

**City of Albany  
Citizens' Police Review Board  
Albany Public Library  
(Large Auditorium – formerly the HBH Room)  
September 13, 2004  
6:00 p.m. - 8:00 p.m.**

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

**Absent:** Paul Weafer

**I. Call to Order and Roll Call**

Chairman Kenneth Cox called the meeting to order at 6:20 p.m.

**II. Approval of the Agenda**

The agenda was reviewed. Chairman Cox moved to amend the agenda to include nominations for Board officer positions, and to table review of Complaint No. 8-04 until the Board's October meeting. Barbara Gaige seconded the motion. The motion carried unanimously.

**III. Approval of the August 2004 Meeting Minutes**

The August meeting minutes were reviewed. Chairman Cox moved to approve the minutes. Manuel Alguero seconded the motion. The motion carried unanimously.

**IV. New Business**

A. *New Complaints*

1. New complaints received since the August 2004 Meeting.

Barbara Gaige reported that three (3) new complaints had been received by the Board since its August meeting. Ms. Gaige read a summary of each complaint.

**CPRB No. 21-04**      The complainant alleges he worked as a confidential informant for the Albany Police Department. He claims the detectives told him that he was done with uptown Albany and asked if he knew any dealers downtown. The complainant alleges he made a buy from a dealer downtown, and was arrested later that same day and charged with drug possession. The complainant claims he was placed in the same cell as the dealer that he bought from, and alleges that the detectives told the dealer that the complainant was their informant. Following his release from jail, the complainant

alleges he and his family were threatened, and claims that he was beaten up on more than one occasion and forced to relocate for his own safety and the safety of his family. According to the complainant, he was told by detectives that they would take care of the pending charges against him, but did not. The complainant further alleges that he was told by detectives that if he didn't cooperate, the DA would "hammer" him on the charges against him. *A monitor was appointed.*

**CPRB No. 22-04**

The complainant claims she was involved in a motor vehicle accident. She alleges the officer taking the report never asked her what happened and was not concerned about those injured, including the complainant's passenger. The complainant claims she was not given a chance to speak on her own behalf about what happened concerning the accident, and that the officer offered no solution when she tried to speak with him/her about amending the report to reflect both sides. *A monitor was NOT appointed.*

**CPRB No. 23-04**

The complainant alleges she is a victim of identity theft. She claims that she has been trying to obtain help from the Albany Police Department, but that the Department has either directed her elsewhere and/or has refused to help her despite her repeated requests. She further claims that the person who has stolen her identity, her mother, is a confidential informant for the Department.

2. New complaints for review

**CPRB No. 11-04/OPS No. C04-307** (Presented by Barbara Gaige)

Ms. Gaige summarized the complaint.

The complainant alleged he was sitting in a parked vehicle owned and operated by a female friend. The friend exited the vehicle to speak with another friend at the Austin Beauty School. An officer pulled up and allegedly began to question the complainant about how he knew the operator of the vehicle. The complainant stated that he was then removed from the vehicle and frisked. Other officers arrived on the scene, and as one officer began to explain to the complainant the reason for the stop, another officer recovered a bag of marijuana from the passenger side of the vehicle. The complainant was placed in handcuffs and stated that he was on parole and "couldn't go down" for possessing marijuana. The officer began to conduct a pat down search of the complainant, which the complainant stated that he resisted. Upon arrival at booking, the complainant was then searched, and narcotics were found. The complainant stated that he did possess the narcotics, but that he "didn't get a fair shake," and that his constitutional rights were violated.

Ms. Gaige stated that the stop was based on a 911 call from a man who reported that his wife was missing and gave the dispatcher a description of a car. Ms. Gaige reviewed the arrest report and the Office of Professional Standards (OPS) detective's notes. Ms. Gaige stated that she also reviewed notes of a conversation with an assistant district attorney.

The car that the complainant was in was similar to the one that had been reported missing by the man on the phone. The officers did a showing at the scene, and brought the man down to identify the car and his missing wife. He stated that the car wasn't the car and the woman wasn't his wife. At that point, they had already searched the car. The conversation with the assistant district attorney revealed that the complainant had waived his right to a suppression hearing and trial, and plead guilty to a class C felony. He had one gram of rock cocaine in his shoe when he was searched at the station in addition to the bag of marijuana that was found on the passenger side of the car. When the officers approached the car, they saw the complainant drop something over the back seat, and that was the reason for the search.

The OPS closed the investigation as "*exonerated*" for three primary reasons. First, although the showing of the caller revealed that the woman wasn't his missing wife, the stop, questioning, and discovery of marijuana was reasonable and proper. Second, the search of the complainant at the South Station and the seizure of a gram of crack cocaine on the complainant's person was done in accordance with the policy and procedures of the Albany Police Department and in accordance with the Criminal Procedure Law. Third, the complainant stated that his life and his family's well-being were at stake, but he waived his right to a suppression hearing and trial, which would have been the place to address the complaint.

Ms. Gaige recognized Richard Lenihan, the monitor appointed to the complaint, and asked if he wanted to add anything. Mr. Lenihan stated that Ms. Gaige adequately summed up the complaint, and stated that the deprivation of the complainant's due process rights should have been addressed at trial, but the complainant waived his right to a trial.

Ms. Gaige then moved to accept the finding of the OPS as "*exonerated*." Vice-Chairman Herman Thomas seconded the motion. The motion carried unanimously.

**CPRB No. 13-04/OPS No. C-04-321** (Presented by Manuel Alguero)

Dr. Alguero summarized the complaint.

The complaint was received on June 9, 2004. The complaint type is a conduct complaint. A monitor was not appointed to the complaint. The incident giving rise to the complaint occurred at 3:37 p.m. on June 7, 2004.

The complainant alleged while waiting at a red light, he noticed a police officer sitting in his unit in the inside lane of traffic with his emergency lights on. The complainant stated

that he attempted to make a right hand turn and the officer jumped out of his unit, ordered the complainant to back up and allegedly stated, “What the f\*ck are you doing?” The complainant stated he attempted to explain to the officer and the officer allegedly yelled, “If you don’t back up and get the f\*ck out of the way and open your f\*cking eyes I will pull you out of your vehicle and lock you the f\*ck up.” The complainant alleged he complied with the officer’s commands.

According to the complainant, he was attempting to enter his business, which was located at the corner of Manning Boulevard where Central Avenue and Clinton Avenue meet. The complainant alleged he drove up Central Avenue around the island and pulled up along side his business on the Clinton Avenue side. When the complainant drove around, he stated that he observed the police unit being used as a barricade to an accident, however, the complainant stated other traffic was moving around the police unit and the officer appeared to be sitting in his vehicle writing a report.

Dr. Alguero questioned if any ticket had been issued. OPS Commander Steven Krokoff responded that he did not believe so.

Dr. Alguero commented that when viewed in totality, the Board must ask what can be attributed to these types of complaints. What is the basis for the complainant’s complaint, the officer’s conduct? Are there limits to resources, techniques of the OPS? Unfortunately, he added, this is a case of he said, she said.

The OPS made a preliminary finding of “*not sustained*” where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint. Attempts were made to speak with the drivers involved in the accident, but attempts failed. The complainant stated that he had a witness, however, he did not supply the witness’s information to the OPS.

Dr. Alguero moved to close the complaint as “*not sustained.*” Judith Mazza seconded the motion, and the motion carried unanimously.

**CPRB No. 15-04/OPS No. C04-362** (Presented by Marilyn Hammond)

Mr. Hammond summarized the complaint.

The complainant alleged that officers rang her doorbell and entered her apartment. The officers stated that they had received a 911 emergency call from her residence. She stated that the call couldn’t have come from her residence because her telephone is broken. The complainant alleged that the officers told her that they needed to check inside to make sure everything was okay and to ensure that there were no hostages inside the residence. The complainant stated that she told the officers they couldn’t come inside her apartment without a search warrant. It was alleged that the officers responded that they would arrest her, and then entered the apartment, looked around, and left.

A 911 telephone call was received by the APD Communications Division on 7/16/04 at 4:48 a.m. from the telephone number of the complainant. The 911 call was made and it was listed to that address. The complainant did say that the telephone was inoperable and that the call couldn't have come from there, but Ms. Hammond stated that she reviewed the call ticket at OPS, which showed the call came in at 4:48 a.m. from that telephone number. It showed the address, the phone number, and the apartment number it came from. It also showed that the dispatcher tried to call the phone number back and he got a busy signal.

The officers arrived at 4:51 a.m. and left at 4:55 a.m. after they looked in the apartment. The search of the complainant's residence without a warrant is permitted because probable cause and exigent circumstances were present in accordance with Article 7 of the CPL. The possibility of a hostage situation permitted the officers to enter the home. The officers were only in the complainant's home for four (4) minutes; they weren't trying to search her home other than to make sure everything was okay.

OPS Detective Shade met with the complainant the next day to explain to her why the police entered her apartment and to let her know that if there was a hostage situation, they wanted to make sure everyone inside the house was safe.

According to Ms. Hammond, the OPS recommended that the complaint be closed as "*exonerated*" as to both call handling allegations. Ms. Hammond moved to accept the OPS's findings. Barbara Gaige seconded the motion, and the motion carried unanimously.

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

The following members were appointed to the Committee on Complaint Review for October 2004: Barbara Gaige, Judith Mazza, Marilyn Hammond, Herman Thomas, and Paul Weafer.

C. *Police Review/Recommendations*

Chairman Cox reported that members of the Board and staff of the Government Law Center (GLC) met with the Mayor, Deputy Mayor, and the President of the Common Council. Barbara Gaige was asked to provide an update of the meeting.

Ms. Gaige stated that the first issue addressed was the appointment of new members to the Board. Ms. Gaige reported that the City would be accepting resumes for these positions until September 20, 2004. Ms. Gaige stated that the second item addressed was the quorum issue. She reported that the quorum issue was being brought to the Common Council by the caucus and voted upon at its September meeting, and should be passed by the September 20, 2004 meeting.

Assistant Corporation Counsel, Patrick Jordan, was recognized. He reported that the quorum amendment is being pulled out and voted upon separately from any other proposed changes or amendments to the Board legislation, which will be taken up by a committee of the Common Council.

D. *Nominations for Board Officer Positions*

Chairman Cox opened the floor for nominations, and asked for guidance as to whether nominations should be made this month and voted upon next month. It was decided that nominations would be made, but that the vote would take place at a subsequent meeting.

Judith Mazza nominated Michael Whiteman for the Chair position. Mr. Whiteman requested time to think about whether or not he wished to be considered for the position.

Marilyn Hammond nominated Barbara Gaige for the Chair position. Ms. Gaige accepted the nomination.

Vice-Chairman Herman Thomas was also nominated for the Chair position, but declined to accept the nomination.

Manuel Alguero nominated Judith Mazza for the position of Vice-Chair. Judith Mazza requested time to think about whether or not she wished to be considered for the position.

Barbara Gaige nominated Herman Thomas for the position of Vice-Chair. Mr. Thomas accepted the nomination.

It was agreed that nominations for the Secretary position would be made at a later date.

E. *Report from the GLC*

GLC Staff Attorney Justina Cintrón Perino gave the report.

As of the day of the meeting, it was reported that there were 26 active complaints before the Board for review. Five (5) complaints remain suspended and 136 complaints have been closed. A total of 166 complaints have been filed with the Board since it began hearing complaints in 2001.

It was reported that the GLC would have the Board's Third Quarterly Report for 2004 prepared and forwarded to Board members in advance of the October 2004 meeting.

It was reported that the GLC would be hiring a new law student intern to assist GLC staff with the day-to-day administration of Board business.

It was reported that the City had agreed to send three Board members to the Annual NACOLE Conference.

F. *Report from the OPS*

Commander Steven Krokoff gave the report.

It was reported that the OPS had recently spent time addressing housekeeping, inspection, and audit issues.

It was also reported that the OPS had checked each of the APD stations to see if old complaint forms were being used, but none were found. Commander Krokoff agreed to replenish each station's supply of complaint forms with the approved form.

**V. Public Comment**

The floor was opened for public comment.

Melanie Trimble was recognized. She asked whether the gentleman who filed CPRB No. 11-04/OPS No. C04-307 had been represented by a public defender. Barbara Gaige responded that she did not know. Ms. Trimble stated that often times public defenders will plead out despite the fact that a defendant does not wish to plead out. She added that the Board should be aware that although a complainant may have pled to a lesser charge, he or she may not have wanted to do so.

Ms. Trimble reported that her organization (the New York Civil Liberties Union) had recently participated in a meeting with the Albany Police Department with regards to developing a policy concerning the use of tasers and a policy concerning cameras in patrol cars. She wanted to know about the Board's position in advising policy development by the police department. She noted that it is her understanding that the Board can request clarification on certain policies, and asked whether or not the Board could participate, in an advisory capacity, prior to and during the development of department policy. She commented that it is good government to involve the public in the establishment of department policies. She added that she would like the Board to look into its enabling legislation, bylaws, and rules to determine whether or not it has the authority to participate in the development of new policies

**VI. Adjournment**

Chairman Cox moved to adjourn the meeting at 6:53 p.m. Barbara Gaige seconded the motion. The motion carried unanimously.

Respectfully Submitted,

Michael Whiteman