

**City of Albany
Citizens' Police Review Board
Albany Public Library
March 10, 2003
6 p.m.–8 p.m.**

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

Absent: Marilyn Hammond

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

Chairman Kenneth Cox called the meeting to order at 6:03 p.m.

II. **Approval of Agenda**

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

III. **Approval of February 2003 Meeting Minutes**

The minutes were reviewed. Manuel Alguero moved to approve the minutes. Herman Thomas seconded the motion. The motion carried unanimously

IV. **New Business**

A. *New Complaints*

1. **Received Since 1/13/03 Meeting.**

Barbara Gaige noted that five (5) new complaints had been received by the Board since the February 10th meeting. Ms. Gaige provided the following summary with respect to each of those complaints.

CPRB No. 4–03. Complainant alleges that on a Friday evening, a couple of fights broke out outside of his place of employment, Club 518. Officers arrived and began to clear the streets using their night sticks. Complainant alleges he informed the officers that he was an employee of the club that he showed the officers his ID, and told them he was trying to re-enter to collect his belongings. He was then allegedly pushed into a snow bank and was struck with a nightstick.

CPRB No. 5–03. Complainant alleges that on the evening of January 4th he was attempting to turn onto Myrtle Ave., where he resides. Blocking the intersection and

entrance to Myrtle Ave. was a police car. Traffic was backing up and approached the officer and asked him if there was an emergency. The officer replied that there wasn't and that he was helping another individual shovel out his car. Complainant asked the officer if he could move over so traffic could clear the intersection and the officer replied that he wouldn't. Complainant asked the officer for his badge number and name and the officer advanced toward him shouting his name and badge number. The officer arrested the complainant for disorderly conduct, alleging that complainant refused to move his vehicle. The officer attempted to open complainant's door, but he had automatic door locks. The officer slipped and almost fell, yelling that the complainant was resisting arrest. Two other officers arrived on the scene and asked the arresting officer if he could move his car because he was blocking traffic.

CPRB No. 6-03. Complainant alleges he filed a complaint with the Police Department regarding stolen checks and the police department is ignoring his complaint. In a letter addressed to the PBA, he alleges that an ex-girlfriend cashed two of his payroll checks by forging his signature without his consent. He reported the incident to Judge Carter who asked the detectives to investigate. A female detective interviewed the complainant and took his report, allegedly saying, "You men think you can overpower us women and you just want revenge." According to the complainant, the female detective has done nothing to pursue his complaint and that she is discriminating against him because he is a man.

CPRB No. 7-03. Complainant alleges that on February 14, 2003, officers stopped and boarded the bus he was riding on. He alleges officers drew their guns on him, and asked him for identification. He asked repeatedly why he was being detained, allegedly with no answer. His backpack was searched and then he was told that he fit the description of a bank robber. He asked the officer's badge numbers and was told they would be in the report. Complainant was taken outside the bus and shown to a witness for identification, who stated that the complainant wasn't the robber. A news crew who was at the scene also filmed the complainant. Complainant feels that the officers acted inappropriately during the incident.

CPRB No. 8-03. Complainant alleges that officers and members of Child Protective Services entered and illegally searched her home. She states an officer grabbed and twisted her arm and placed complainant under arrest. She was handcuffed and an officer attempted to force her downstairs. Complainant states that an officer grabbed her 13 year-old daughter's arm and "snatched" the phone away from her while she was trying to call her grandmother. The officers allegedly told complainant's daughter she was going to jail as well. Complainant's other child, who is wheelchair bound, was also very frightened. Complainant was told the search was in connection with a "major dope deal that was supposedly going down." Complainant says during this incident she was further injured because she was recuperating from a previous injury and had 25 stitches that opened up from the treatment by the officer. Complainant states that the same officer is now harassing her when he sees her on the street.

As to CPRB No. 6-03, Paul Weafer commented that an allegation that a female officer said “dead beat man” doesn’t rise to the level of a civil rights situation and to appoint a monitor and spend that money is useless. Mr. Weafer added that the Board should be more careful when appointing monitors.

Manuel Alguero noted that on the face of the complaint, the Board is unable to say whether a monitor should or should not be appointed. However, the consensus was that a monitor should be appointed.

Chairman Cox added that more than one member of the Board agreed that a monitor should be appointed to the complaint, and that the complaint did not simply allege rudeness or incivility, but rather a lack of investigation.

Barbara Gaige agreed with the Chairman noting that the complaint doesn’t focus on rudeness, but the lack of investigation

2. Five (5) New Complaints for Review.

CPRB No. 53-02, OPS No. C02-410 (Presented by Herman Thomas)

Albany police officers approached the complainant because they had received a call for a stolen truck. After pursuit, the complainant proceeded up North Pearl Street and ended up at the Port of Albany. Although the complainant did not hit any cars, he did hit a police cruiser. The complainant alleged that officers kicked him in the head, however, the record indicated that he was resisting arrest. According to Mr. Thomas, people at the scene working took pictures of the incident. The complainant had some scratches on the right side of his face. After reviewing the officers statements and witness reports, there was nothing found in the investigation to indicate that the complainant was kicked in the head.

Mr. Thomas noted that a monitor was appointed to this complaint. The monitor, Richard Lenihan was recognized. Mr. Lenihan commented that he found nothing to sustain the allegation made by the complainant. According to Mr. Lenihan, OPS’s investigation was thorough and fair. He noted that the complainant was resisting arrest and his injuries were from resisting arrest. Witnesses, a flagman and a supervisor, took pictures of the complainant. Being placed on the ground could have caused scratches. The complainant said “the only thing you will find in my blood is cocaine.” A crack pipe was confiscated. The passenger said he was driving in an erratic manner and side swiping cars that were proceeding down street.

Herman Thomas moved to accept OPS’s findings and make a finding of “not sustained.” Paul Weafer seconded the motion. The motion carried unanimously.

CPRB No. 64-01, OPS No. C02-539 (Presented by Michael Whiteman)

This is several complaints embodied in one complaint, which came from the mother of a 16-year-old boy. The complainant alleged 1) improper use of force with respect to her son being pushed off his bike; 2) improper search - invasive, with force, and without cause; 3) improper ticketing for proceeding through a red light on a bicycle and failure to comply with the officer's directive; 4) improper call handling - 911 failed to take the complainant's information and hung-up on her; and 5) disrespectful behavior and the use of derogatory and insulting language toward the complainant and witnesses.

Mr. Whiteman noted that the facts of the complaint were as follows. The complainant's son was exiting a parking lot at 12:30 a.m. and failed to observe a red light. He declined to stop when requested by officers and there was a repeated exchange. Eventually, the police caught up with him in front of the house where his mother alleges he was pushed off his bike. They stopped him and gave him 2 tickets and an altercation ensued.

As it appears, the complainant's son was not pushed off his bike; he said he got off himself. As to the search, she alleged he was repeatedly searched. The complainant's son said that he was not searched, only patted down. The basis for the search was the fact that the young man had run away when told to stop and kept one hand in a pocket throughout the altercation. As to the ticket for the red light, this was to be resolved in court, and it appears that the son has received an ACOD. As to the alleged 911 hang-up, the monitor stated that the 911 tape confirms that there was no hang-up. The tape goes on and the operator gets information and continues to ask questions. One can draw one of three inferences: 1) the complainant was accidentally disconnected; 2) the complainant encountered what appeared to be a "dead" line; or 3) the complainant hung up. It does not appear from the tape that the operator hung up on the complaint. As to the disrespectful language, OPS's report sustained the allegation because it was inappropriate.

Mr. Whiteman noted that a monitor was appointed to the complaint. The monitor, Albert Lawrence, was recognized. Mr. Lawrence commented that the complainant, her son and all witnesses were interviewed and that the records and tape were obtained. Mr. Lawrence concluded that the investigation was thorough and professional.

Paul Weafer inquired about the insulting and derogatory remarks, noting that both officers denied the remarks, but yet OPS found that the remarks were made. Commander Anthony Bruno responded that there was enough evidence to believe the complainant.

Michael made a motion to adopt findings of OPS and making a finding of "unfounded" as to the improper search, improper ticketing and improper handling of a 911 call and "sustained" as to the disrespectful conduct/use of derogatory and insulting language allegation. Judith Mazza seconded the motion. The motion carried unanimously.

CPRB No. 65-02, OPS No. C02-541 (Presented by Judith Mazza)

This was a situation that took place in the ER of the Albany Medical Center (AMC). The complainant was due in court and called his lawyer. A warrant was issued by the court when he failed to show. Albany PD was called to pick him up at the ER. It appears that the police were told that the complainant stated that if the police were going to come and get him, it would be a shoot out. The officers spoke to security. The complainant was with his mother at the time. Police officers asked the complainant if he was the complainant. The complainant did not identify himself as the complainant, but rather as his brother. As the complainant left the ER, he made a phone call and told the person on the other end not to come because the police were there. Shortly thereafter, the complainant's brother arrives outside in complainant's car.

The complainant alleged that he was smacked, punched and slammed, and that officers struck him with a baton, causing him to sustain a swollen cheek and eye. Ms. Mazza noted that she had looked at the pictures and there were no injuries. If there were injuries, it did not happen during the arrest. The AMC director of security stated the complainant identified himself as his brother and was taken outside and that on camera, police did strike his lower back in an attempt to restrain him. However, officers never hit him in the face, nor struck him. He did misidentify himself and also told his brother not to show up. Based upon the investigative information, witnesses, AMC staff, security and camera, there is nothing to indicate that the complainant was struck by an officer or resisted arrest.

It was noted that a monitor was appointed to the complaint. The monitor, Richard Lenihan was recognized. Mr. Lenihan commented that he did not have much to add. The reports and photos indicate that the complainant did not sustain injuries to his head or eye.

In addition to the possibility he may have had a weapon, he was a physically impressive sized man and officers had difficulty restraining him.

Chairman Cox inquired as to where the threat came from about the weapon. Ms. Mazza responded that it came from the Rensselaer County Police. The police said it there was a possibility that he had a gun and threatened to engage in a shoot out. When he lied, they were just taking him out to sort out the situation.

Ms. Mazza commented that the complainant had no marks nor bruises, no medical report because he was not treated for the injuries complained of.

Ms. Mazza made a motion to accept OPS's preliminary finding and make a finding of "unfounded." Herman Thomas seconded the motion. The motion carried unanimously.

CPRB No. 67-02, OPS No. C02-553 (Presented by Manuel Alguero)

Dr. Alguero noted that a monitor was not assigned to this complaint. He further noted that OPS is recommending this complaint for mediation. A member of the GLC spoke with the complainant in an effort to explain the process of mediation. The complainant indicated that he was amenable to participating in mediation.

Dr. Alguero made a motion to refer the complaint to mediation. The motion was seconded. The motion carried unanimously.

CPRB No. 69-02, OPS No. C02-558 (Presented by Barbara Gaige)

The complainant stated that he was walking from a used car lot to his home and police said, “hey, you stop” and he didn’t pay attention. He kept walking. It is alleged that an officer jumped out of his car, pushed the complainant against a store and searched him. The complainant stated the officer gave no reason for search, so he wouldn’t cooperate with the officer. The officer ran him for warrants and nothing came back. He was charged with false personation. OPS spoke with the officer, reviewed the radio tapes and paperwork, and made a preliminary finding of “unfounded.” The officer stated that he/she saw what appeared to be a drug deal in progress. It was noted that in that area, there was approximately 172 calls for shoots fired and drug deals. The officer approached the complainant, who identified himself. The officer said he was not searched. The name given on the complainant’s identification was a different name than what was initially given to the officer. The complainant was subsequently arrested. The officer described the complainant as confrontational and admitted he said “busting balls” because the complainant allegedly said that the Albany Police were “p*ssys and f*ggots.” OPS heard the same first name that the officer heard. When in fact the complainant had another legal name, which sounded like the name that the officer heard. It appears that there may have been a misunderstanding. The complainant received an ACOD for the charge.

Barbara Gaige made a motion to accept the findings of OPS and make a finding of “unfounded. The motion was seconded by Herman Thomas.

Dr. Alguero inquired about the misunderstanding, commenting that there doesn’t seem to be room for confusion. According to Ms. Gaige, when the officer asked the complainant what his name was he gave one name, and when he produced an ID, it was another. As a result he was charged with criminal personation. Dr. Alguero inquired as to whether or not the officer asked for a spelling. He then noted his disagreement with the finding.

Judith Mazza noted that this complaint was similar to a complaint previously filed with the Board where a woman who gave officers her middle name was also charged with false personation. She noted that many people go by other names, nicknames and asked whether or not that was false personation.

Michael Whiteman responded that the definition of false personation is giving a false manifestation or otherwise misleading information in order to frustrate a person who properly asked a question in his or her duties. I'm not sure he had any intent to do anything, apart from the misunderstanding.

Mr. Whiteman added that the Chairman Cox had asked him to explain an ACOD. Mr. Whiteman commented that an ACOD means "adjourned in contemplation of dismissal." It is a proceeding on a criminal charge where the charge is suspended. If the defendant does not get into trouble, then charges will be dismissed.

Judith Mazza noted her concern over the fact that the complainant was arrested at all when he didn't do anything wrong to begin with. He still has a record for 6 months when he didn't do anything. Paul Weafer responded that the complainant was in a high drug area and did not stop when directed to by the officer. Ms. Mazza noted that complaints of this nature were a concern and that the Board needs to have discussions about these types of complaints.

Ms. Mazza's motion was renewed by Barbara Gaige. The motion carried in a 5-3 vote. Chairman Cox, Barbara Gaige, Herman Thomas, Eleanor Thompson and Paul Weafer were in favor and Manuel Alguero, Judith Mazza and Michael Whiteman were opposed.

B. Appointment of two new members to the Committee on Complaint Review for April 2003

The following Board members were appointed to the Committee on Complaint Review for the April 2003 meeting: Barbara Gaige, Marilyn Hammond, Herman Thomas, Paul Weafer and Michael Whiteman.

C. Report from the GLC

Staff Attorney Justina Cintrón gave the report.

Complaint Status. It was reported that the Board had 25 active complaints, 88 complaints that have been closed, and four complaints that remain suspended. Of the active complaints, 6 complaints have been referred to mediation

Training. It was reported that the Board's March 31st training on racial profiling would be rescheduled for a date in April. It was reported that the trainer for that session had a pre-existing conflict. Upon a consensus of the members present, the training was rescheduled for April 21st.

Outreach. It was reported that the GLC had scheduled a series of community outreach meetings at the Board's request. It was noted that an outreach meeting was scheduled

with the NY Civil Liberties Union at the Whiteman Offices on March 19th. Eleanor Thompson and Barbara Gaige agreed to attend.

It was reported that the outreach meeting with the Capital District Gay & Lesbian Community Council had been rescheduled for May 7th at 6:00 p.m. It was noted that Michael Whiteman, Judith Mazza and Barbara Gaige would attend the meeting.

It was reported that the GLC had contacted the NAACP, 100 Black Men, and the Center for Law and Justice and was awaiting a response. It was also reported that the GLC has made several unsuccessful attempts to contact the union by phone to schedule an outreach meeting. It was reported that the GLC would attempt to make contact via correspondence.

NACOLE Update. It was reported that the Board had received a copy of a letter forwarded to the GLC by the NACOLE Board of Director's notifying the Center that NACOLE did not accept the Center's proposal to host the 2004 NACOLE Conference. It was reported that the Center is interested in putting together a regional program in 2004. More information to follow.

Mediation. The status of complaints referred to mediation was reported as follows:

CPRB No. 3-02/OPS C02-01 - involved mother and minor son, outstanding, still awaiting response from police officer/police department.

CPRB No. 33-02/OPS C02-291 - involved aunt and nephew, outstanding, still awaiting response from police officer/police department.

CPRB No. 36-02/OPS No. C02-319 - involved K9 unit, outstanding, still awaiting response from police officer/police department.

CPRB No. 39-02/OPS No. C02-302 - the ticket has been resolved, outstanding, still awaiting response from police officer/police department.

CPRB No. 43-02/OPS No. C02-356 - outstanding, still awaiting response from police officer/police department.

CPRB No. 57-02/OPS No. C02-428 - outstanding, still awaiting response from police officer/police department.

D. Report from OPS

Commander Anthony Bruno gave the report. Commander Bruno reported the following statistics for 2002.

76 total complaints, a drop of 13 % (had 88 in 2001);

47 supervisory inquires, drop of 38% (76 in 2001);

19 officers disciplined;

Processed 24 telecommunications; 47 firefighters; 79 police applicants

It was reported that the Department has seen a drop in complaints and supervisory inquiries. It was reported that discipline ranged from an oral reprimand to suspensions.

Commissioner John Nielsen was recognized and responded that suspensions are used very rarely. Barbara Gaige inquired as to whether there are steps to discipline. Commander Bruno responded that the Department uses a progressive discipline model, adding that discipline depends on the seriousness of the charge. Commissioner Nielsen added that the Department can and has fired an officer for lying once

V. **Public Comment**

Dr. Alice Green was recognized. Dr. Green commented that it has been 3 months since the shooting of Jason Mayo. She noted that she had raised this issue 2 months ago because no official report was given to the community. She added that she understood that the Department may not have completed its investigation. She added that she was interested in knowing what the Board's role was with respect to this incident. She noted that the Board felt that it did not have a role yet. She also inquired as to whether or not the Board's racial profiling training was designed to address police policy.

Michael Whiteman asked Dr. Green if she had any recommendations as to what the Board's role ought to be. Dr. Green responded that the Board should be involved even if a complaint has not been filed.

Commissioner Nielsen commented, saying that the Board does play a part. He noted that the Board was called and notified about the incident as were those who represent different constituencies, the clergy and elected officials. He added that the reason it has been 3 months is because we are done with what can be done and have turned it over to the District Attorney, Paul Clyne. The DA is still awaiting a metallurgy test that has not yet come back from the lab before commencing with the Grand Jury. The Commissioner commented that his intention has always been to communicate to the public once he is able to do, adding that the Department is not hiding anything in this case.

The Commissioner commented on Dr. Green's inquiry about the racial profiling training, explaining that it is not appropriate at this time to have the Board review and comment upon the Department's profiling policy. He added that the Department is in the process of putting the policy together and is making an effort to work with various community groups, including the Center for Law and Justice, in developing the policy.

Justina Cintrón commented that the Board's racial profiling training is being conducted by an Albany Law School Professor who has written extensively on this topic. She added that the training is intended to provide education to the Board on the topic.

Lonnie Ford was recognized. Mr. Ford noted that there were a couple of comments that concerned him. He stated that a member of the Board had made a comment about where

individuals live and how they interact with the police. He recognized that this was not done negatively. However, he added that an individual's views are colored by how he or she is raised and by where the individual lives. He noted that people grow up in certain environments and view people in uniforms as enemies, not friends. He added that officers should be reminded that they must be professional because they are representing something bigger and no longer the individual and the power that was given to them is larger. Sometimes interactions are negative, like the boy who was arrested. Mr. Ford acknowledged that he didn't stop, but stated that individuals often feel victimized so they don't feel safe stopping and prefer to get to people who they know. He asked the Board to be mindful of those things when it is dealing with histories.

Chairman Cox read a letter regarding Herman Thomas. It was a resolution adopted by Albany County Legislature appointing Mr. Thomas as the County Coroner. Mr. Thomas was congratulated. Commissioner Nielsen commented that he has been a policeman for 30 years, mostly as a detective and then a supervisor. He noted that he has literally seen every murder scene in 30 years and without exception, the one person that he would want at those scenes is Herman Thomas. Mr. Thomas thanked the Board and the Commissioner for their kind words.

VI. **Adjournment**

Chairman Cox made a motion to adjourn the meeting at 7:36 p.m. Herman Thomas seconded the motion. The motion carried unanimously.

Respectfully Submitted,

Michael Whiteman
Secretary