

City of Albany
Citizens' Police Review Board
Minutes of 6/10/02 Meeting
200 Henry Johnson Boulevard, Community Room

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

I. Call to Order

Chairman Kenneth Cox called the meeting to order at 6:05pm.

II. Approval of Agenda

The agenda was reviewed. Chairman Cox moved to accept the agenda. The motion was seconded by Manuel Alguero. The motion was carried unanimously.

III. Approval of Last Meeting Minutes

The minutes from the May 13, 2002 meeting were reviewed. Barbara Gaige moved to accept the minutes. Michael Whiteman seconded the motion. The motion was carried unanimously.

IV. Old Business

CPRB No. 32-01/OPS No. C01-447. Michael Whiteman gave summary of the complaint. There were three allegations in the complaint: 1) improper search of the complainant's vehicle; 2) use of offensive language in referring to the complainant; and 3) physical pat down search of the complainant by an officer of opposite gender.

Pat Down Search

Commander Anthony Bruno reported that there was further investigation of the complaint. Both the complainant and the officer were re-interviewed. The officer who conducted the pat down search stated that he used the back of his hand to conduct the search. Commander Bruno noted that this was not part of the Department's standard operating procedures. According to Commander Bruno, when the officer was asked about this method of conducting the search, the officer stated that he was trained at the police academy to conduct pat down searches this way when searching an individual of the opposite gender. Commander Bruno reported that his review of the academy's training procedure for pat down searches confirmed the officer's statement.

It was reported that OPS made a finding of "ineffective training or policy" with respect to this allegation. Commander Bruno noted that his office is in the process of drafting a policy regarding the procedures for pat down searches.

In light of the officer's statement, Michael Whiteman moved to accept OPS' finding and made a finding of "ineffective policy or training." Paul Weafer seconded the motion. The motion carried unanimously.

Vehicle Search

It was reported that the complainant and passenger gave consent to search the complainant's vehicle. According to OPS, the complainant was contacted and interviewed a second time. During this second interview the complainant stated that she did not specifically revoke consent, but framed her revocation in the form of a question. Both police officers who were present stated that the complainant did not revoke consent.

Commander Bruno reported that OPS' finding with respect to this allegation was "not sustained."

Judith Mazza asked if this was a training issue and if it should be made clear to individuals that consent can be revoked at any time. Commander Bruno responded by saying that police officers are trained regarding the revocation of consent at the training academy, but added that officers are not required to give advice regarding consent, unless they are asked.

Michael Whiteman moved to accept OPS' finding and make a finding of "not sustained" as to the vehicle search allegation. Both Judith Mazza and Barbara Gaige seconded the motion. The motion carried unanimously.

CPRB No. 12-01/OPS No. 01-263. Manuel Alguero gave a summary of the findings previously made with respect to the allegations in this complaint, and noted that the strip search allegation had been returned for further investigation and was still outstanding. The complaint involved a landlord/tenant dispute.

According to Commander Bruno, booking personnel were interviewed again, however, no one could recall whether or not the complainant was strip searched. Commander Bruno reported that the booking tapes from the date of the incident were no longer available, noting that there was an initial delay between the incident and the filing of the complaint and adding that 22 months have elapsed since the incident occurred. He reported that there no new recollections of the incident by the officers who were present.

There was discussion about the department's strip search policy. According to Commander Bruno, the Department is mandated by the State Commission of Corrections to search individuals who are being processed. The Department is permitted to conduct a search of the person and their clothing. A cavity search can only be performed by a M.D.

Paul Weafer noted that when the Board initially reviewed this case, the Board recommended that a policy be adopted regarding the department's strip search

procedures, including a requirement that searches conducted be logged. Commander Bruno reported that a policy had been drafted by his office and forwarded to Department's administration department for review.

Judith Mazza asked if the policy had been adopted. Commander Bruno responded that he did not know

Commander Bruno reported that OPS' finding with respect to the strip search allegation remained "not sustained" and the allegation regarding the kiss was also "not sustained."

Manuel Alguero asked about the number of officers involved in the incident and whether this information would help? Commander Bruno reported that there were four people present, some were civilian and added that on the cell block, only the officers were present. He reported that all of the individuals involved were interviewed twice, but didn't recall the strip search.

Dr. Alguero commented that he is uncomfortable with police officers' lack of recollection and that the Board is uncomfortable with this lack of recollection. He asked this be noted in the record.

Paul Weafer commented that if the complainant was asked, he would say that he was strip searched. He noted that OPS conducted a further investigation of the strip search and that the Board has made a recommendation regarding the Department' strip search policy. He added that he didn't think the complaint should be prolonged. Judith Mazza agreed, noting that the case is 22 months old.

According to Mr. Weafer, the Board had already recommended two (2) policy changes: 1) limiting police officer involvement in landlord/tenant disputes, and 2) limiting strip searches to cases where an individual is violent or there are drug-related charges.

Judith Mazza commented that policy takes time and that the people affected do not always have time. She recommended that the Department's strip search policy be put into effect by the Board's next meeting as a priority. Manuel Alguero agreed with his colleagues, and noted that he is satisfied that the Police Department is taking action regarding a change in procedure. Dr. Alguero then moved to accept the findings of OPS and make of finding of "not sustained" as to the strip search allegations. Judith Mazza seconded the motion. The motion carried unanimously.

V. New Business

A. *New Complaints*

1. Paul Weafer gave a brief summary of the new complaints received by the Board since its May 13, 2002 meeting.

CPRB No. 27-02. A monitor was appointed.

CPRB No. 28-02. No monitor was appointed. The complaint involves allegations against the Albany Police Department. Upon further inquiry, it was discovered that the same allegations are being made against the Bethlehem Police and the Albany County Sheriff's Department.

CPRB No. 29-02. No Monitor was appointed. It was noted that the description in the complaint included a date (May 3) and the word "knife."

Commander Bruno reported that OPS detectives went to both addresses listed on the complaint and left cards, but could not locate the complainant at either address. He noted that the contact phone number had been changed and reported that the individual who filed the complaint has an active warrant against him/her. Commander Bruno reported that his office is unable to determine what the allegations of the complaint are.

Barbara Gaige asked if the Department had contact with the complainant on May 3rd. Commander Bruno responded that it had not.

CPRB No. 30-02. No monitor was appointed.

2. Complaints Filed Later than 6 Months of the Alleged Incident

It was reported that the Board had four (4) outstanding complaints, filed later than six months of the alleged incident giving rise to the complaint, that required a majority vote of the Board to accept and review. Paul Weafer gave a summary fo the complaints.

CPRB 41-01. This complaint is a 1999 case. The complainant alleged that he did not receive any information about the findings made with respect to his complaint. Paul Weafer noted that the complaint is three (3) years old and should have been filed with the former Board. Mr. Weafer noted that discipline cannot be imposed in cases more than two (2) years old.

Michael Whiteman inquired as to the kind of response the complainant had received from the Chief or OPS. Commander Bruno reported that he spoke to the complainant several times and that the complainant had spoken to the supervisor on duty. According to Commander Bruno, the complainant did not want to file a complaint at that time; he just wanted his complaint documented. Commander Bruno noted that his office considered the case closed after the complainant spoke with the supervisor. However, he noted that the complainant had approached him at a previous Board meeting and stated that in light of 9/11, the 1999 incident was an "act of terrorism" against him. Commander Bruno added that the complainant requested that his case be looked at further.

Judith Mazza asked about the result. Commander Bruno responded that the complaint did not go through OPS; it was handled by the Supervising Officer. He added that the Supervisor had several contacts with the complainant.

Barbara Gaige made a motion to advise the complainant that it is too late to file a complaint from 1999. Michael Whiteman seconded the motion. The motion carried unanimously.

CPRB No. 14-02. This complaint is also a 1999 case. The complainant is currently in federal prison for assault. The complaint alleges unlawful entry without a warrant, physical abuse and the filing of false charges.

Michael Whiteman inquired about the disposition of the complaint. Commander Bruno reported that the allegations of physical abuse were unfounded and unsubstantiated because there were no medical records to indicate abuse. According to the Commander, the complainant did go to the hospital, but he told hospital employees that he passed out in the shower because he had a heroin addiction. He made no allegations to the staff of the hospital of physical abuse, and his records indicate that he was treated for withdrawal, an ulcer and high blood pressure.

Michael Whiteman wanted to know if the complainant was advised of the findings of the case. Commander Bruno responded yes.

Manuel Alguero asked about the warrantless entry. Commander Bruno responded that the complainant's only witness to the alleged warrantless entry was in the hospital during incident and, therefore, could not corroborate the complainant's statement. Commander Bruno reported that the complainant permitted the officers to enter his residence and added that the complainant incriminated himself with respect to the charges filed.

Michael Whiteman made a motion not to accept this case for review. Judith Mazza, Barbara Gaige and Marilyn Hammond seconded the motion. The motion carried unanimously.

CPRB No. 17-02. It was noted that his case is under investigation by the Albany Police Department and OPS. The Board recognized that the complaint could have been filed sooner. However, Paul Weafer moved to accept the complaint for review with the appointment of a monitor. Vice Chairman Herman Thomas seconded the motion. The motion carried unanimously.

CPRB No. 26-02. Michael Whiteman reported that the review of this complaint was suspended, pursuant to Section 42-378 of the law, because a civil action is underway. Judith Mazza recommended that the Board wait to see what happens before voting to

review the complaint.

3. New Complaints for Review

It was reported that there were six (6) new complaints for review.

CPRB No. 6-02/OPS No. C01-58. Paul Weafer gave a summary of the complaint. Mr. Weafer noted that George Kleinmeier, the monitor appointed to the complaint, was present. According to Mr. Kleinmeier, the complainant stated that he left his home at around 8:00 p.m. on a Saturday night and did not return until the following day. When the complainant returned to his apartment around noon on Sunday, he found that the lock on his door had been broken. He claims that his dog was missing and that \$23,000 was stolen. According to the complainant, he has been harassed by the Police Department.

Mr. Kleinmeier reported that the police were called to the complainant's address because of a domestic disturbance 911 call. They noted that there was a blood trail from the truck outside to the apartment. They noticed a dog in the apartment that was acting aggressively. The police called the fire department to the scene to make sure that there wasn't someone hurt inside and to assist in securing the dog. Police officers broke into the apartment and were there for approximately 2 or 3 minutes, long enough to ascertain that there wasn't anyone inside that might be hurt. The officers found the apartment in disarray and took photos to document the incident.

George Kleinmeier recounted five (5) witness statements. One witness said that the police were only in there for 2 or 3 minutes and that no one spent any length of time in the apartment. The complainant knew that the police had taken pictures.

Mr. Kleinmeier interviewed the complainant and asked the complainant why he didn't have his money in a bank. The complainant responded that he owed \$5,000 to his ex wife and produced a letter from his ex wife that stated that she did receive money from him. The complainant told Mr. Kleinmeier that he has not paid income tax in five (5) years and that he was one (1) year behind in rent. According to the complainant's landlord, the complainant was four (4) years behind in his rent.

Mr. Kleinmeier reported that the complainant never mentioned the stolen money on his first visit to the police station. Paul Weafer questioned the complainant's credibility. Mr. Kleinmeier commented that he did not believe the complainant to be credible because his stories were conflicting.

Paul Weafer moved to accept the findings of OPS. Vice Chairman Thomas and Marilyn Hammond seconded the motion. The motion carried unanimously.

CPRB No. 7-02/OPS C02-88. Vice Chairman Herman Thomas gave a summary of the complaint. He noted that Richard Lenihan was appointed to monitor the complaint and

that Mr. Lenihan was present. Mr. Lenihan summarized his report.

According to Mr. Lenihan, the charge in the complaint was a breach of confidentiality. The complainant, the owner of a day care center, alleges that after helping the police to rid her street of a known drug dealer, her place of business along with the street name was mentioned in the newspaper, putting her, her family and business at risk. The complainant claims that she was forced to close her daycare in fear of retribution and risk to the children.

Mr. Lenihan reported that the Police Department's Public Information Officer (PIO) indicated that he had received the information and had given this information to a Times Union reporter. The daycare owner, who was present at the meeting, indicated that she has had retribution in the form of comments from individuals in the neighborhood.

Mr. Lenihan opined that the Public Information Officer (PIO) should have more training and that clearance by a superior officer should be given to the PIO before information is released. He added that OPS made a finding of ineffective policy or training.

The complainant was recognized. She stated that she wants to know what the police department is going to do to protect her from the person who was the subject of investigation. She commented that no one had an answer. She explained that she was forced to close her daycare after 10 years of operation. She added that she feels that she has no recourse and wants to know what the police department will do to guarantee that this does not happen to another informant.

Paul Weafer asked the complainant if she had received any expression of regret from the City? The complainant said no. He asked if she was threatened? The complainant said that she has been labeled a "rat" and was informed that she would be taken care of.

According to Commander Bruno, OPS has recommended training for the department's media person to ensure that this does not happen again. He commented that he was unaware that the complainant had not received an apology from the City and added that he would address this matter with the people above him after the meeting.

The complainant stated that she has brought this situation to the Mayor in the form of a hand-delivered letter, but that she hadn't received a response.

Barbara Gaige inquired about the Department's policy regarding the released of informants names. Commander Bruno responded that the Department has a policy of not releasing information that would endanger the lives or safety of individuals.

It was noted that the complainant wasn't named in the newspaper, but that her day care was the only daycare on the street and it was located directly across from the drug house. Commander Bruno reiterated that his office is taking steps to make sure that

this type of situation does not happen again.

Marilyn Hammond commented that she knows the complainant and the person arrested, knows the situation, and absolutely regrets that this has happened to the complainant as she had it happen to her.

Judith Mazza commented that there must be consistent policy and procedures so people understand that they don't have to give their name and phone number to officers when reporting. She noted that 1) there needs to be consistency, and 2) that the message needs to get out.

Manuel Alguero commented that the Board must bring this to the attention of the Commissioner to overhaul the policy. He noted that this is the reason the Board was created; to be a conscience and to establish better police/community relations.

Chairman Cox commented that the Board needs to address the City Administration and meet with the Mayor immediately to find out why there was no response to the complainant. Vice Chairman Thomas seconded the motion and the motion carried unanimously.

Eleanor Thompson commented that the Board must make some decision now. It was reported that OPS made a determination that the situation was a result of ineffective training or policy. Paul Weafer recommended that the Board defer the final determination until it meets with the Mayor. Chairman Cox seconded the motion. The motion carried unanimously.

CPRB No. 8-02/OPS No. C02-84. Judith Mazza gave a summary of the complaint. She noted that Theresa Balfe, the monitor appointed to the complaint, was present.

The complainant was stopped on I787 at 8:00 p.m. by two officers, a field trainer (senior officer) and an officer in training for speeding and for changing lanes. The officers called for back-up, split up and approached the car on either side. They asked the individuals in the car for identification, the driver (complainant) produced identification and the passenger claimed that he did not have any identification on him. The passenger began to display nervous behavior and the police officers indicated that they were concerned about their safety. One of the officers asked the passenger to step out of the vehicle. During the stop, the complainant asked why she was being stopped, why the passenger was asked to step out of the vehicle, and why her passenger was being searched.

The passenger stepped out of the vehicle and was patted down. The complainant never got out of the car. According to the complainant, the officer felt something in the passenger's pocket and reached in and removed it. It was determined that the object was the passenger's wallet, which had the passenger's identification. When asked why he didn't produce his identification when asked, the passenger replied that he did not

think that he had his wallet on him (he was wearing very baggy jeans). The passenger was then arrested and booked on an outstanding warrant. The complainant alleged that she questioned the officers about why her passenger was being searched. According to the complainant, when she asked the officers for their badge numbers the officer told her that it would be on the report and would not give it to her.

According to the monitor, Ms. Balfe, the passenger of the vehicle was not present, did not file the complaint and has not participated in the investigation. In her review of the investigation, the passenger said nothing except his name to the officers. The complainant made all the statements and engaged in all discussions with the officers.

The complainant was recognized and stated that she wanted to get out of the car to witness the officers going through the passenger's wallet. She was informed to stay in the car for her safety, which she did. She noted that she felt obligated to report this incident because: 1) one of the officers would not give her his name and badge number when asked, 2) she felt that the ticket was unjustified since the officer had bargained with her about the violation for which she was being issued a ticket and 3) she believes that the officers violated her passengers civil rights.

Judith Mazza noted that she reviewed the tapes from the incident, but added that the tapes do not indicate what the complainant was stopped for.

It was reported that OPS made a finding of "exonerated" with respect to call handling and a finding of "unfounded" with respect to the vehicle stop. According to Ms. Mazza, the records indicate that the officers could not determine who was in the car because the windows were tinted. She added that the stop occurred in the evening in February and that based on these factors, there is nothing to indicate that the stop was race-related. Ms. Balfe noted that she did not have an opportunity to hear the tapes because the tapes were not offered to her.

Ms. Mazza reported that the files revealed that the passenger opened his wallet and gave his identification to the officers.

Judith Mazza asked if it is policy to announce over the air why a vehicle was stopped or to run the plates for warrants. Commander Bruno replied that there is no policy to announce the reason for a stop over the radio or the running of warrants. He indicated that the police cars are equipt with computers so this information can be obtained without having to radio in for it.

There was discussion as to the appropriate procedures used during a traffic stop, specifically, the procedures used in this stop including the request for identification and a pat down search.

Michael Whiteman inquired about the Department's policy with respect to identification. Commander Bruno responded that the Department's policy is that identification must be

provided.

Mr. Whiteman also inquired about the race of the officers involved. The complainant stated that they were white males and believes that if the passenger wasn't a 6'4" Black/Hispanic male this would not have happened. The complainant commented that she believed that they were stopped because of racial bias.

Paul Weafer inquired about why the passenger was not part of the complainant and asked if the passenger's cooperation would assist in the investigation. Commander Bruno responded that it would.

Michael Whiteman inquired about an appropriate disposition for the complaint noting that both exonerated and sustained would not be appropriate in this case.

The allegations in the complaint were identified and summarized: 1) lack of reason for traffic stop - police officers stated that the stop was for changing lanes, but the complainant contends that this was not the case and that did not do anything wrong; 2) failure to identify - one officer identified himself to the complainant, the second officer told the complainant that his information would be in the reports. Commander Bruno commented that officers are encouraged to give this information; and 3) Pat down search - the search continued after the pat down revealed no evidence of a weapon.

Judith Mazza noted her concern that there was no statement made by the passenger and that there is a contradiction between the complainant and the two police officers.

There was a brief discussion about the passenger's wallet. The monitor indicated that the property report did not list the wallet. The complainant stated that it was a regular sized wallet.

Judith Mazza recommended that a second attempt be made to contact the passenger and report back at the next meeting to make a resolution. Manuel Alguero seconded the motion. The motion carried unanimously.

CPRB No. 9-02/OPS No. 2-106. Barbara Gaige gave a summary of the complaint. Police officers answered a call for a domestic disturbance situation, but there was no physical contact. OPS closed the case as "not sustained." Barbara Gaige moved to accept OPS' finding and make a finding of "not sustained." Paul Weafer seconded the motion. The motion carried unanimously.

CPRB No. 12-02/OPS No. 02-124. Eleanor Thompson read a synopsis of the case and the investigative case status. The complaint alleged that a police officer in the City Courthouse used profane/inappropriate language and made inappropriate comments. The complainant and witness failed to cooperate with OPS. OPS closed the case as "sustained." Ms. Thompson moved to accept OPS' finding and make a finding of "sustained." Paul Weafer seconded the motion. The motion carried unanimously.

CPRB No. 13-02/OPS 02-150. Paul Weafer gave a summary of the complaint. The complainant was arrested on a vacated warrant at his place of employment causing him embarrassment. The record indicated that the warrant paperwork was not properly entered into the Department's system and the arrest was the result of an administrative error. OPS closed the case as "sustained." Mr. Weafer moved to accept OPS' finding. Marilyn Hammond seconded the motion and the motion carried unanimously. Mr. Weafer urged greater care by the Department to avert this type of situation from happening again.

B. *Committee on Complaint Review*

Manuel Alguero, Barbara Gaige, Marilyn Hammond, Judith Mazza and Paul Weafer were appointed to the Committee on Complaint Review for the July meeting.

C. *Report from the GLC*

Justina Cintrón gave the report. It was reported that 100 Black Men would like a training session on filling out and filing a complaint and that the training was tentatively scheduled for July 17, 2002 from 6:00 p.m. to 7:30 at 388 Clinton Avenue. Barbara Gage, Kenneth Cox, Paul Weafer and Herman Thomas volunteered to attend.

It was reported that a draft of the Board's quarterly report had been provided to the Board. It was noted that a few additional items needed to be included. The Board tabled approval of the report until the July meeting.

It was reported that the Board had received letters from two complainants (38-01 and 42-01). One letter was in response to the complainant's findings letter and the second letter inquired about the Department's Standard Operating Procedures. It was decided that the GLC would work with OPS to draft a letter in response to the complainant inquiry about the SOP and that Michael Whiteman would draft a letter on the Board's behalf in response to the second letter regarding the case findings.

As a follow-up to the Board's training on developing a monitoring process, it was reported that a draft of the monitor's procedures is still outstanding. The GLC agreed to provide a first draft to the Board of these procedures for review.

It was reported that the Board received an invitation to attend a lecture being given by Dr. Ruby Payne and that the information concerning the letter had been forwarded to the Board.

The Board was referred to the revised inventory regarding complaints that have been filed with the Board, and it was noted that 73 complaints had been filed with the Board as of the date of the meeting.

Chairman Cox invited Judith Mazza to comment on the Common Council Committee meeting in Schenectady, which was held on May 28. Ms. Mazza reported that Schenectady is having some of the same issues with the development of their Review Board as Albany had. Both Ms. Mazza and Chairman Cox reiterated the importance of open meetings and that executive session be used only when necessary. According to Ms. Mazza, their Board will have an Executive Director and Monitors, like the Albany model. However, the Executive Director is to be hired by the Mayor of Schenectady, who in turn will hire the monitors.

D. *Report from OPS*

Commander Bruno introduced Detective Sergeant Kevin Connolly who will now be assisting him at OPS. Commander Bruno noted that Sgt. Connolly was the recipient of the 2002 outstanding police officer award. He added that Detective Risberger took a position with Community Services.

Commander Bruno reported that the physical location of OPS may be moving to the first floor of 200 Henry Johnson Boulevard in September. The Board welcomed Det. Sergeant Connolly.

VII. Public Comment

Louise Roback was recognized. She noted that she has not had an opportunity to address the Board since the NYCLU issued its report about the Board. She commented that the report was done to foster constructive comments and suggestions to improve the process, but added that she still has a few concerns:

1) whether there has been consideration to propose changes to law; and 2) whether there has been any report from the Police Department for developing an early warning system that is mandated by local law.

With respect to the 8-02 complaint, Ms. Roback noted that the traffic stop and search of the passenger is frustrating because the concerns of the complainant were not addressed. According to Ms. Roback, it is entirely appropriate for a witness to file a complaint, and if the passenger did not come forward before, it is likely that he will not come forward now. She added that even if the passenger comes forward, there will still be a conflict regarding what occurred and the Board will likely find in favor of OPS. In response, Commander Bruno noted that at the Board's last meeting, the Board voted to sustain a case where there was this classic conflict.

Ms. Roback commented that the law does not provide for appropriate findings and that the law needs to be revised to allow the Board to the appropriate findings.

Judith Mazza noted that the Board has made recommendations for changes in the law to enable to the Board to better look at what is going on and to make better decisions.

Dr. Alice Greene was recognized. Dr. Greene raised an issue regarding the budget for the CPRB.

With respect to CPRB No. 8-02, she saw no real disagreement on the stop and frisk issue and getting more information is not going to solve this issue. The police are obligated to stop searches when they are no longer at risk. She does not know how this will be solved by speaking with the passenger.

VIII. Adjournment

Kenneth Cox moved to adjourn the meeting at 8:45 p.m. Judith Mazza seconded the motion. The motion carried unanimously.

Respectfully Submitted,

Michael Whiteman
Secretary