

City of Albany  
Citizens' Police Review Board  
Minutes of Meeting 5/13/02  
Albany Public Library  
HBH Room

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

Absent: Marilyn Hammond and Manuel Alguero

I. Call to Order & Roll Call

Chairman Kenneth Cox called the meeting to order at 7:05pm.

The agenda was temporarily suspended while waiting for a quorum. Chairman Cox announced that Anthony Bruno was promoted last Friday to the rank of Commander and that he would be more regularly involved with the CPRB on behalf of OPS. Chairman Cox commented on Commander Bruno's record of excellent cooperation with the Board and congratulated him on his promotion.

Commander Bruno delivered the report from the Office of Professional Standards. He thanked the Board for their good wishes on his promotion. He stated that he looked forward to working with the Board in his new capacity, and that he has a lot of ideas to share with the Board. He noted that he is still getting settled in his new role which is only days old. He stated that he would make certain that the Board received annual and quarterly reports from OPS.

A quorum was present and Chairman Cox moved back to the regular agenda.

II. Approval of Agenda

The agenda was reviewed and Paul Weafer moved to approve it. The motion was seconded by Herman Thomas and all approved.

III. Approval of Last Meeting Minutes

Michael Whiteman noted some changes to the minutes of the April 2002 meeting that were given to the Board members at the meeting. After reviewing the minutes he offered two changes. The first change was on page 4 and addressed the voting. He noted that there were 4 not 2 affirmative votes. There were 2 negative votes and 2 abstentions. The second change was on page 7, paragraph 3 should read that the incidents are not efficiently addressed. Michael Whiteman moved to adopt the minutes as amended. Herman Thomas seconded. All approved.

#### IV. Old Business

Michael Whiteman reviewed **Case No. 43-01, OPS No. C01-524.**

The case alleged harassment with three specific allegations: 1) early July last year, complainant got a ticket for double parking and alleged this was harassment. The complainant alleged that the issuing officer stated that the ticket was issued because an unidentified female nearby was swearing at the police officer; he also alleged he was called names which had racist meanings; 2) he was issued another ticket 3 months later for parking on the wrong side of the street; 3) over the course of the last 3 years, he has been called names by police. As to the first allegation, the police officer said he was not aware of a woman swearing at him. He said the complainant was not in his car and he directed the complainant to "stand by." The complainant did not listen and instead drove off so the police followed him. Michael Whiteman reported that the complainant admitted to double parking. No one corroborated the allegation that he was called racist names, including the complainant's companion who was there. As to the 2<sup>nd</sup> ticket, the complainant admits he was illegally parked. Complainant asked a police officer on a bike if he issued the 2<sup>nd</sup> ticket. The officer said yes, but he had not, the ticket was issued by the first officer (there was a 3 month separation between these events). As to the 3<sup>rd</sup> allegation, Michael Whiteman characterized it as vague. OPS found all three allegations unfounded. Michael Whiteman moved that board adopt a finding of unfounded on all 3 allegations. Paul Weafer seconded. All approved.

Judith Mazza reviewed **Case No. 30-01, OPS No. C01-428.**

This case has been reviewed in the past. A 911 call revealed that someone was shot and bleeding. She reported that she listened to the 911 tapes. She reported that when the police arrived there seemed to be a lot of confusion. The police separated the crowd. The complainant is the father of the victim. Apparently he was trying to see his injured son while the police were separating people. The complainant was trying to tell the police why he wanted to see his son. He alleges that one officer poked him with flashlight, and that when he refused to cooperate the police tried to handcuff him. He says the police bent him over a railing to cuff him and put him into a car to go to the station. The police charged him with obstruction of governmental administration. The complainant says his eyeglasses were broken, that he was bruised, and that he was unjustly arrested. Judith Mazza remarked that the 911 tapes show a lot of confusion and a lot of hollering. Police and EMS were sent to the scene and the victim did not want treatment. Complainant was part of the group there when the police arrived. Various people were interviewed, photos of bruises were reviewed, and it was noted that the complainant went to Albany Medical Center. The bruises probably happened when he was pushed to the railing. No one saw alleged flashlight poking. OPS found that the allegation of arrest was exonerated. The allegation of use of force was determined to be unfounded by OPS. Judith Mazza reviewed the monitor's report since the monitor on this case has since moved out of town.

Attorney Mark Mischler said he was pleased the Board has taken jurisdiction of the complaint again. He expressed concerns about the process followed by the police the night Mr. Ford was arrested as well as concerns with the policy of OPS. He said OPS should have reviewed medical records. Mark Mischler asked for clarification as to whether the investigation was completed some time ago or whether additional work was done after it was first reported to the Board. Judith Mazza said she didn't have an answer. Mark Mischler said that in terms of the substance of the OPS investigation, he did not believe they did a proper job. Mark claimed that at the point when the police arrived, there was not a "crowd", just a few people. What Mr. Ford describes was that there were 6 police officers and 3 civilians; that the son and the daughter each had 2 officers with them. He said the police then approached Mr. Ford and that their first contact was that they came up to Mr. Ford and hit him hard in the abdomen with a flashlight. There was no communication and no conversation. Mr. Ford said, "You will not do that to me." Then he was bent over the railing and handcuffed. Mr. Ford said there was no reason for the officer to approach him and poke him with a flashlight, that it was excessive force, and there was no need for any force. He said he was falsely arrested. Mark Mischler noted that he hasn't seen the police officers' statements. He thinks that what the police said doesn't make sense and that Mr. Ford has been consistent from the beginning. Mark Mischler said they are not satisfied with the conclusion, and he doesn't think OPS considered the scene and what was said. Mr. Ford was injured but not seriously and he was charged with a criminal offense which is still pending.

Barbara Gaige asked if Mr. Ford arrived at the scene just as the officers did?

He said he heard his daughter crying and he went up and saw her crying. One officer had his leg on her back and another officer was still talking to his son. An officer then poked Mr. Ford. Mr. Ford demonstrated what happened to him.

Herman Thomas said that the Board was supposed to talk to his daughter. Judith Mazza said her case was already reviewed.

Judith Mazza said a number of people were interviewed. The monitor said there were two friends and two other neighbors in the area at the time. It is difficult for the Board to determine whether the arrest was warranted - that is for the court. The police and OPS saw use of force unfounded and the arrest was exonerated. Judith Mazza suggested mediation.

Mr. Ford said he went to OPS and wanted an apology and his glasses. He said the DA and the public defender laughed in his face. New glasses cost \$375. That's all he asked for. That's when he went to get a lawyer.

Paul Weafer said he went to listen to the tapes and that repeatedly the caller said a boy has been shot - why are you asking me these questions?

Mr. Ford said he was outside by the window. With respect to the 911 call, he was hollering, screaming, and crying.

Paul Weafer noted that police department policy is to separate everyone when they think there is a gun. He said there was a lot of noise and confusion. Paul Weafer asked if his son was safer with police. Mr. Ford said yes.

Mark Mischler said the police were implementing a policy in response to a call. Mark Mischler said that is not what the officer wrote that night. He said Mr. Ford pushed the officer and that is a different theory of what was going on.

Judith Mazza said the Board cannot make a determination on someone being arrested. The Board can only respond to a complaint by Mr. Ford. She suggested that based on the information in the original complaint, the Board make a determination to move this to mediation before a decision is made with respect to an OPS conclusion.

Michael Whiteman concurred in that view. The Board is not in a position to determine what happened that night, and the facts are tied up with the facts as a basis for arrest. He said he is uncomfortable making a decision with a pending criminal proceeding and a notice of claim has been filed.

Ken Cox asked Mr. Ford whether he would be willing to mediate. He said yes.

Judith Mazza moved to recommend to the Commissioner that the case be moved to mediation. Paul Weafer seconded. All approved. The Commissioner said that all parties must agree.

Mark Mischler still has concerns that OPS and the Board still back off when the propriety of an arrest is on the table. He asked why this can't be examined by the Board and OPS.

Paul Weafer said that Board members who heard the tapes, heard concern and confusion with respect to what happened to Mr. Ford's son. Paul Weafer said hopefully mediation will allow this information to come out.

Paul Weafer reviewed **Case No. 01-02, OPS No. C01-515**

The monitor on case was George Kleinmeir.

While waiting for a parking space, the complainant was asked to move. He said he was waiting for a parking space. An off duty police officer asked the complainant to move the car again and used a swear word. The complainant called 911 to report the incident to the State Police. The State Police referred it to Guilderland. The complainant owns a store in Troy and a brick was thrown through the window. OPS found the complaint not

sustained. The officer was supposed to report the incident even if he was off-duty. The monitor reviewed statements of the witness and the complainant. The complainant said it was road rage on the part of the off duty police officer. The complainant's van had his store name and phone number on it. The complainant had accused someone else of road rage too. The monitor asked to see whether the cell phone of the officer had made calls to Troy. OPS did this and no calls were made. OPS said the Chief of Police should have been administratively notified and that the officer admitted to not doing this.

Michael Whiteman said OPS found this not sustained because the officer denied he lost his cool and there were no other witness, but there was another person in the vehicle. The complainant had a lot of details and they were corroborated by the witness. The police officers' only response was general denial with no details at all. Michael Whiteman said he is troubled by OPS's finding. Police are bound to follow rules and this is about rudeness and incivility. He said it is more likely that it occurred than it didn't.

Judith Mazza asked if the witness felt there was hostility. The monitor said yes that there was a lot of yelling.

Michael Whiteman read the possible findings. He suggested the Board make a finding of sustained. Judith Mazza said she was similarly struck because the complainant reported this to two different police jurisdictions. Paul Weafer said we just had a far more serious case and we recommended mediation, why not use mediation? Paul Weafer said the officer can learn from mediation.

Ken Cox seconded Michael Whiteman's motion to find the complaint sustained. Six approved, 1 opposed (Paul Weafer).

V. New Business.

A. *New Complaints Filed.*

Paul Weafer reported that the Board opened up files for Cases 15-02 to 25-02. 7 cases have monitors, 4 for alleged civil rights violations and 3 for alleged use of force.

B. *Complaint Review*

Herman Thomas reviewed **CPRB No. 3-02, OPS No. C02-01.**

Mother and son complainants alleged that officers at last year's Tulip Festival exchanged words with the son. Another youth had hit an officer with a piece of metal. The complainant's son was allegedly chased by a police officer and choked with his shirt. The police officer allegedly ripped a necklace and charm off of his neck and his clothing was torn. The complainant said that the officer had given her son dirty looks. He said he would be waiting for her son to turn 16. Bruce Androphy, the monitor, said

the boys were caught but were not arrested. Bruce Androphy said the officer told the complainant's son to have his mother reach him later. The second part of the complaint alleged threatening of a juvenile. There was a discrepancy noted. The officer did stop at the residence of the boy, but there are no witnesses to corroborate. There is a great deal of hostility among the parties. Michael Whiteman noted that the first part of the complaint is more than 6 months old and that the second part is from November. He said there should be a motion to consider it. Michael Whiteman moved to consider, Paul Weafer seconded, and all approved to hear both complaints.

The mother said she tried to file a complaint on 5/13/01 and that the officer that came out to take the complaint was the one involved. She was turned away. Herman Thomas said it was in the officers' record. For each contact between the officer and her son, there was someone there to witness it. Allegedly, the officer asked the aunt when he would be 16 and what his name was. The complainant alleged that the officer who was choking her son was saying racial things. He said he would take the boy to the North Station, and he called him a nigger. Apparently, the mother said the officer was upset because he had to chase someone. He told the boy, "You made me waste my energy because I had to chase you." Paul Weafer asked the son if the other child threw the metal pipe at the officer and the boy replied yes. The complainant's son tried to stop the other kid from throwing the pipe at the officer. The officer knew the other kid's father was dead and the officer said he was happy.

Paul Weafer asked if the officer has approached the son since November. The mother said no, but that the officer has rolled past the house and has been at the High School. Paul Weafer asked if OPS knew about the father's death and she said yes. In August, the officer gave the son a dirty look. In November, the officer put the light on and wanted to know why he was out late.

Herman Thomas asked the complainant what she wants. She wants her son to be safe. OPS said it is a high crime area. The complainant is concerned that the officer is keeping a mental record of what happened. Herman Thomas asked if she would consider mediation. She said no, because she'd witnessed the officer using excessive force against another student at Albany High School. She went with the family to the police department as a witness. She said this officer has a reputation and that sitting down will not be effective.

Paul Weafer commented that Bruce Androphy thought the investigation was thorough. Bruce said this was all in the file.

The son was treated at Albany Medical Center for strangulation and contusions. His clothes were ripped. He told the officer that he couldn't breathe.

Herman Thomas moved for further investigation. Paul Weafer seconded and all approved. The GLC was asked to assign a new monitor.

Barbara Gaige reviewed **CPRB No. 4-02, OPS No. C02-13.**

Complainant was on her way to pay parking tickets when she went into a store. An officer wrote her a ticket for being double parked. There were two officers present. One was a training officer, one was a new recruit. The complainant got angry, and moved her car to a parking space and went into store. The officer was there and said she was two feet from the curb (she did not get a ticket for this). She tried to move her car but the officers wouldn't move. She got another ticket for driving without a seat belt. Her car was then towed because she owed money on other tickets. She paid the money at City Hall and was given a release. The complaint was found sustained by OPS. There should not have been an argument and the training officer was not a good role model for recruit.

Monitor said she should have let the ticket go, but the police officers should have acted more appropriately. The officers didn't feel they did anything wrong, but OPS did. The tow truck operator seemed to have diffused the situation.

Barbara Gaige moved to sustain the complaint. Judith Mazza seconded and all approved.

Eleanor Thompson reviewed **CPRB No. 5-02, OPS No. C02-45.**

The complainant alleged he was transported to the station and passed through a metal detector. A check of the computer system failed to show complainant had contact with Albany Police Department. A check with the Albany County Sheriff's Department revealed it was their vehicle. There was no proof to show complainant had contact with any member of the Albany Police Department. It appears it was the Albany County Sheriff's Department. Complainant is no longer at the Interfaith Center. The Center for Law, Order and Justice has no contact information on the complainant. Eleanor Thompson agreed and the case should be closed with no findings. Judith Mazza seconded and all approved.

Judith Mazza asked if anyone tried to contact the complainant to suggest communicating with the Sheriff. Commander Bruno spoke with him and referred him to the county.

Paul Weafer asked to go back to the matter that was sustained 6-1. He said the motion just relates to the Crossgates incident, not that the officer threw a brick in the window. Michael Whiteman moved that the Board find not sustained on the brick. Paul Weafer seconded and all approved.

Paul Weafer reported on 2 outstanding matters.

On the landlord/tenant issue he noted that the Commissioner of Public Safety has taken

under advisement that the Board recommended a policy be implemented. OPS is still investigating whether complainant was strip searched that day. Paul Weafer asked Commander Bruno to explain the strip search policy. The Commander said that the SOP is being reviewed.

In the second case, the complainant said his out of state driver's license was not returned to him. Justina Cintron said the complainant called the GLC and asked for a copy of the SOP. Justina Cintron said she called OPS and was told the SOP needed to be FOILed. Judith Mazza said people shouldn't have to FOIL it.

#### C. *Committee on Complaint Review*

Ken Cox recommended that the complaint review committee be kept the same for next month.

#### D. *Report from GLC*

Justina Cintrón reported that 70 complaints have been filed to date. She noted that the GLC's First Year Assessment of the work of the CPRB had been completed. Each Board member was provided with a copy. Justina Cintrón also discussed the need to schedule additional training programs beginning in the Fall. Barbara Gaige asked the status of recruiting more monitors. Patty Salkin responded that the GLC was working on this and expects to interview candidates in June.

Justina Cintrón reported that the Commissioner has forwarded to the GLC all of the outstanding final reports.

Justina Cintrón said that the Board needs a mechanism on how to communicate with complainants when old complaints are received.

100 Black Men has asked the Board to conduct a training on how to file a complaint and what happens when one is filed.

Justina Cintrón said she is looking for other ideas for outreach.

Paul Weafer said there are 12 new complaints, and he commented that it may be necessary to do more than 5 a night.

#### V. *Public Comment*

The floor was opened for public comment. No comment was offered.

VI. *Adjournment*

Ken Cox moved to adjourn the meeting, Paul Weafer seconded. All approved.

The meeting was adjourned at 9:00 pm.

Respectfully Submitted,

Michael Whiteman  
Secretary