

City of Albany  
Citizens' Police Review Board  
February 11, 2002

HBH Room - Albany Public Library (Washington Avenue)

In Attendance: Manuel Alguero, Morris Eson, Marilyn Hammond, Herman Thomas, Judith Mazza, Eleanor Thompson, Michael Whiteman and Paul Weafer

Absent: Kenneth Cox

I. Call to Order & Roll Call

Vice Chairman Herman Thomas called the meeting to order at 7:05 p.m..

Vice Chairman Thomas read the order of the agenda, and moved to accept. Dr. Manuel Alguero seconded the motion. The motion was carried unanimously.

II. Approval of Last Meeting Minutes

The Board's January meeting minutes were reviewed. Mr. Michael Whiteman moved to accept the minutes. Dr. Alguero seconded the motion. The motion was carried unanimously.

III. Outreach

Ms. Judith Mazza reminded the Board that its outreach meeting with One Hundred Black Men was scheduled for February 12<sup>th</sup> at 6:30 p.m.

IV. Old Business

**30-01/CO1-428.** Mr. Paul Weafer reported that this case was carried over from the January meeting, but that it would be reserved for consideration in executive session.

**14-01/C01-294.** Mr. Paul Weafer gave a summary of the complaint. The complainant alleged that while she was driving on I-787, another driver blocked her from passing. When the complainant did finally pass the other vehicle, she made a hand gesture to the driver. According to the complaint, the driver of the other vehicle was an off-duty police officer. Shortly after the incident, the off-duty officer called the complainant at home asking whether or not she was the driver on I-787, and explained that she was speeding (the complainant admitted to speeding in her complaint). The officer proceeded to issue her a warning. The complainant acknowledged that she hung up on the officer.

Mr. Weafer asked Commander Paula Breen whether or not it was appropriate, under

the circumstances, for an off-duty officer to call a complainant at home and ask that person to come into the station in order to issue him or her a ticket? Commander Breen responded that it would be appropriate, under certain circumstances, if the complainant were speeding. Commander Breen added, however, that the conduct of the off-duty officer in this case was inappropriate because the officer should have followed-up, at the time of the incident, by calling the dispatcher, seeking assistance from a unit on-duty and documenting the incident. Dr. Morris Eson noted that the off-duty officer did not do any of these things in this case.

Mr. Weafer reported that OPS made a finding of sustained with respect to the allegation that the off-duty officer called the complainant at home, and made a finding of not sustained with respect to the allegations regarding the off-duty officer's conduct on the road. He then moved to accept the findings of OPS, and make the following findings: "sustained" as to the allegation that the off-duty officer called the complainant at home and "not sustained" as to the allegations regarding the off-duty officer's conduct on the road.

Dr. Alguero asked why the allegations concerning the off-duty officer's conduct on the road were not sustained. Commander Breen responded that there was no independent corroboration to sustain those allegations.

Ms. Mazza asked whether the finding of sustained concerning the off-duty officer calling the complainant at home could be interpreted to mean that the officer intimidated the complainant. Commander Breen responded that it does not, and that OPS does not know whether or not the complainant felt intimidated by the call.

Dr. Eson seconded the motion. The motion carried unanimously.

**26-01/C01-414.** Mr. Weafer gave a summary of the complaint, noting that the complainant had previously filed complaints with the Board. The complainant alleges that he was stopped and ticketed for the unlicensed operation of a motor vehicle. The complainant further alleges that during the stop, the officer removed his license plate from his motorcycle, and that the motorcycle was towed. The complainant felt that the officer did not have the authority tow his motorcycle away.

Mr. Weafer reported that OPS made a finding of exonerated as to the allegations regarding the officer's handling of the stop. Dr. Alguero moved to accept the finding of OPS and make the following finding: exonerated as to the officer's handling of the traffic stop. Mr. Weafer seconded the motion. The motion carried unanimously.

#### V. New Business

Dr. Alguero congratulated Patricia Salkin of the Government Law Center for receiving the Attorney in Public Service Award from the New York State Bar Association.

A. *Complaint Review*

**33-01/CO-458.** Mr. Whiteman suggested that the Board reserve this case for consideration in Executive Session as it relates to Complaint 30-01/C01-428.

**34-01/C01-462.** Ms. Mazza gave a summary of the complaint. The complaint was filed by an individual who attended a party last November. The complainant alleged that a call was made to the police about excessive noise, and that the police arrived to break up the party. In the process, it is alleged that the officers came into the house, proceeded up the stairs to the second floor in search of the occupant of the house. The complainant stated that he had asked the officers why he had to leave, why they were breaking up the party and what ordinance had been violated. In addition, the complainant claimed that the officers asked for identification and when the complainant asked why, the officers asked if he lived at the house. The complainant alleged that during this dialogue with the officers, he was pushed by an officer and fell down two or three steps of the stairs in the apartment building. Ms. Mazza reported that the complainant did not claim injuries from this contact. The complainant further alleged that the officer unlawfully entered the home.

The Board inquired as to whether the monitor assigned to this case was present. Mr. Al Lawrence was recognized.

Mr. Lawrence gave a summary of his report to the Board. He reported that OPS' investigation was done thoroughly, and that all available witnesses were questioned. According to Mr. Lawrence, there were a number of witnesses listed by the complainant, but these persons could not be reached by OPS. He noted that OPS had attempted to call each witness on two occasions, and left business cards at their residences. The witnesses that responded to OPS had said they would contact the detectives after break, but never followed up. According to Mr. Lawrence, pursuing the witnesses further would not be productive.

Ms. Mazza commented that there was a contradiction in what was reported by the officers, witnesses and the complainant. She asked where each of the officers were at the time of the incident. According to Ms. Mazza, both officers stated that they were in the building. However, one officer stated that he did not go into the building. Ms. Mazza asked Mr. Lawrence if this was ever addressed. Mr. Lawrence responded that he does not recall the officers being questioned about this. He added that one of the officers was not present when the physical contact occurred.

Ms. Mazza asked if the issue of whether or not the officers were invited into the house was addressed during the investigation. Mr. Lawrence responded that OPS was not able to obtain eyewitness testimony from the person who allegedly opened the door to the officers when they arrived at the house to break up the party. One of the officers stated that the person who let them in was not the owner of the house. Ms. Mazza then asked whether or not it was appropriate for the officer to enter the home when the

owner was not there. Commander Breen responded that an officer is permitted to enter the residence to locate the owner.

Mr. Whiteman asked whether or not it was alleged that the officers entered the apartment as opposed to entering the building. Ms. Mazza responded it was alleged that the stairs were part of the apartment.

According to Ms. Mazza, everyone agreed that physical contact took place, but there were differing versions of the contact. One officer stated that he was trying to get past the complainant on the stairs, but the complainant wouldn't move. When the officer attempted to pass the complainant, the complainant lost his balance and the officer held onto the complainant until he caught his balance.

Ms. Mazza reported that one officer claimed the complainant appeared to be intoxicated and asked Mr. Lawrence if this was addressed in the investigation. Mr. Lawrence responded that the officer involved in the physical contact with the complainant said the complainant appeared to be intoxicated. However, there were no other witnesses that testified to this fact; the complainant admitted to having half of a beer at the apartment.

Ms. Mazza commented that if the officer believed that the complainant was intoxicated, the officer never addressed the issue of where the complainant went after the party of whether he would be driving home intoxicated. According to Ms. Mazza, if this were true, wouldn't the officer have an obligation to follow up. Commander Breen responded that the officer would not be obligated to follow up unless the officer was checking to see if the complainant were going to enter a motor vehicle. If so, the officer wouldn't have allowed him to do so. Commander Breen added that in cases such as these in this area, the students generally travel by foot, take the bus or drive with others, and the circumstances of these cases didn't warrant follow up by the officers. Moreover, Mr. Lawrence reported that the complainant admitted that he was not driving.

Dr. Alguero noted that several of the witnesses were unavailable in this case, and asked how many. Ms. Mazza responded that there were four that were not available and three that were available. Ms. Mazza added that of the four, some could not be reached at all, and two of the three witnesses that were initially available became unavailable and wouldn't respond to OPS' calls. Dr. Alguero expressed his concerns about witnesses not coming forward.

Vice Chairman Thomas asked Ms. Mazza about the physical contact. Ms. Mazza responded that there was contact, but the parties involved disagreed as to what contact occurred.

Ms. Mazza commented that the complaint evolved from a lack of understanding of the city's noise ordinance. She then moved to accept the findings of OPS, and make the following findings: "unfounded" as to the allegation of use of force and "exonerated" as to the allegation of unlawful entry into the apartment with a recommendation that a

mediation take place between the complainant and the officers so they can discuss the noise ordinance. Dr. Alguero seconded the motion. The motion carried unanimously.

**36-01/C01-489.** Ms. Eleanor Thompson gave a summary of the complaint. The complaint arose from an incident involving the complainant's acquaintance urinating on the side of a hotel. The complaint alleged that an officer grabbed the complainant and "roughed" him up, causing bruising on his neck and shoulders. Ms. Thompson reported that she had reviewed all of the information contained in OPS' file, including the statements from the witnesses. She reported that one witness did not see the complainant being physically touched in any manner or excessive force being used, and that a second witness never returned OPS' calls to give a statement. She also reported that the officer stated that he did use force on the complainant's neck to place him against the wall in order to calm him down because he was intoxicated. She noted that the monitor assigned to the case reported that pictures were taken of the complainant, but that there was no evidence of the physical injuries complained of.

According to Ms. Thompson, OPS made a finding of unfounded as to the use of force. She noted that the officer's conduct could not be sustained because OPS could not find witnesses to corroborate the complainant's statements. She then moved to accept OPS' finding and make a finding of "unfounded" as to the allegation of use of force. Dr. Alguero seconded the motion. The motion was carried unanimously.

**39-01/C01-505.** Ms. Marilyn Hammond gave a summary of the complaint. The complainant alleged that he was brought down to police station, strip searched in a hallway and left in a cell. The complainant admitted to smoking crack, which is why he was being arrested, but felt degraded for being strip searched in front of a camera. The complainant alleged that his rights were violated. Ms. Hammond reported that OPS made a finding of exonerated as to the strip search being conducted in front of the camera.

Ms. Hammond asked whether or not the police department had a policy regarding the manner in which strip searches are to be conducted. Commander Breen stated that it is the department's policy to conduct strip searches out of the view of the camera, and that searches are permitted in the hallway of the cell block area so long as they are out of the camera's view. Commander Breen followed up by stating that a recommendation for policy change is currently being made because the current policy is vague. The new policy would identify a specific area for strip searches. She added that both men and women would not be searched in the same area.

Ms. Hammond then moved to accept the finding of OPS' and make a finding of "exonerated" as to the allegation that the complainant was strip searched in view of the camera with a recommendation that a firm policy be implemented identifying a specific location to be used for strip searches. She further requested that the Board be notified if and when such policy is adopted. Mr. Weafer seconded the motion. The motion carried unanimously.

**43-01/C01-524.** Mr. Paul Weafer gave a summary of the complaint. The complainant alleged that while he was dropping off children on Clinton Avenue, he was issued a ticket for double parking. He claimed to have been issued the ticket because a woman, who was present on Clinton Avenue when the complainant dropped off the children, swore at the officer. The complainant further claimed that during the incident, the ticketing officer directed a racial slur at him. In addition, the complainant alleged that the officer who issued him a ticket on Clinton Avenue was the same officer that ticketed him several days later, and the officer was therefore harassing him. According to the complaint, Albany police officers have been harassing the complainant for more than 10 years about his associations with persons of a different ethnicity.

The monitor assigned to this case, Al Lawrence was recognized. Mr. Lawrence gave a summary of his report. The passenger in the complainant's vehicle at the time of the incident stated that she did not hear a racial remark directed at the complainant. The complainant was recognized and stated that he could not recall if she heard the remark or not. Mr. Lawrence reported that there was an investigation to determine who the woman was that swore at the officer, but she was never found. The officer did not have any recollection of such woman. However, the complainant claimed that the officer told him that he was being ticketed because the woman swore at the officer. The officer stated that the complainant got out of his vehicle. The complainant claimed to have never exited his vehicle.

Mr. Lawrence reported that the back-up officer did not observe any of the incident. He further reported that during the course of the investigation, the complainant had different versions of how and when the racial remarks were made.

Eleanor Thompson commented that the complaint alleged more than 10 years of incidents between the complainant and the police. Mr. Lawrence responded that the complainant has not been able to provide names and details.

Ms. Mazza asked the complainant whether or not either of the tickets were legitimate. The complainant responded that the second one he received at his house was issued by the same officer from the previous incident as proven by the signatures on the tickets.

Mr. Weafer asked the complainant why he believed the police have been harassing him and calling him racial names. The complainant explained that he was born and raised in the Albany projects, and that many of his friends are of color; he claimed that he is being harassed because of his associations. He further explained a recent incident in which the police broke into his apartment, seized his German Shepard dog and stole a substantial amount of money.

Mr. Whiteman summarized the allegations contained in the complaint. First, the complainant alleged that he received two tickets from the same officer and was

therefore, being harassed. However, there is evidence that the tickets were issued by two different officers. Second, the complainant alleged that the officer(s) were not justified in issuing him the tickets. However, this is a matter that is best left for the courts. Third, the complainant alleged that he was the target of abusive and inappropriate language. However, there is not an independent witness to corroborate this allegation. Mr. Whiteman agreed that OPS' determination was the appropriate one.

Mr. Weafer then moved to accept the finding of OPS and make a finding of "unfounded" as to the allegation that the complainant was being harassed by officers and was the target of derogatory and abusive language. Vice Chairman Thomas seconded the motion.

Vice Chairman Herman Thomas, Eleanor Thompson, Paul Weafer and Michael Whiteman voted in favor. Manuel Alguero and Morris Eson voted against the motion. Marilyn Hammond and Judith Mazza abstained.

#### B. *Appointment of New Members to Committee on Complaint Review*

Two new members of the Committee on Complaint Review were appointed. Vice Chairman Thomas and Dr. Alguero were appointed to replace Ms. Hammond and Ms. Mazza.

#### C. *Report of the Government Law Center*

Ms. Justina Cintrón gave the report of the Government Law Center. Ms. Cintrón reported that the Spanish complaint form had been posted to the CPRB Web site. She reminded the Board that there was an outreach meeting scheduled for February 12<sup>th</sup> at 6:30 p.m. with One Hundred Black Men of the Capital Region. She noted that the Board had received an updated report of the status of pending complaints, and explained that she would be providing a report to the Board on administrative matters at each monthly meeting.

Mr. Whiteman asked about the status of member reappointments/appointments. Ms. Patricia Salkin responded that the Government Law Center had not yet received notification of the reappointment of Dr. Alguero and commented that the Common Council was in the process of interviewing a replacement for Dr. Eson.

#### VI. Public comment

A complainant commented that he had presented a complaint to OPS on April 1, 1999, but that he did not feel that there was adequate resolution of his case. Lieutenant Anthony Bruno advised the complainant that there is a time limit for submitting complaints for review and that due to the complaint being six months old, the Board would have to vote on whether or not it would review the complaint. The complainant asked that the Board please read the complaint. The Board agreed that it would and

Mr. Weafer stated that it would be placed on the calendar for the next meeting.

A complainant asked why the Board consistently agrees with the findings of OPS. Dr. Alguero acknowledged that this question was important for the Board to take up at a future meeting.

Mark Mischler discussed several of his concerns. First, Mr. Mischler expressed his concerns regarding the letter his client received from the police department, which had only one finding with respect to the complaint. Mr. Mischler noted that he had counted more than one finding at the last meeting of the Board, and is troubled by the fact that it appears that certain things are sent to the complainant and other information is shared with the Board and the monitor.

Second, Mr. Mischler was surprised to hear that the monitor was not present during most of the interviews. He opined that if the monitor is not present during key interviews, then the monitor is not fulfilling its monitoring function.

Third, Mr. Mischler expressed his concern regarding the charges being brought against his client, claiming the charge has no basis. He asked whether or not the circumstances surrounding the charges could be investigated thoroughly by OPS so as to prove that the officer had filed a false charge to cover brutality or some other conduct. He stated that it was not appropriate for the Board to let this issue go by.

Finally, Mr. Mischler expressed his concern about Board members discussing his client's case in private, not in an open meeting and not in public, noting that this behavior was not appropriate. The Board assured Mr. Mischler that no conclusions had been drawn with respect to his client's case, and that Board has not had private discussions about his client's case. Mr. Whiteman noted that two Board members comparing notes about a particular case, which is what likely happened, is not prohibited by law. Mr. Weafer added that the Board's new procedures require members to visit OPS and review all information relating to a complaint.

Mr. Mischler concluded that he did not feel the resolution of his client's complaint by OPS was the proper.

Mr. Weafer moved to go into executive session to hear complaints 30-01 and 33-01. The complainant 30-01 noted his opposition to going into a closed meeting. Mr. Weafer noted the opposition and withdrew his motion.

**33-01C01-458.** Complainant's father explained that the complainant could not attend the meeting because she was attending a funeral. Review of the complaint was tabled until the March meeting.

**30-01/C01-428.** This complaint was carried over from the January meeting. The complainant sought to present pictures concerning his complaint to the Board. Mr.

Todd Burnham expressed the Corporation Counsel's reservation with respect to whether the Board could look at the photographs. He requested time to confer with his office because it was unclear whether the legislation permitted the Board to look at material not attached to a complaint. Mr. Burnham commented that viewing pictures that are provided by a complainant and that are not part of OPS' file is outside the scope of the Board's authority. Mr. Weafer noted that the Board has, in the past, been invited down to OPS to look at all information pertaining to a complaint, including photographs.

Dr. Eson moved to proceed. Dr. Alguero seconded the motion. The motion carried unanimously. The complainant presented pictures to the Board of his physical condition when he was released from lock-up following the incident complained of. Vice Chairman Thomas asked about medical reports. Mr. Mischler responded that there is medical documentation, which is part of OPS' file, that confirms contusions and abrasions. Due to time constraints, review of the complaint was tabled.

Ms. Hammond moved to adjourn the meeting. Ms. Thompson seconded the motion. The motion was carried unanimously and the meeting was called to order at 9:00 p.m.

Respectfully Submitted,

Michael Whiteman  
Secretary