

**City of Albany**  
**Citizens' Police Review Board**  
**Albany Community Development Agency (Community Room)**  
**200 Henry Johnson Boulevard**  
**July 1, 2003**  
**6:00p.m. – 8:00 p.m.**

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

**Absent:** Michael Whiteman

**I. Call to Order & Roll Call**

Chairman Kenneth Cox called the meeting to order at 6:10pm. Chairman Cox asked that all in attendance show respect for one another and for both the Board and members of the community. Chairman Cox asked that Board members refrain from swearing and suggested other ways of indicating language in the complaints.

**II. Approval of Agenda**

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

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

The minutes were reviewed. Chairman Cox moved to approve the minutes. Manuel Alguero seconded the motion. The motion carried unanimously.

**IV. Old Business**

*A. Two (2) Old Complaints for Review*

**CPRB No. 31-02/OPS No. C02-276** (Presented by Barbara Gaige and Todd Burnham)

Ms. Gaige stated that the Board had reviewed this complaint at the May meeting and tabled its deliberations to allow an opportunity for Assistant Corporation Counsel Todd Burnham to consult with the Commissioner of Public Safety with respect to the following:

- (1) the timeliness of OPS's investigation - specifically, what caused the delay in concluding the investigation given that the complaint was filed on June 12, 2002, but OPS's report of its preliminary findings was not received by the Board until March 10, 2003; *and*

- (2) whether or not a statement, from a witness identified by the complainant, exists substantiating the complainant's version of the events. At the Board's meeting, the complainant indicated that he possesses a statement from a witness that substantiates his claim.

Mr. Burnham was recognized. He commented that the delay was due to an ongoing criminal investigation. He stated that he takes responsibility for not letting the Board know of the progress and added that there should be some way of letting the Board know of extenuating circumstances.

Mr. Burnham stated that he also spoken with OPS Detective Arthur Shade who said that the witness had nothing relevant to add to the situation. There were also some concern about the appropriateness of the officer moving in next door and added that he has been able to find different housing since then. The move next door to the complainant was due to the officer's inability to available housing following the sale of his residence.

Dr. Manuel Alguero commented that he is glad the witness was found, but noted that the witness had nothing to contribute. Dr. Alguero commented that he presumed that people are more easily available to the monitor to make a statement.

Mr. Burnham commented that Detective Shade said he had made several attempts to interview other witnesses.

Ms. Gaige concluded that the statement did not concur with what the complainant had said and made a motion to accept the findings of OPS. Dr. Alguero seconded Ms. Gaige's motion. The motion carried unanimously.

**CPRB No. 66-02/OPS No. C02-548 (Presented by Barbara Gaige)**

Ms. Gaige stated that the Board had discussed this case in June and summarized the complaint. Ms. Gaige commented that she felt that the Board had analyzed the complaint thoroughly.

Ms. Gaige noted the complainant's son matched the description of a shooter in Latham. The complaint alleges that the complainant's son was treated differently because he was black and that the white officers ignored the initial officers because of his race.

Ms. Gaige noted that at the last meeting the Board decided to vote individually on the allegations in the complaint. With respect to the complainant's conduct allegation, Ms. Gaige stated that the complainant was African American, and the second officers were white and were not aware of the pat down initially made by the first officers.

Ms. Gaige made a motion that the Board agree with the OPS finding in regard to the conduct allegation. Paul Weafer seconded the motion.

Dr. Alguero questioned if there was a monitor appointed for this case. Ms. Gaige responded that there was and added that the monitor is George Kleinmeier. Dr. Alguero asked what the monitor concluded. Ms. Gaige replied that Mr. Kleinmeier agreed with OPS's findings.

Chairman Cox commented that there was a motion on the floor with respect to the conduct allegation and took a vote. The motioned carried 6 in favor, 1 against and 1 abstention. Judith Mazza voted in opposition to the motion and Manuel Alguero abstained from the vote.

Ms. Gaige addressed the second allegation in the complaint - the officers' arrest authority. She noted that OPS made a finding of exonerated as to this allegation. She then moved to accept OPS's finding. Mr. Weafer seconded the motion. The motioned carried 6 in favor, 1 against and 1 abstention. Judith Mazza voted in opposition to the motion and Manuel Alguero abstained from the vote.

Ms. Gaige addressed the third allegation in the complaint - the use of force. She noted that OPS made a finding of exonerated as to this allegation. Ms. Gaige then moved to accept OPS's finding. Mr. Weafer seconded the motion. The motioned carried 6 in favor, 1 against and 1 abstention. Judith Mazza voted in opposition to the motion and Manuel Alguero abstained from the vote.

## **V. New Business**

### *A. New Complaints*

#### 1. Received since the June 2, 2003 meeting

Barbara Gaige noted that no new complaints had been received by the Board since its last meeting in June.

#### 2. Two (2) new complaints for review

**CPRB No. 58-02/OPS No. C02-427** (Presented by Paul Weafer)

Mr. Weafer summarized the complaint.

The date of the incident was 5/21/02 and the complaint was made in August. There are two separate allegations. The monitor assigned to the complaint is Richard Lenihan. Mr. Weafer noted that the monitor was in attendance at the meeting. There were three witnesses. Several officers arrived at the complainant's home where he lives with his mother, child and girlfriend. The complainant's girlfriend answered the door. The complainant could hear his girlfriend ask the officers if they had a search or arrest warrant. The officers said "no" and she told them to leave. The officers then shattered the front door and

ransacked the house. The complainant was under the bed and they dragged him out. The complainant alleged the officers kicked and punched him. The complainant said that he was injured and needed medical attention, but was denied. The complainant further claimed that the officers had no grounds for entering his home.

The synopsis of OPS's report is that the complainant failed to show on several occasions and that the complainant's witnesses also failed to show. There is an outstanding arrest warrant for the complainant. The police have been unable to find the complainant. The monitor reviewed all of the department's paperwork relating to its investigation. There are statements from the target officers who stated they did not hit the complainant. Pictures were taken at booking and there is no evidence of injury.

Mr. Weafer commented that there were several incidents that led up to entry into the complainant's house. On one occasion, there was a report that a shotgun was discharged from the house. On another occasion, a masseuse was called to the house and robbed of \$1,000. As a result, arrest warrants were issued for both incidents.

Mr. Weafer noted that OPS made a finding of *unfounded* as to the use of force allegation and *exonerated* as to the call handling allegation. He then made a motion to accept OPS's findings. Barbara Gaige seconded the motion. The motion carried unanimously.

Assistant Corporation Counsel Todd Burnham commented that the Board should to be careful in their review and presentation of a complaint because it does not want give the appearance of bias.

Chairman Cox asked that each Board member *only* review the facts of the complaint that are part of the investigation.

**CPRB No. 4-03/OPS No. C03-83** (Presented by Herman Thomas)

Vice Chairman Thomas summarized the complaint.

The complaint alleges use of force. There was a crowd at a club on Ontario Street. The complainant was outside and approached an officer to go back into the building. It is alleged that a fight broke out outside and that the officers used a baton to clear the crowd and keep the complainant back. The complainant said that he was attempting to go back inside to get items, but the officer pushed him. The complainant alleged that he attempted to talk to the officer's supervisors at the club, but was pushed into a snow bank and struck with the officer's baton.

Vice Chairman Thomas commented that he reviewed all of the

departmental paperwork including medical records received and all other investigative materials. He noted that the complainant was interviewed in the presence of the assigned monitor. He also stated that he went to see pictures of the complainant and the batons used.

Vice Chairman Thomas commented that the witness named in the complaint said he wasn't even there. The investigation revealed that the officer was directing traffic and that the complainant was smoking a cigarette and blowing smoke in the officer's face.

Theresa Black, the monitor assigned to the case, commented that she reviewed the same material and felt that the officers were correct. The complainant described a different baton than what officers normally use. The witness said he never goes to clubs. The officers present at the scene stated that he did not hit the complainant.

Vice Chairman Thomas noted that OPS had closed the case as *unfounded* and recommended that the Board close the case as *unfounded*. Barbara Gaige seconded the motion. The motion carried unanimously.

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

The following Board members were appointed to the Committee on Complaint Review for the August 2003 meeting: Barbara Gaige, Marilyn Hammond, Herman Thomas, Paul Weafer, and Michael Whiteman for (50-02) and Judith Mazza for (70-02).

Ms. Gaige commented that case assignments will be given at the end of the meeting.

C. *Report from the Government Law Center (GLC)*

The report was given by GLC Staff Attorney Justina Cintrón.

Status of Complaints

It was reported that 28 complaints remain active, 93 complaints have been closed, 7 complaints have been referred to mediation and 4 complaints remain suspended. It was also reported that a total of 132 complaints have been filed with the Board since it began hearing complaints in 2001.

Mediation Report:

It was reported that Karleen Karlson, the CPRB's Mediation Program Coordinator and Justina Cintrón participated in a conference call with Assistant Corporation Counsel Todd Burnham and Commissioner John Nielsen to discuss the

outstanding cases referred to mediation. The Commissioner agreed to work toward a resolution of these cases.

It was reported that Ms. Karlson had met with Sergeant Kevin Connolly and Council 82 President Officer James Teller in May to discuss the Board's mediation program and the reluctance of police officers to participate in mediation to resolve a complaint. Ms. Karlson provided Officer Teller with material about other agencies that have a mediation process as part of their citizen oversight process.

It was reported that Ms. Karlson and Ms. Cintrón met with Sergeant Connolly and Officer Teller in June to further discuss ways in which the Board and the union could work through the issues that have posed obstacles to officer participation in mediation. The following was summarized from the meeting: 1) contractual issues remain; 2) questions remain about the role of mediation and the officers' rights; 3) Officer Teller invited Ms. Karlson and Ms. Cintrón to attend a union meeting to discuss the Board's mediation program with the rank and file; and 4) Officer Teller indicated that if the "right" case came along, he might be amenable to sending it to mediation assuming all of the outstanding issues and concerns are resolved.

It was reported that 7 complaints referred to mediation are outstanding and would not be resolved through mediation until the issues and concerns expressed by the union are addressed. Ms. Cintrón inquired as to what the Board would like to do with these cases in light of the circumstances presented. Judith Mazza moved that the Board contact each of the complainants whose cases have been referred for mediation or are awaiting mediation to explain the delay in mediation and to determine what each individual expects as an outcome of this process. Ms. Cintrón asked if the Board would like a staff member or a board member to contact the complainants. Barbara Gaige stated that she would be willing to come to the GLC office and contact the complainants as the Chair of the Complaint Review Committee. However, it was recommended that the Ms. Karlson take the lead in contacting the complainants and asked that she report on back to the Board's at its next meeting.

Paul Weafer seconded the motion. The motion carried unanimously.

#### Approval of Correspondence

Ms. Cintrón reported that the GLC had drafted several pieces of correspondence at the Board's request and on the Board's behalf, and had forwarded those letters to the Board for its review. She noted that the Board's approval of the correspondence was required before the letters could be mailed to the appropriate parties.

##### *1. Department Strip Search Policy*

Paul Weafer commented that one of the complainant's whose case prompted, in part, the drafting the letter did not appear to be copied on the letter and instructed the GLC to copy the complainant.

Judith Mazza moved to approve the letter. Mr. Weafer seconded the motion. The motion carried unanimously.

*2. Policy Review - Handcuffing of Minors During the Execution of an Arrest Warrant*

Barbara Gaige moved to approve the letter. Mr. Weafer seconded the motion. The motion carried unanimously.

*3. Non-Confidential Copy of SOP*

It was reported that last year a complainant had requested a non-confidential copy of the police department's SOP. It was reported that the Board had agreed to forward this request, on the complainant's behalf, to the police department and had done so. The complainant has recently filed another complaint regarding a failure of the department to comply with a freedom of information law request.

Paul Weafer recalled the complaint and commented that one of the issues is that if the complainant wanted the SOP it would be \$0.25 a page, rather than on reserve at the Law School Library.

It was reported that follow-up correspondence was drafted to the Commissioner seeking information about the status of this request.

Mr. Weafer moved to approve the correspondence. Ms. Mazza seconded the motion. The motion carried unanimously.

Ms. Mazza inquired as to what the nature of the allegations of the second complaint were. Ms. Cintrón responded that the complainant had filed a freedom of information law request, which had been granted. However, the department has failed to produce the requested document.

*4. Invitation to Union to Meet with the Board*

Ms. Mazza moved to approve the correspondence. Mr. Weafer seconded the motion. The motion carried unanimously.

*5. CPRB No. 12-03- Complainant Seeking File Information*

It was reported that the complainant wrote a letter to the Board requesting all documentation related to the complainant's file. Ms. Cintrón noted that the only information contained in the file is the complaint form. The Board has not yet received OPS's preliminary findings. A suggestion was made to draft a letter to the complainant explaining that no new information had been received by the Board.

Dr. Alguero moved to accept the recommendation of a follow up letter. Mr. Weafer seconded the motion. The motion carried unanimously.

Ms. Mazza suggested that the board may want to add copy of the Board' brochure explaining what the Board does so that the complainant understands what the process.

### Policy

It was reported that at the Board's last meeting, a suggestion was made to add "policy recommendations" to the agenda as a regular agenda item.

Paul Weafer commented that the Board should add policy recommendations to the agenda, but should give the police department a reasonable amount of time to respond to its recommendations. Manuel Alguero questioned what Mr. Weafer considered to be adequate or reasonable time. Chairman Cox commented that it should depend on the issue raised.

Mr. Weafer noted that strip search has been outstanding for a while. Ms. Cintrón commented that it has been outstanding for one (1) year.

Judith Mazza added that it should be based on the discussion and what the Board recommends. If it takes research or training then it should take time.

A suggestion was made that the Board consider placing this item on the agenda as a means of providing a report or update similar to the reports given by the GLC and the OPS.

Dr. Alguero commented that the Board needs flexibility and added that the Board is making the recommendations on the basis of confidence building. He added that the Board has an obligation to keep asking and requesting a response at the earliest possible time.

Barbara Gaige moved to include "policy recommendations" as an agenda item. Judith Mazza seconded the motion. The motion carried unanimously.

### Outreach

It was reported that the GLC had forwarded copies of the Board's current outreach materials as well as a flyer, newsletter article and community organization contact list prepared by GLC intern William Little to each member for review and comment. It was reported that the GLC in the process of updating these materials and that the Board's input was needed.

#### E. *Report from OPS*

The report was given by OPS Commander Stephen Reilly. Commander Reilly

commented that he would report on the complaint numbers at the Board's next meeting.

Commander Reilly reported that his promotion to OPS created a vacancy in the Child and Families Unit. He added that the vacancy would be filled by Sergeant Kevin Connolly. Commander Reilly thanked Sergeant Connolly for his service to the OPS.

Chairman Cox, on behalf of the Board, expressed his heartfelt congratulations, thanked Sergeant Connolly and wished him the best of luck.

## **VI. Public Comment**

The floor was opened for public comment.

Dr. Alice Green was recognized. She commented on case 66-02. She stated that she was shocked that no one mentioned that the complainant, who was present during the discussion of the case at the last Board meeting, was starting trial. She noted that the complainant has since been found not guilty by the jury even though 7 officers testified. She commented that one of the points of law is that there was no reason to arrest the complainant for disorderly conduct.

Dr. Green commented that, during its discussions, the Board maintained that the complainant was stopped because he matched the description of the suspect. She added that she did not know if the Board checked into the description, noting that the complainant was at the last meeting and is no where close to the description of 6'4" and 250 pounds.

She commented that the Board was fixated on the information that the police acted reasonably because the complainant kept reaching into his waste band. She stated that only one officer mentioned that and no other officers noticed that. She added that she does not know how the Board really operates in getting as much information as is needed to review a complaint.

The complainant's mother, also herself a complainant, was recognized. She commented that she wanted to thank god that the jury recognized that this was an improper arrest. She stated that she feels very hurt and upset that this happened because her son was facing seven (7) years for something he did not do. She added that this has been going on for a long time, but there needs to be something done in that whatever a person says doesn't count, but what the officer says does. An officer can swear and if a person does, he is disorderly.

Dr. Green added that she thinks the board is not as sensitive to institutional racism as it ought to be and thinks that needs to be addressed.

Dr. Green commented on the department's racial profiling policy and on the Mayo shooting. She stated that Commissioner Nielsen has promised for 4 months to look into the racial profiling policy and that for the past 2 months has promised to get in

touch with her, but he hasn't. Dr. Green added that she thinks the Board needs to be concerned and needs to look into this issue. She noted that she would also like to know if anyone in the police department has briefed the Board on the Mayo case, the police shooting that took place in December. She added that Commissioner Nielsen said he would publically release the report and she wanted to know if he had.

Paul Weafer stated that he was remiss because he forgot to inform the Board of the acquittal and added that he has spoken to the GLC about a training on institutional racism. He commented that he is sure that there is a certain amount of frustration for young African Americans in Arbor Hill and similar neighborhoods. He would suggest a training session or sensitivity training with members of the community and the police department in an effort to have a cross discussion on this issue and added that the Board has been criticized from day one for not having a youth representative.

Judith Mazza stated that the Board has not received a report or briefing from the department and has not yet received anything on the department's racial profiling policy. She added that she thinks the Board needs to get a follow-up letter out as soon as possible. Ms. Gaige seconded the motion. The motion carried unanimously.

Officer James Teller, President of Council 82, was recognized. Officer Teller commented that the union would gladly meet with the Board and would like to meet prior to next month's meeting. Officer Teller added that the union has some issues it would like to address with the Board and he believes everyone could benefit from a meeting.

Chairman Cox suggested that the meeting take place two weeks from today on July 15<sup>th</sup> at 6pm. The location is still to be discussed.

Paul Weafer noted that the meeting would have to be a public meeting if a quorum of the Board is present.

## **VII. Adjournment**

The meeting was adjourned at 7:12 p.m.

Respectfully Submitted,

Michael Whiteman  
Secretary