

**City of Albany
Citizens' Police Review Board
Albany Public Library, HBH Room
Washington Avenue
Minutes of 2/10/03 Meeting**

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

Absent: Marilyn Hammond

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

The meeting called to order by Chairman Kenneth Cox at 6:10 p.m. It was noted that Michael Whiteman was not present at the start of the meeting.

II. **Approval of the Agenda**

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

III. **Approval of January 2003 Minutes**

The minutes were reviewed. Vice Chairman Herman Thomas moved to approve the minutes. The motion was seconded by Judith Mazza. The motion carried unanimously.

IV. **Old Business**

A. *Complaints referred to mediation*

CPRB 30-01/OPS No. C01-428. (Presented by Barbara Gaige)

This complaint involved an incident in which the police responded to a 911 call for a shooting. The father of the suspect complained that officers poked him twice with a flashlight. The father is the complainant. OPS exonerated the officers. The CPRB initially reviewed this case on 1/14/02 and it's been carried over to 2/11/02. The Board recommended that the case be mediated and that was proposed to the police department. The police department has not approved this case for mediation. The monitor assigned is no longer with the Board, but she believed the investigation was complete, thorough and sufficient. The complainant did not allege conduct based on race. Barbara Gaige noted that the complaint was again before the Board for a final determination.

Barbara Gaige moved to close the case with a finding of exonerated. The motion was seconded by Paul Weafer. The motion carried unanimously.

CRPB 41–02/OPS No. C02-355. (Presented by Barbara Gaige)

Barbara Gaige noted that Al Lawrence was the monitor assigned to the complaint. The complaint involved an incident in the parking lot of the Club Aquatica. The daughter of the complainant had gone to a party and other mothers called the complainant about another dispute in the neighborhood. When the complainant arrived, she alleged that the police were too aggressive and used billy clubs on her child and friends. Witnesses described the scene as a riot, involving 75 to 300 people and 14 officers. According to the staff of the club, the officers did best they could under the circumstances. It was noted that the complainant attended the meeting when the complaint was first reviewed. The Board recommended mediation. However, the police department refused mediation in this case. The monitor concluded that the Office of Professional Standards (OPS) conducted a thorough and professional investigation. It was reported that OPS made a finding of “exonerated” with respect to how the officer’s handled the call and “not sustained” with respect to use of force.

Ms. Gaige then moved to accept OPS’s findings and make a finding of “not sustained” with respect to the use of force and “exonerated” with respect to how the call was handled. The motion was seconded by Paul Weafer. The motion carried unanimously.

V. **New Business**

a. *New Complaints.*

1. Chairman Cox noted that one (1) new complaint had been received since the January meeting and that five new complaints were on the agenda for review.

CPRB No. 73-03. (Summarized by Barbara Gaige) A monitor was appointed. The complainant’s daughter was involved in a car accident. The accident was reported. The complainant alleges the officer only included the other driver’s statement. Complainant called the APD. The reporting officer said that a statement was not needed from the complainant’s daughter and hung up on the complainant. The reviewing officer was nice, but said he could do nothing. The complainant wants an amended report and the officer’s rudeness addressed.

2. Chairman Cox reported that there were five (5) new complaints for review

CPRB No. 54-02, 55-02/OPS No. C02-476. (Presented by Michael Whiteman) Upon reviewing the two complaint files opened by the Board, both cases present a single complaint about a

single incident. Having read the report and complaint and also portions of the file at the Office of Professional Standards (OPS), the facts are as follows.

The complainant, an older man, was in local supermarket. He observed younger couple. The male of the pair acted in ways that were offensive to the complainant. The complainant confronted the male in some fashion. What happened thereafter is unclear. The older gentleman, the complainant, fell and hit his head, which caused a laceration and bleeding. The Albany Fire Department responded and an EMT team came. They found the gentleman (1) injured and (2) talking and acting confused - talking about subjects that were of no relationship to the incident. Moreover, they reported that he was asked several questions of a nature that you would ask someone whose conduct seemed confused.

The complainant was recognized and interjected. The complainant commented that they had absolutely no right to touch him and that they are criminals - the police department.

According to Mr. Whiteman, the responding personnel asked questions such as the date and the identity of certain public officials. However, the complainant was not able to give clear answers to these questions.

The complainant interjected again, stating "I'm not going to sit here and listen to these crimes and how they went about and tried to cover it up. I'm not here to have these people lie. I've waited all this time and have received no satisfaction because the APD will do everything to cover it up."

Mr. Whiteman reported that OPS found that the AFD had a reasonable basis for requesting assistance. However, the complainant did not wish to receive medical care. The EMTs asked him to sign a release - a waiver of liability, however, the complainant refused. Advice was given from the AMC ER doctor to administer a sedative and bring him to the ER for care. The complainant allegedly told the EMTs to bring him to the VA for free care. It was reported that neither the EMTs, APD nor AFD heard the request - if they had heard it they would have taken him to the VA.

The complainant stated that he wanted the FBI to step in and "got no justice because criminals are in the APD."

Mr. Whiteman reported that the APD restrained him in cuffs and AFD gave him emergency care. The complainant was then taken to the ER and treated for lacerations and sent home. He received a bill from the ambulance and a bill from the ER. The ambulance company withdrew its bill – but it was unclear as to whether the ER bill had been satisfied. The complainant said it was unreasonable and unnecessary, the unlawful restraint. That it was kidnapping. The AFD is not within our jurisdiction. OPS “exonerated” on grounds that the events that the complainant alleged took place were factually as he related them, and that the conduct of the officers was appropriate under the circumstances.

Chairman Cox asked if a monitor has been appointed. Mr. Whiteman responded that a monitor had not been appointed to the complaint.

The complaint was recognized and offered the following comments: “When a person goes to Price Chopper time after time, and they try to stop something that is wrong and ends up with a little mark on the head. I went to get cat food and wanted to go home. As I went to get cat food, they wouldn’t take money for the food. I went over and got my basket and it didn’t have anything in it. They said you can’t leave the store. They tried to grab my bags from the dollar store. They cuffed me and held me down. I went to see lawyer and the mayor. I fought the Germans in WWII, I fought for liberty. We need to clean it out, the APD. The AFD came and held me down for 35 minutes, and it’s the Gestapo. If you went to the store and you were on your way home, they have no right to force you to go to the hospital. I could have gone to the VA hospital. I have a certificate from war efforts. I don’t need the APD to seize me. They violated everything the flag stands for; everything in the bill of rights, what the framers of constitution wanted. Above all else, they violated what the people wanted. They think there is a criminal out there. They are like Hitler, the Gestapo, but Hitler didn’t bother the American people. Did you see it on 23? They made it like it was nothing. They tied me down. They are dangerous criminals, protected by Paul Klein. We are like slaves before the civil war. This man is a criminal, he will be judged. Some woman was trying to help me when I was being held down for 35 minutes, for what, because I wanted to get cat food and go home. These criminals are hooked up with Price Chopper. I haven’t been able to do my normal work from August to November. Three days after I went to get out of bed and I couldn’t lift my arm. Read the paper. The criminals are still free. Amen. Don’t let this man lie to you. And don’t let Paul Klein lie to you. He’ll say the APD is so honorable and they violated everything.

I'm taking this to the commander in chief in the case. They are famous for committing their crimes and famous for going unpunished.

Mr. Whiteman noted that the complainant was offered medical assistance. The AFD thought his refusal was dangerous. The APD observed him thrashing his arms around and they did restrain them.

Judith Mazza asked if the complaint was handcuffed before the officers arrived. Mr. Whiteman responded that Price Chopper had nothing to do with his restraints. Paul Weafer noted that employees of Price Chopper were trying to help him.

Barbara Gaige reported that under the Mental Hygiene Law, when behavior is such to be concerned about his mental health, the APD can make a decision to take him to a mental health facility. In this case, they were concerned about the cut on his head.

Mr. Whiteman noted that the pretreatment report by the EMT stated that the EMT called AMC and talked to an ER doctor who advised the EMT to administer a tranquilizer. The complainant was then he was taken to the medical center because he had lacerations. There isn't much else from the medical center. He was not charged with any crime and never in jeopardy with being charged for a crime. He was represented by counsel, but the Board received a letter from counsel that he no longer represents him for reasons that are unknown.

Mr. Whiteman then moved to concur with the recommendation of OPS and make a finding of "exonerated." Mr. Whiteman added that he hasn't read or seen evidence to suggest a gap in any report. Paul Weafer seconded the motion. The motion carried unanimously.

CPRB No. 61-02/OPS No. C02-520. (Presented by Barbara Gaige) The complainant was an inmate at the Albany County Correctional Facility, and complained of abuse in the facility. The complaint was turned over to Albany County Sheriff's Department, the responsible agency. OPS recommend that the case be closed as "no finding" because it was referred to another agency. Barbara Gaige moved for a finding of "no finding." The motion was seconded by Judith Mazza. The motion carried unanimously.

CPRB No. 62-02/OPS No. C02-511. (Presented by Judith Mazza) This is case was where there was a traffic stop and the complainant

stopped his car before the traffic stop. The complainant pulled over and got out and walked down street. One of the officers called to him to stop. At that point in time, he started running. Officers chased the complainant. The complainant said he ran and fell down in the grass and an officer jumped on him, punched him in face and called him names. During the chase, he dropped his jacket and continued to run. He alleged that when he asked about the jacket, the officers said what jacket.

Michael Whiteman asked who dropped the jacket. Ms. Mazza responded that the complainant in this investigation.

It was reported that a monitor was assigned to the complaint. The assigned monitor, George Kleinmeier was recognized.

According to Mr. Kleinmeier, the complainant was stopped for failing to use a left turn signal. Mr. Kleinmeier noted there were apparently two other people in the car, but only one other was actually picked up. Both were arrested and there was no indication that the jacket was ever picked up, and not ever mentioned later on. Officers say yes, that they did chase the complainant and caught him by Arbor Hill Elementary School. He was fighting and tried to get away. They handcuffed him and brought him back. He was ultimately arrested because of drugs. The other person that was arrested said the complainant did get sick while in the paddy wagon, and evidence from the police tapes showed that he became ill while being booked. The EMS was called and he was taken to hospital, but there was no evidence of him being assaulted. OPS recommended the case be closed as “unfounded.”

Mr. Kleinmeier added that he had a question as to why the complainant was stopped to begin with and a question as to why no one ever found or discussed the jacket. It was reported that the officers were questioned about the jacket. After they arrested the complainant, they went back and the jacket was gone. . They did see him throw it down, but it was gone when they looked for it.

Paul Weafer noted that the complainant has been since murdered, but that the complaint still has relevance against the APD officers involved.

Manuel Alguero asked whether there were suspicions that anything was in the jacket. George Kleinmeier responded that the complainant did have marijuana on him.

Judith Mazza commented that she agreed that the use of force during the arrest was “unfounded.” She then made a motion to accept OPS’s finding and make a finding of “unfounded” on the use of force. She added that she still had questions about the stop.

Michael Whiteman commented that the complainant was stopped for failing to signal properly, but recognized that the Board thought that this reason was a stretch. He added, however, that the state was made for legitimate reasons and the complainant ran.

Commander Anthony Bruno noted that Colonie Street is a high crime, high drug area. According to the Commander, these traffic check points are an effective tool. Folks that don’t live there will come in to buy drugs. It’s a deterrent when cops are there for seat belt checks. When persons approaching them, and stop or make a U-turn, they may be in violation at that point. Police officers might want to talk to that person about the violation and why the person is avoiding the check point.

Paul Weafer commented that the checkpoints are lawful. Commander Bruno confirmed that they are. He added that the complainant in this case was also driving without a license at the time of the traffic stop. With respect to the jacket, Commander Bruno noted that persons often shed clothing because of contraband or because they are trying to change their look.

Ms. Mazza’s motion was seconded by Manuel Alguero. The motion carried unanimously.

CPRB No. 63-02/OPS No. C02-537. (Presented by Manuel Alguero) The complainant lost his freedom, has been indicted and now is in jail. There are several issues involved. OPS closed the case as “exonerated” because the review shows that the handling of the warrant, the search of the house, and the seizure of the auto were appropriate. The wife confessed that the car was used for peddling drugs. There were two warrants issued.

With respect to the handling of the warrant, one warrant was issued for a search and a second was issued for the arrest. The complainant claimed he tried to get a copy of the search warrant.

According to the monitor, George Kleinmeier, the complainant said that they showed it to his wife, but he didn’t see it.

Dr. Alguero commented that he did not see a disagreement with OPS's findings on the issue of the warrant because the search warrant was shown to a person, the complainant's wife.

Sergeant Kevin Connelly commented on warrants in general. He noted that, in many cases with search warrants, there will be a single page which is signed by the judge and shown when executing the warrant. However, the warrant using includes supporting documents with confidential information. To obtain a copy of the warrant, an attorney would request one from the court. As to the arrest warrant, the complainant was indicted by a grand jury, and the judge signed the arrest warrant; it's nothing more than a piece of paper that has been entered into a computer.

Paul Weafer noted that the complainant wanted to get a copy of the search warrant, and the police department wouldn't give him a copy without an attorney. Additionally, Mr. Weafer noted that the car was returned in error and re-seized when it never should have been released

The complainant's wife was recognized. She explained that she had four kids in the house, and that police officers cuffed her 12-year-old. She added that her 4-year-old has said that the police were in his house with guns. stated that the upstairs had gotten raided before.

Dr. Alguero commented to the complainant that her husband said she had seen the warrant. She responded that she had not. She was on the porch. She added that her main concern is that officers handcuffed her minor child.

Paul Weafer asked what crime the complainant committed. George Kleinmeier responded that it was drugs. Paul Weafer then asked why the officers would cuff a child. Commander Bruno responded that it is not a set policy to do this, but they may do so if the situation dictates the need for cuffing. George Kleinmeier added that the officers found a stun gun in the room with the girl, and that may be why she was cuffed.

Chairman Cox asked if the complainant's daughter looked older than 12. The complainant's wife responded that she did – she is as big as the complainant's wife.

Mr. Weafer asked if her daughter had any emotional problems. She responded that she did, but that she is not violent; she is only violent when other kids "mess" with her. Mr. Weafer asked if the

officers had taken her daughter outside. She responded that they hadn't – she stayed in the house. Mr. Weafer noted that they asked her to sit down, and other than the cuffs, she was treated with respect. He added that the cuffs were removed after she told them how old she was.

Dr. Alguero noted that there was confusion that she was an adult, and that was regrettable. He noted, however, that there were mitigating circumstances. He added that he did not see anything in terms of improper procedures, but recommended that perhaps the officers should ask first, unless the minor is a danger to himself or herself. Dr. Alguero then moved to concur with the findings of OPS and make a finding of “exonerated,” with a recommendation that the department review its policy with respect to handcuffing minors. The motion was seconded by Judith Mazza. The motion carried unanimously

CPRB No. 68-02/OPS No. C02-555 (Presented by Paul Weafer)
Mr. Weafer noted that no monitor was assigned to this complaint. The complainant went to the Social Security Office and must have made quite a fuss. She was escorted out of the building. OPS closed the case as “no finding” because the APD had turned it over to another agency; the complaint involved federal employees not APD employees.

Mr. Weafer then moved to make a finding of “no finding” with respect to this complaint.

Michael Whiteman commented that if the complainant believed she was told by the federal officer to leave because of a prior complainant she made against an officer, then this case is properly within the jurisdiction of the APD.

It was reported by OPS that this complaint involved a federal employee, not an APD employee.

Judith Mazza seconded the motion. The motion carried unanimously.

- b. *Appointment of two new members to the Committee on Complaint Review for March 2003.*

The following Board members were appointed to the Committee on Complaint Review for the March 2003 meeting: Manuel Alguero, Barbara Gaige, Judith Mazza, Herman Thomas and Michael Whiteman.

c. *Report from the GLC*

Staff Attorneys Justina Cintron and Karleen Karlson gave the report.

Complaint Status. It was reported that the Board had 22 active complaints, 80 complaints that had been closed and 4 complaints that remain suspended. Of the 22 active complaints, 6 complaints have been referred to mediation. According to Ms. Cintron, 115 complaints have been filed since the Board began hearing complaints.

Reappointments. It was reported that the GLC had received notice that both Barbara Gaige and Eleanor Thompson have been reappointed. The GLC was also notified that the City would be forwarding a letter regarding Herman Thomas's reappointment. Herman Thomas reported that he had already received a letter regarding his reappointment.

Training. It was reported that the CPRB's racial profiling training session was scheduled to take place on March 31st from 6-8pm at the law school.

Outreach. Ms. Cintron reported that each member had received a training and outreach schedule in their materials. She noted that an outreach meeting is scheduled for March 19th with the NYCLU and that 2 or 3 members are needed to participate. Barbara Gaige and Eleanor Thompson volunteered for the meeting. She also noted that each member had received a copy of a one page insert that was prepared by the GLC for inclusion in a city-wide mailing for review. Judith Mazza noted that the form needs to be more user friendly.

Dr. Alguero agreed to translate this insert along with the Board's brochure into Spanish.

Mediation. The following was reported with respect to the complaints that have been referred to mediation.

CPRB No. 39-02/OPS No. C02-302. The complaint involved a pursuit by an off-duty police officer. It was reported that the complainant would be in town court that evening to have ticket dismissed. Karleen Karlson agreed to follow up with her. Paul Weafer noted the great cooperation of Commander Bruno in resolving the ticket issue.

CPRB No. 3-02/OPS No. C01-428. It was reported that this is an old complaint and that the Board is still waiting to hear from the APD as to whether the officer and the department have agreed to mediation.

CPRB No. 33-02/OPS No. C02-291. This complaint was filed by the Aunt on behalf of her nephew. Ms. Karlson reported that she had sent

letters to the officers – but the officers have not responded. It appears that there is a lack of interest in the mediation so the Board may want to consider returning it to the review process and making a finding.

CPRB No. 36-02/OPS No. C02-319. Ms. Karlson reported that she has not heard from the complainant or the APD yet – again it appears that there is a lack of interest in mediating this complaint so the Board may want to consider returning it to the review process and making a finding.

CPRB No. 43-02/OPS No. C02-356. Ms. Karlson reported that she is waiting to hear from the APD.

CPRB No. 57-02/OPS No. C02-428. Ms. Karlson reported that she is waiting still waiting to hear from the APD.

d. *Report from OPS.*

Commander Bruno noted that there was nothing new to report.

VI. **Public Comment**

The interim director of the NYCLU commented that it was good to hear that the Board is recommending that the policy on handcuffing minors during the execution of search warrant be reviewed. She inquired as to whether there was a policy on how to make a policy review recommendation to the police department. Paul Weafer responded that past practice has been to have the Chair express the policy review recommendation in a letter to the Commissioner. The Commissioner takes the letter under advisement and either acts upon it or does not upon it. Chairman Cox added that the Board then reports on the action or inaction to the public.

VII. **Adjournment**

The meeting was adjourned at 7:26 p.m.

Respectfully Submitted,

Michael Whiteman
Secretary