alleged that when his friend exited the vehicle, he remained inside the car, holding her son. The officer approached the complainant and demanded that he put his phone down. The officer asked the complainant his name and how he knew the driver of the vehicle. The complainant responded to the officer calmly. The officer

then instructed the complainant to give the child to his mother, and ordered the complainant out of the car. The officer proceeded to search the complainant, including his pockets and mouth. The officer brought the complainant to the back of his friend's car and proceeded to search the vehicle. The officers told the complainant that he was stopped because an individual called the police and reported his car stolen and his wife missing. The officer returned from searching the car holding a bag of marijuana. The complainant was taken to the police station where he was stripped searched, and narcotics were found. The complainant alleged that his Constitutional rights were violated. *A monitor was appointed.*

CPRB No. 12-04

The complainant alleged that on April 4, 2004, she and her two young children were in an automobile accident. The complainant alleged that she "called the police the minute the accident occurred and begged the driver to wait" for the police to arrive. The other driver refused and left the scene of the accident. The complainant wrote down the driver's license plate number, and provided it to the police when they arrived. The complainant was told by the officer that the other driver would be ticketed for leaving the scene of an accident. The complainant alleged that on April 13, 2004, she picked up a copy of the police report and "was surprised to read [that] the other driver had not been ticketed." *A monitor was appointed.*

CPRB No. 13-04

On May 7, 2004, the complainant alleged that while waiting at a red light on Central Avenue, the complainant observed a police officer sitting in his police car heading north on Manning with his "revolving lights" on. The complainant attempted to make a right turn, but as he approached the police car, the officer jumped out of his vehicle, ordered the complainant to back up, and yelled at the complainant, using profane language. The officer continued to yell at the complainant, using profane language, until the complainant complied with the officer's orders. *A monitor was NOT appointed.*

CPRB No. 14-04

The complainant alleged that he and a friend were pulled out of their car by officers "with guns out," were put on the ground and searched, and were placed in an unmarked cruiser. According to the complainant, he asked the officers three times for arrest warrants, but the police officers were unresponsive. After the complainant and his friend were taken to the precinct, the complainant claimed that a third party who was in the car at the time of the incident, but who was not taken out of the car by officers, observed officers "kick in the door [to an apartment] without a search warrant and search and seize what was inside." Although the complainant claimed that it was not his apartment, he alleged that "many of his personal belongings [inside of the apartment] were stolen," including: a watch valued at \$ 4,000; earrings valued at \$ 1,000; a cross necklace

valued at \$ 500; a ring valued at \$ 500; cash in the amount of \$ 1,000; a white fur coat; cameras, a fax machine-printer; and two color televisions. *A monitor was appointed.*

CPRB No. 15-04

The complainant alleged that an officer flashed lights inside of her window, rang her doorbell, and told her that he had received a 911 call. The complainant claimed that the officer asked her if she was holding a hostage. According to the complainant, she replied “no,” and told the officer that her phone was broken and that she had never made any calls. The complainant alleged the officer threatened to put her in jail because she told him to get a warrant. *A monitor was NOT appointed.*

2. Two(2) new complaints for review

CPRB No. 28-03/OPS No. C03-715 (Presented by Paul Weafer)

Mr. Weafer summarized the complaint. He noted that the monitor appointed to the complaint was present at the meeting.

The incident happened on the morning of November 28, 2003 at 3:30 a.m. in the morning. The complainant stopped to get pizza and then proceeded to drive North in the direction of Washington Avenue. The officer followed and had dropped back some distance behind him. When the complainant got to Orange Street, he took a left turn and the police car continued to follow him. The complainant made a right hand turn onto Henry Johnson Boulevard. He turned onto Lexington Avenue where he parked, got out of his car, and locked his doors. The patrol car pulled in behind him with its lights on. The complainant stated that two other patrol cars arrived; with a total of four officers. The complainant was given a ticket for imprudent speed because it was alleged that the officer had to accelerate to 50 mph before he could catch up to the complainant.

The complainant’s primary objection is that the officer went into his car without permission. The investigation disclosed that the officer did this because the officer found that the complainant’s license was suspended when he ran the license plate. The complainant alleged that he had a notification that the suspension had been lifted, which was in his glove department. The complainant made an effort to try to get into the car and said there were some harsh words exchanged. The officers claimed that they did not know what was inside the car, but did notice a small baseball bat in the grabbing area. One of the officers went into the glove compartment to locate the Department of Motor Vehicles notice. While in the car, the officer noticed a bag commonly used to package marijuana.

According to the monitor, Al Lawrence, the only ticket given to the complainant was a ticket for speeding. According to Mr. Lawrence,

whether or not the complainant was speeding is a question of fact for the court to decide. Mr. Lawrence added that the complainant took issue with the search of his vehicle, which he claimed was unlawful.

The OPS's made a finding of "exonerated" as to the issuance of the ticket. The OPS did find that the baseball bat should not have been seized and made a finding of "sustained" as to that allegation.

Mr. Lawrence suggested that a better practice would have been for the officer to seek permission to search the complainant's car. Based upon his knowledge of Constitutional Law, Mr. Lawrence explained that the officer did not have a right to go into the complainant's car to search the grabbing area because the complainant was already outside of the car. He noted, however, that no harm was done to the complainant because the officer did have the right to impound the car and arrest him.

When asked by Mr. Weafer whether or not an officer should seek permission to search a vehicle, Police Chief James Turley responded that his practice is to ask permission. Barbara Gaige commented that the officers should have explained what they were doing to the complainant.

Chief Turley noted that the officers gave the complainant a break and did do him a favor by not arresting him. The Chief added, however, that the complainant was entitled to get his bat back.

Mr. Weafer moved to accept the findings of the OPS. Marilyn Hammond seconded the motion. The motion carried unanimously.

CPRB No. 4-04/OPS No. C04-72 (Presented by Michael Whitemen)

Mr. Whiteman summarized the complaint. The complainant alleged that he was stopped, his person and car were searched, and inappropriate remarks were made to him by a police officer during a traffic stop. The complainant was stopped because he was going the wrong way up Sheridan Avenue, a one-way street. According to the investigation, the initial stop was justified.

The OPS concluded its investigation with a preliminary finding of "not sustained" as to the stop, search, and inappropriate remarks because there was no evidence one way or the other to support the allegations, other than the statements of the complainant and the police officer.

The officer's story was that the complainant was giving peculiar answers and he seemed glazed, and may have been under the influence of either drugs or alcohol. The remarks that were allegedly inappropriate were admitted by the officer, but his view of the meaning of the remarks was

different. At one point, the complainant said the police officer made a sarcastic remark, which the officer admits to doing. The officer explained that he was impatient because he had asked for the complainant's information several times, but the complainant badgered the officer about why the officer needed the complainant's information. After making the request three or four times, the officer told the complainant that he needed the information because he wanted to send him a Christmas card. The reason the officer had requested the information was so that he could fill out a contact card.

The officer denied making a Phish concert joke as the complainant alleged. The officer admitted making the comment, "Welcome to Albany," and stated that he had learned that the complainant had recently moved to the area. The complainant also alleged that he was asked whether he was a supporter of Al Qaeda because the officer found a pamphlet about a demonstration in San Francisco. The officer had recollection of making such a comment.

There is a strong inference that the complainant was unduly sensitive. There were also two different stories about what was said and what was meant.

The complainant claimed his person was searched for weapons, but the officer stated that the complainant was not searched; he was patted down. The complainant alleged the officer searched his car, however, the officer stated that he just looked around the seat. No tickets were issued. The complainant was ultimately sent on his way.

Mr. Whiteman moved to agree with the OPS's finding of "not sustained" with respect to the stop, search, and insulting comments. Judith Mazza seconded the motion.

Manuel Alguero commented that there seems to be a pattern of complaints without witnesses, and where the situation seems to be one of a he said, she said. He noted that the complainants generally do not deny the wrongdoing that they are accused of. He added that he believes most complaints are filed because the individual complainants want to be treated fairly and with respect.

Mr. Whiteman agreed, but noted that this complaint doesn't fit well with some of the other complaints presented at previous meetings. Mr. Whiteman reported that there is no evidence, other than the complainant's interpretation, that the officer did anything wrong. The complainant was plainly going the wrong way and seemed confused. According to Mr. Whiteman, this is a case that would have been perfect for mediation.

However, Mr. Whiteman explained that the procedure for mediation as outlined in the statute allows the Board to recommend mediation at a point in the process (after the receipt of the OPS's preliminary report) where the officer is unwilling to participate.

Ms. Mazza agreed that this is not one of the more blatant complaints. She added that when an officer reaches the point of using sarcasm, then the officer's comments are going to be perceived in a certain way, especially when a person feels threatened or vulnerable. She noted that this is a matter of training. She stated that she would agree with Mr. Whiteman's motion to accept the OPS's findings with respect to this complaint. She commented, however, that officers should be cautious not to be sarcastic or make inappropriate remarks that could be misconstrued, which reflects poorly on the officers and the Department.

Paul Weafer asked Chief Turley and Council 82 President Officer James Teller how the Department stresses to young recruits that they must retain their civility at all times. Officer Teller responded that the Union stresses civility and professionalism through training.

A vote was taken on Mr. Whiteman's motion. The motion carried unanimously.

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

The following Board members were appointed to the Committee on Complaint Review for August 2004: Manuel Alguero, Marilyn Hammond, Eleanor Thompson, Paul Weafer, and Michael Whiteman.

After a proposal to change the Board's August meeting date and a brief discussion, the Board decided to keep its meeting on the second Monday of the month, August 9th.

C. *Policy Review/Recommendations*

Chairman Cox stated that he wanted to make several recommendations to the Board for discussion. First, he requested the Common Council move to select a candidate to replace him as he has resigned his seat from the Board effective in October. He noted that Manuel Alguero had also indicated that he will no longer be serving on the Board beyond October, and therefore, the City would need to select a candidate to fill his seat. Chairman Cox commented that a third, and possibly a fourth, member of the Board may also be resigning in October. He encouraged the City to take the necessary steps to select replacement members.

Second, the Chairman suggested that the Board hold a summit, in which the Mayor, the Common Council, the Police Department, the Union, and the Board would be invited to participate. Chairman Cox explained that the summit would provide an opportunity to look at how far the Board has come and to look at improvement opportunities, including opportunities for changes to the legislation. He recommended that the summit be held in a place open to the public (e.g., a university setting – the University at Albany or St. Rose).

Paul Weafer agreed with the Chairman's recommendations. He added that it is time to look at the effectiveness of the Board, and noted that mediation should be part of the discussion.

There was discussion of the high quorum requirement. Chairman Cox commented that the high requirement has been difficult for the Board to meet, given work and summer schedules and serious personal issues that members have dealt with in recent months. He stated that he does not want the public to feel as though the Board is taking the process for granted.

Marilyn Hammond commented that that the place of the forum is important and that the quorum requirement needs to be addressed.

Judith Mazza commented that the quorum issue is an operational issue that can be addressed outside of the summit. She encouraged the Board to bring this issue before the Common Council as soon as possible, recommending that the requirement be reduced from 7 to 5.

Paul Weafer reported that he, Vice-Chairman Thomas, and Barbara Gaige met with the Mayor on May 24th to discuss the Board's recommendations and proposals for changes to the legislation. Mr. Weafer noted that the Mayor was receptive to the recommendations made. He added, however, that he had not had an opportunity to draft his notes from the meeting.

Mr. Weafer also commented that if the Board has members leaving, the Board needs to have its new members appointed within the next two or three weeks. Otherwise, these members are not going to be ready (as voting members) for the November meeting.

He then moved to accept Chairman Cox's recommendations, urging the Common Council to reduce the quorum requirement from 7 to 5 and the City and Council to use all due expedition to appoint new members to the Board. It was decided that new member appointments should be made by September 1st. Chairman Cox agreed to poll the members of the Board with respect to those members staying and those members leaving.

Barbara Gaige noted that the appointees need to start civilian police academy in the fall, although completion of the academy is not required to become a voting

member under the law. GLC staff reported that the only requirement to become a voting member is completion of the Board's orientation program, which is facilitated by the Center.

Mr. Weafer renewed his motion, and directed that letters be drafted and sent to the Mayor and to the Common Council requesting that appointments be made and urging the Common Council to lower the quorum requirement. Marilyn Hammond seconded the motion. The motion carried unanimously.

D. *Report from the GLC*

GLC Staff Attorney Justina Cintrón Perino gave the report.

It was reported that as of the date of the meeting, there were 20 active complaints before the Board for review, three complaints that were referred to mediation, five complaints that remain suspended, and 132 complaints that had been closed. It was reported that 157 complaints had been filed to date.

It was reported that Ms. Cintrón Perino had recently resumed her work with the Board following her maternity leave, and was in the process of updating herself on Board business that had taken place in her absence.

It was reported that the GLC was expected to complete the Board's second and third quarterly reports in advance of the Board's next meeting.

The GLC agreed to draft the requested correspondence to the Mayor and the Common Council, and would forward the same to the Board for its approval.

Assistant Corporation Counsel Patrick Jordan was introduced. It was reported that Mr. Jordan had been assigned to serve as the Board's new counsel. It was also reported that Mr. Jordan had already met with staff of the GLC regarding his new role as counsel.

Chairman Cox and Vice-Chairman Thomas welcomed Ms. Cintrón Perino back and made a brief presentation.

E. *Report from OPS*

Commander Steven Krokoff gave the report.

Commander Krokoff summarized the statistics from the OPS's second quarter report. He reported that 9 civilian complaints were received and investigated; and there were a total of 36,324 calls for service, which resulted in 3,583 arrests not including juvenile arrest. The complaint rate for the quarter was 0.024%.

Chief Turley was recognized, and commented on several items raised during the meeting. With respect to the complaint presented by Michael Whiteman, Chief Turley offered to speak with the officer to express concerns regarding the officer's professionalism as well as retrain the officer. He noted that the Department tries to teach its newer officers to be business like and to remain professional.

With respect to the concerns raised by Manuel Alguero, Chief Turley commented that Dr. Alguero's message was well put and that the administration of the Department understands his concerns. Chief Turley added that the Department is working on the issues raised, and while complaints represent a small percentage, 0% would be better.

In the area of policy review and recommendations, the Chief suggested forming a subcommittee of practitioners, which could include: Officer James Teller, Assistant Police Chief Paula Breen, Board members, members of the OPS, members of the NYCLU and other community groups, to address issues or concerns with police department policies. He added that the Department would like to put together such a working group and the Board may wish to be part of that group. Chief Turley said that with respect to some complaint investigations, this group could help.

Judith Mazza stated that she would be interested in being part of this group.

Barbara Gaige commented that when the Board refers to policy and regulation changes, the Board has to be very specific and note what policy or regulation changes it is referring to; those of the Board or those of the Department. Paul Weafer noted that during the meeting, the Board was referring to policies and legislation of the Board. Mr. Weafer added the only Department policy issue being considered by the Board that is outstanding is the hot pursuit policy.

VI. Public Comment

The floor was opened for public comment. No comment was offered.

VII. Adjournment

The meeting was adjourned at 7:47 p.m.

Respectfully Submitted,

Michael Whiteman