

City of Albany
Citizens' Police Review Board
Albany Public Library
April 14, 2003
6 p.m. – 8 p.m.

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

Absent: Kenneth Cox and Paul Weafer

I. Call to order and Roll Call

Vice-Chairman Herman Thomas called the meeting to order at 6:15 p.m.

II. Approval of Agenda

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

III. Approval of March 2003 Minutes

The minutes were reviewed. Michael Whiteman moved to accept the March 2003 minutes. Manuel Alguero seconded the motion. The motion carried unanimously.

IV. Old Business

A. One (1) "old" complaint for review

Barbara Gaige noted that there is one (1) previously reviewed complaint on the agenda for further review. Michael Whiteman provided the following summary with respect to that complaint.

CPRB No. 15-02, OPS No. C02-169. (Presented by Michael Whiteman)

Complainant claims he was driving from Madison Avenue towards Lark Street and Clinton Avenue and was asked for a ride by a woman. When he got to Lark and Orange, she offered or solicited payment for a sex act that she was willing to perform. He declined and she got out of the car. The complainant gave her 80 cents. He then traveled to Henry Johnson Boulevard. The complainant was stopped on Livingston Avenue. He alleges that the police officer rudely pushed him against the car; he was asked who the person was and was ultimately given a ticket for failing to signal. Complainant said his car was searched. However, the police claimed that nothing but "the grabable" area around driver's seat was searched. The Office of Professional Standards (OPS), upon investigation, found the complainant's claim of

unnecessary use of force was not sustained. However, OPS found that the ticketing, the stop and the search were justified because the woman was a known prostitute and drug user and because she had gotten out of the car in an area known for high drug use and traffic. OPS found that the search was justified because the complainant consented, but the complainant denied having given the consent. OPS, however, stated that, based on the circumstances, consent wasn't required because the complainant should have known that the woman was a prostitute. It is alleged that the complainant lied and said she was a friend, but could not name her.

The complaint was returned to OPS in an earlier review to further investigate why it took so long for the officer to stop the complainant. According to the officer, traffic was heavy and the officer didn't feel that it was safe to make a stop in traffic until the officer got to Livingston Avenue. The validity of this explanation was questioned. Marilyn Hammond noted that it was around 8pm on a Monday evening when the incident occurred, which is not a generally busy time. The possibility of an unusual traffic occurrence was proposed.

Mr. Whiteman commented that there is not much evidence to sustain the complaint and that the Board should not second-guess the justification for the search. Mr. Whiteman recommended that the Board adopt OPS's findings. However, Mr. Whiteman noted that the officer said the complainant agreed to the search and was cooperative until he was given a ticket. Mr. Whiteman commented that the officer in this case appeared to have inadequately absorbed the department's training because the officer failed to use the search consent form.

Mr. Whiteman made a motion to adopt the findings of OPS, however, it was noted that this police officer should be reminded of the proper policy regarding the use of search consent forms. There was inquiry made into what would happen if the complainant was offered a consent form and refused to sign it. However, after discussion, it was noted that the search itself was not the main complaint.

The issue of why the prostitute was not stopped as well as the complainant was raised. It was reported that she was questioned after some time had passed. In addition, questions were asked about what was found on the license check that led to the search of the complainant and his car. OPS responded that they didn't think anything was discovered during the check.

Mr. Whiteman reminded the Board of the context of the incident; the vehicle stop in a high drug traffic area, a woman gets out of the car, the police recognize her as a known prostitute in the area, the failure to signal, all giving rise to the officer's suspicions that something was "going down."

The monitor assigned to the complaint, Richard Lenihan, was recognized. Mr. Lenihan added that the complainant stated that he felt he was stopped

solely on the basis of his race. However, it was noted that given the demographics of the area, it would not be unusual for an African-American to be stopped. He also noted that in addition to the consent form, the field investigation contact report was not filled out and/or could not be produced. OPS commented that the second form wouldn't be filled out if there was a traffic ticket issued. Mr. Lenihan added that, in addition to the traffic infraction, the complainant was stopped because of the person who was in the car.

Mr. Whiteman moved to accept the findings of OPS. The motion was seconded by Barbara Gaige.

Dr. Alguero noted that there should be further investigation into what specifically motivated the search apart from the prostitute and the occurrence of the incident in a high drug traffic area.

Mr. Whiteman renewed his motion to accept OPS's findings of "exonerated" with respect to the allegations pertaining to the traffic stop and "not sustained" with respect to the use of force allegation. The motion carried 4-3 with respect to the traffic stop (in favor: Barbara Gaige, Herman Thomas, Eleanor Thompson, and Michael Whiteman and opposed: Manuel Alguero, Marilyn Hammond and Judith Mazza). The motion carried unanimously with respect to the use of force allegation.

Mr. Whiteman noted that the Board must have 5 votes to take action on a complaint, and only 4 voted for "exonerated" as to the traffic stop.

Dr. Alguero then moved to return the complaint to OPS for further investigation of the traffic stop. Ms. Mazza seconded the motion. The motion carried unanimously.

OPS asked the Board specify why it was returning the complaint for further investigation.

Mr. Whiteman offered the following question: what led to the search, apart from the prostitute and the fact that the incident occurred in a high drug traffic area?

V. New Business

A. New Complaints

1. Received Since 3/10/03 Meeting

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

CPRB No. 9-03. Early in the morning on February 23rd, the complainant alleges he was arrested without being read his rights or told why he was being placed under arrest, was called “a f*cking moron” several times by officers and was called a “f*cking as*hole.” The complainant alleges that an earlier incident involving the complainant’s cab, where an alleged a mob of underage intoxicated students “attacked” his taxi, resulted in personal injury to the complainant and his arrest on two misdemeanor charges. The complainant also alleges the Albany Police allow underage drinking to occur while no police presence or crowd control is implemented to ensure the safety of innocent bystanders. *A monitor was assigned to this complaint.*

CPRB No. 10-03. The complainant states that he believes his 4th, 6th, and 14th amendment rights have been violated. In November, an officer alleged stated to complainant’s friend to “keep on walking or you’re going to jail” when complainant and his friend were exiting the friend’s home located at 24 Lexington Avenue. Complainant states he offered his New York State ID to the officer and responded that he had no outstanding warrants. The officer cuffed the complainant, stating he had an anonymous tip that there was a “black man out [t]here selling drugs in all blue clothes.” The officer then entered the basement apartment of 26 Lexington Avenue and found “a sock full of drugs.” The complainant alleges he told the officer that the drugs were not his. He also alleges he attempted to tell responding officers at the scene that the drugs were not his, but the officers “dismissed” everything he was saying. The complainant was then arrested for a class-C felony. *A monitor was assigned to this complaint.*

CPRB No. 11-03. The complainant alleges he was the victim of excessive use of force and assault committed by two Albany police officers and resulting in four stitches and a hyper-pigmentation scar on his cheek. A fight broke out at a dance club the complainant and his friends were at, and the complainant attempted to leave the area by vehicle. Other cars were blocking the complainant’s car, so the complaint began honking his horn, in hopes they would move and allow complainant to leave the fight area. An officer approached the complainant, stating “stop honking you f*cking horn. I’m about to shove that f*cking horn up your a*s in a minute.” The complainant replied “what the hell did I do wrong?” and an officer replied “I’m going to shove that horn up your ass, you asshole.” Because complainant could not open his window due to a malfunction, he attempted to open his door to speak to the officer. The officer then “ripped” the door open, damaging the hinges, grabbed the complainant and hit him twice in the back of the legs with his “police stick.” The officer yelled “get down to the f*cking ground you a*shole.” The complainant claims he did not resist and voluntarily dropped to his knees, but was pushed down, cuffed and kicked twice in the head and face. The complainant alleges that the first time he was kicked, his chin hit the black top and split open and the second kick caused his face to hit the pavement resulting in his face being deeply cut and scraped. At the station,

the complainant requested he be given a Breathalyzer, which showed he was not intoxicated and had no alcohol in his system. He was then taken to AMC for treatment, where he received 4 stitches in his chin and treatment for the cuts and abrasions to his left cheek. *A monitor was assigned to this complaint.*

CPRB No. 12-03. The complainant called the police department regarding a harassment violation. During the call, the complainant was asked to come to the station to discuss an arson incident. He alleges that a woman gave a statement about the arson incident and was told by an officer that if she told the complainant about the statement, her children would be taken away. The complainant and his girlfriend were subsequently arrested “on the arson charge.” The complainant alleges that he was cuffed and left in a questioning room for 1 hour and 20 minutes and that he was told he didn’t need a lawyer. The complainant claims when he asked to leave, he was told by an officer that he could be charged with an A-1 felony and told to “just be patient.” The complainant also claims that he was told he could go home if he “[gave] a murder case or well known drug dealer.” *No monitor was assigned.*

CPRB No. 13-03. Complainant was approached by an officer and was asked for his license and registration. He did not have either so the officer asked for his name and date of birth. The officer returned to his car and the complainant “drove off” with 3 police cars “giving chase.” The complainant alleges that officers chased the complainant at speeds “up to 100 mph” through Albany and into Colonie, “causing 6 people to be injured” for no just cause. *No monitor was assigned.*

2. Three (3) new complaints for review

CPRB No. 31-02. (Presented by Barbara Gaige)

Barbara Gaige made a motion to review this complaint in closed session pursuant to the Freedom of Information Law (FOIL). The motion was seconded by Judith Mazza and carried unanimously. Assistant Corporation Counsel Todd Burnham commented that the Board may move into closed session under the Open Meetings Law, not FOIL.

The complaint was heard in executive session. The following is a summary of the Board’s review.

Ms. Gaige read the complainant’s statement verbatim. The complaint is of harassment. An interview was conducted and witnesses were interviewed. Ms. Gaige noted that she reviewed what they had down at OPS. The officer had provided an investigative report with what happened and a neighbor made a report as well. The complainant stated that an acquaintance was given two (2) tickets and the officer said that he [the complainant] should stop dealing drugs or move if he was living across the street from a police officer and was doing

something wrong. On July 2nd, the complainant was arrested for harassment; he let off fireworks and almost hit the officer's wife.

OPS concluded that the complaint was "unfounded" because no witness could verify the harassment. The actions the officer took were such that any police officer and a concerned neighbor would take. Ms. Gaige moved to accept OPS's findings.

The brother of the complainant was recognized and said the following: "After my brother filed the complaint against this officer, he was arrested twice. The officer lived across the street and filed an order of protection against my brother. He sold the house and rented the house next door. That doesn't seem like a rational act. What I'm asking for is to have him removed. Is this APD policy? He filed order of protection and then moved next door!"

Ms. Gaige said that she didn't think that the Board could address that issue. The complainant's brother asked, "What do you address then and why are we just getting to this now?" The complainant was recognized and stated, "I filed this paper because we were in fear of our life. I thought somebody was going to do something." The complainant's brother stated, "The fact that he filed a complaint against the officer and was arrested twice after that is at issue. The officer and wife both have orders of protection. Is this normal procedure?"

Manuel Alguero clarified the role of the Board, noting that the Board's authority is limited to the review the investigation. He added that the Board does not do any independent investigations and does not assign discipline.

The complainant stated, "I'm 39 years old and have never been arrested before. They arrested me in front of my child when I have never done anything wrong or sold drugs."

The timeliness of the investigation was questioned. Ms. Hammond questioned that if the officer had an order of protection, why would he move in next door?

The complainant briefly addressed the claim that there were no witnesses to corroborate his complaint. He responded that he has documentation that there is a witness that can corroborate his complaint.

Dr. Alguero asked what the basis was for the arrest. Ms. Gaige responded that there was a firecracker that was set off by the complainant and ended up in the backyard of the officer and almost hit his wife. He was arrested for reckless endangerment.

The complainant commented that the officer claimed the complainant violated the order. The complainant noted, "I didn't do anything. Anytime this man calls the police I am arrested."

Todd Burnham agreed to talk with the Commissioner about this complaint. It was suggested that the timeliness of the investigation be addressed as well as whether or not there is a statement from a witness that corroborates the complainant's version of the events.

Ms. Gaige moved to table this complaint to allow an opportunity for Mr. Burnham to further inquire about this situation. The motion was seconded by Dr. Alguero and was carried unanimously.

CPRB No. 45-02 (Presented by Herman Thomas)

The complainant alleged he was subject to retaliatory action and false arrest without cause and that he was taken into custody, shackled, and transported to South Station. The complainant was allegedly arrested for a suspended registration. During the arrest, the officer stated that the complainant was "un-arrested." The complainant was then released and advised to pick up his vehicle. OPS a made findings of sustained as to each allegation.

Richard Lenihan, the monitor assigned to the complaint, was recognized. Rich stated that the officer had a problem with his animals and was ultimately issued a nuisance ticket. According to Mr. Lenihan, the bottom-line was that the officer was retaliatory in his nature and did something stupid.

The complainant addressed the Board and stated that the dog was a vicious dog and so labeled by the court system. The dog charged at complainant, his wife, and children. The officer was ordered to put a collar on the dog and to keep the dog restrained. The complainant doesn't want his family to have to fear further action. The complainant stated "We gave him [the officer] good faith and tried to welcome him into the neighborhood. I felt that this whole situation was retaliatory. His probable cause was that I had a tassel hanging from my rearview mirror. And I wasn't suspended. I knew he was in a retaliatory mood, and when he pulled me over I wasn't surprised. I retained my composure. I am an ordained minister and I couldn't go to see a heart attack victim because of this incident. I have small children and we have a great neighborhood and it's disheartening that we opened our neighborhood to this man."

The complainant's wife spoke and offered the following comments: "Good evening, I am here to represent two positions, a mother and also someone who works for children in the community. My concern is two-fold. It is not acceptable that anyone be allowed to have a vicious animal, and certainly not an officer, who is supposed to uphold the law. Another issue is that there is a day care center, the owner is here today, and these children should be able to go outside. Another concern is that we have a home for disabled clients and they themselves need protection and can't risk being outside now. Also, Daughters of Sarah and the Teresian House are in the

neighborhood, we have a lot of elderly people. I love dogs but we had to send our children through the woods by themselves because the dog barely stopped from biting us. What troubles me is that after the officer was ordered by the court to collar the dog and install an invisible fence, he is still not abiding by that law. We are here now to ask your help to fix this situation.”

Vice-Chairman Thomas moved to accept OPS’s findings and make a finding of “sustained” as to the complainant’s allegations.

For purposes of the record, Michael Whitman asked if OPS could determine from the dispatcher’s log when the check of the license/registration took place. OPS commented that the check took place several times, the first time being prior to the stop. Mr. Whiteman also inquired as to whether the handcuffs were metal or plastic. Commander Bruno commented that the handcuffs were likely standard issue metal cuffs.

Mr. Whiteman seconded Mr. Thomas’s motion. The motion carried unanimously.

CPRB No. 02-03 (Presented by Barbara Gaige)

The Complainant alleges she was stopped on December 27th at 3 a.m. and was asked to show ID, which she did. Complainant stated she asked the officer why she was being stopped and he advised her that she fit the description of a “robber.” The complainant stated the officer did not check her name over the radio. The complainant stated she then used her cell phone to contact her mother and the officer allegedly asked, “Who are you calling? Your lawyer?” The officer allegedly stated, “You don’t scare me.” The complainant alleged the officer violated her rights when he stopped her and that the officer was rude when she asked for his name and shield number.

Ms. Gaige reviewed the files at OPS. At 2:55 a.m., there was a burglary in progress and an alarm was activated. There was a 2nd call received saying the party was wearing a red and black jacket. The contact form that was reviewed said the complainant’s clothing matched the description. An officer then asked her for her ID. The officer then said that the witness could not ID the suspect. Complainant demanded the name and badge number of the officer. The tapes confirm the description of a jacket that matched the complainant’s jacket.

OPS concluded that the conduct was “not sustained” and call handling was “exonerated.”

Ms. Gaige stated that according to the Criminal Procedure Law, a police officer can stop a person if he or she believes a crime has been or is being committed and a police officer can perform a search limited in scope if he believes or has reasonable cause for an indication of possible harm.

The complainant was recognized and commented that she doesn't have the officer's name because the officer wouldn't give his name. She continued, "I don't know how I fit the description of the male robbery suspect. He was very rude and I don't like what he did to me. We were having our Christmas dinner. He was very nasty, he said 'who are you calling, your lawyer'. I said 'no, my mother.'" I want to know how long this is going to go on that people are going to be harassed. He had his dog with him as well. And I thought he was supposed to give me his name."

Ms. Mazza stated that the complaint is mainly about the attitude.

The complainant stated she was mad about how the officer stopped her. "If he came to some of the functions in my community, he would know how I am. The rudeness is never okay."

Ms. Hammond inquired as to why he would stop a female when looking for a male suspect. The complainant noted that at the time of the incident, her hair was long and her coat was different. She stated, "He kept insisting, where was the cigarette pack?"

Ms. Mazza commented that there is legitimacy to the stop. The stop itself is not so much the question as is what happens after someone is stopped. There should be an understanding that citizens will be less likely to cooperate if being treated with disrespect by police officers.

Karleen Karlson reported that the complainant is well informed about the process of mediation and does not want to participate in mediation. She wants to see the officer's behavior addressed.

Ms. Mazza again stressed the need of the Board to address the recurring issue of attitude problems among officers.

It was noted that eventually these attitude problems could escalate into a physical problem. It was also noted that this "quality of performance" issue may be beyond what the Board can efficiently deal with. The problem was said to not be "pervasive," however, it is a recurring, identifiable problem. In addition, the Board recognized that many of the complaints that come to the floor deal with this issue of a lack of respect by the officers towards the citizens.

Ms. Gaige moved that the Board send a letter to the Commissioner outlining these concerns about officer attitudes. Dr. Alguero seconded the motion. The motion carried unanimously.

Complainant also said, "When the detective called me in, he couldn't find anything in the record about Stewarts. The detective said they didn't even know my name. Why wasn't the contact information recorded? Something

has to be wrong.” The complainant was informed by the Board that they are not investigators and that they only report on the investigation of OPS.

OPS informed the Board that the contact card goes to a data entry person and that there may be a lag. Considering it was Christmas time when the incident occurred, it was likely that those persons responsible for entering the data were on vacation.

Ms. Gaige stated that in view of the complainant’s concerns, she would like to suggest that the Board table its review of the complaint. A motion was made to return the complaint to OPS for further investigation as to whether or not the officer filled out a field investigation contact form and whether or not such contact form was properly recorded in the department’s database. The motion was seconded by Marilyn Hammond and carried unanimously.

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

The following Board members were appointed to the Committee on Complaint Review for the May 2003 meeting: Manuel Alguero, Barbara Gaige, Judith Mazza, Eleanor Thompson and Paul Weafer.

C. Reports

1. 2002 Annual Report

The Government Law Center reported that the Board’s Second Annual Report was almost complete, noting that this year’s report includes statistics and summaries of more than 90 complaints.

2. First Quarter Report for 2003

The Government Law Center noted that a draft of the First Quarter Report for 2003 has been forwarded to the Board in advance of the meeting. The Center noted that information about the Board’s upcoming racial profiling training session had been included in the report. The report was reviewed. Judith Mazza moved to approve the report. Dr. Alguero seconded the motion. The motion carried unanimously.

D. *Report of GLC*

The report was given by Staff Attorneys Justina Cintron and Karleen Karlson.

Correspondence

It was noted that several pieces of correspondence received by the Center on behalf of the Board were copied and forwarded to the Board members for their review. It was reported that one piece of correspondence was received by a complainant whose case had been reviewed by the Board. The complainant asked that the GLC forward the letter to the Board for its review. Another letter was received by a potential complainant. A third letter was addressed to Dr. Alguero requesting information in support of a pending disability benefits claim being made by the complainant. It was reported that the Center consulted with Assistant Corporation Counsel as to the request. The Center was advised to draft a letter in response advising the agency seeking the information that Dr. Alguero cannot appropriately provide the requested information since he is not a medical doctor and does not have knowledge or documentation to support the complainant's claim for benefits. Judith Mazza moved to send the letter. The motion was seconded by Dr. Alguero. The motion carried unanimously.

SUNY Report

It was reported that the Center had received SUNY's report on the CPRB and had forwarded copies to the Board for its review.

Outreach

The Center noted that there was an updated outreach schedule included in the information forwarded to the Board at the start of the meeting. Judith Mazza, Barbra Gaige and Marilyn Hammond agreed to attend the May 7th and May 29th outreach sessions with the Capital District Gay and Lesbian Community Council and the Center for Law and Justice.

Training

The Board was reminded that a racial profiling training session had been scheduled on Monday, April 21st from 6 p.m. to 8p.m. at the law school.

Mediation.

It was reported that the Center had scheduled two complaints were scheduled for mediation the week preceding the Board meeting. The following was reported with respect to those complaints.

CPRB No. 55-02. Commander Anthony Bruno of OPS represented the police department. No agreement was reached, however the Board did reach a decision already.

CPRB No. 67-02. A session was scheduled for that afternoon however, two hours before the mediation was scheduled; it was cancelled by the officer because the union had instructed him not to attend.

The Center reported that there were still 4 outstanding complaints referred to mediation.

Michael Whiteman inquired as to whether it was a general policy of the union to advise officers not to participate.

Karleen Karlson responded that she was not aware of a policy, but commented that this is an issue that needs to be explored.

The Center introduced Kate Raynor, a master's student at SUNY Albany who has been hired to assist in the administrative support of the Board.

E. Report from OPS

Commander Anthony Bruno gave the report. Commander Bruno reported that OPS has fully moved into its new offices at 200 Henry Johnson Boulevard, and that a press release would be sent out soon. An invitation was extended to the Board to visit the new offices. It was noted that the their phone numbers would remain the same.

VI. Public Comment

Dr. Alice Green was recognized and introduced Ms. Linda Watkins. She commented that she thinks it's great that the board is sending a letter to the Commissioner about attitude problems. Dr. Green explained that there are four issues that she would like to address with respect to the shooting incident in Albany in December 2002. First, she commented that Ms. Watkins has not heard anything from the police department about the shooting of her son. Second, Dr. Green noted that there has been some four months that have elapsed since the investigation began and it is not yet concluded. She inquired as to how long the Ms. Watkins and the public would have to wait to hear more about this incident. Third, she reported that on December 26, 2002, two days following the shooting of her son, Ms. Watkins wrote a letter to the City asking for certain information from the police department, but the police department has not had the courtesy to respond to these requests. Finally, she noted that Ms. Watkins had filed a request under the Freedom of Information Law and the department has also not responded to that request.

Dr. Green added that there were other policy issues that should be addressed, noting that it is within the Board's authority to address policy regarding the department's use of force, and the Board should address the issue of conducting investigations within a specified time.

Linda Watkins was recognized. Ms. Watkins noted her frustrations with the City's failure to respond to her letter requesting information on Dec 26th and to her FOIL request. Ms. Watkins stated, "As a concerned parent, I have a right to know what is going on. We haven't heard a thing."

Commander Bruno noted that any request under FOIL would go through administrative services and there may be some information they might not want to release. Ms. Watkins replied, "My child is not coming back, what harm would the papers be?" Commander Bruno commented that the papers wouldn't come from OPS so he would have nothing to do with that issue.

Ms. Watkins commented that, "My son was shot, but the PD hasn't responded a word." Assistant Corporation Counsel Todd Burnham was asked by the Board to look into the matter. Mr. Burnham agreed to consult with the Commissioner and report back to the Board.

VII. Adjournment

Vice-Chairman Herman Thomas made a motion to adjourn the meeting at 8:39 p.m. Barbara Gaige seconded the motion. The motion was carried unanimously.

Respectfully Submitted,

Michael Whiteman
Secretary