

City of Albany
Citizens' Police Review Board
Minutes of 7/8/02 Meeting
Albany Public Library, HBH Room
Washington Avenue

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

Absent: Kenneth Cox

I. Call to Order and Roll Call

Vice Chairman Herman Thomas called the meeting to order at 6:08 pm.

II. Approval of Agenda

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

III. Approval of Last Meeting Minutes

The minutes from the June 10, 2002 meeting were reviewed. Michael Whiteman moved to accept the minutes. Paul Weafer seconded the motion. The motion was carried unanimously.

IV. Committee Reports

A. Public Outreach

Barbara Gaige gave a summary of the Board's outreach training session with One Hundred Black Men that was held on June 17, 2002. Ms. Gaige commented that although the meeting was not well attended, she thought that it went well. Vice Chairman Thomas added that the meeting was held at the request of the organization for the purpose of training its staff on how to assist complainants with filling out and filing complaints.

V. Old Business

A. Follow-up on Implementation of Strip Search Policy

CPRB No. 12-01/OPS No. C01-263. Commander Bruno was recognized. The Commander reported that his office is currently in the process of researching strip search policies of the other jails in the area. He noted that he has also been in contact with the Commissioner of Corrections in an effort to review the Commission's recommendations/policies for strip searches in city lockups. A draft of OPS' strip search policy will be completed and forwarded to the Commissioner of Public Safety by the next meeting.

VI. New Business

A. *New Complaints*

1. Paul Weafer gave a brief summary of the new complaints received by the Board since its June 10, 2002 meeting.

CPRB No. 31-02. *No monitor was appointed.* The complaint involves rudeness and harassment.

CPRB No. 32-02. *A monitor was appointed.* The complaint involves a violation of civil rights.

CPRB No. 33-02. *A monitor was appointed.* The complaint involves excessive use of force by an officer.

CPRB No. 34-02. *No monitor was appointed.* The complaint involves abuse of police procedure, but did not rise to the level of a violation of civil rights or excessive use of force.

CPRB No. 35-02. *No monitor was appointed.*

CPRB No. 36-02. *No monitor was appointed.* The complaint involves harassment by a police officer.

CPRB No. 37-02. *A monitor was appointed.* The complaint involves excessive use of force.

CPRB No. 38-02. *No monitor was appointed.* The complaint involves an allegation of harassment.

CPRB No. 39-02. *A monitor was appointed.* The complaint involves a civil rights violation.

CPRB No. 40-02. *A monitor was appointed.* The complaint involves an allegation of excessive use of force.

B. *New Complaints for Review*

It was reported that there were five (5) new complaints for review.

CPRB No. 18-02/OPS No. C02-025. It was noted that Richard Lenihan was appointed to monitor the complaint, and was present. Barbara Gaige gave a summary of the complaint, which involved the alleged use of excessive force. The complainant alleges that police officers were across the street, attending to a domestic complaint. The complainant started his car and went into his house. The police officers stated that there was excessive smoke coming from the complainant's car. The complainant returned to the car and found the keys missing. The police officers approached the complainant and asked to see his license and registration. At that time, according to the police officers, the complainant refused. The complainant stated he questioned them, but did not refuse. At this point, the complainant was asked to sit in the vehicle and the complainant refused. Department policy states, once an individual is stopped, that individual must remain in the vehicle for the safety of the officer, the complainant and the public. The complainant tried to get out. The complainant was pepper-sprayed. The police officers stated his license was suspended. The complainant was arrested, and while at booking, he was decontaminated. After his release, he went to the Albany Medical Center.

During the course of the investigation, OPS interviewed a number of witnesses. Most of the witnesses had not seen the incident and were not aware of what it was about. One witness said the complainant "resisted." The complainant was charged with leaving his vehicle unattended, heavy smoke, suspended license, and aggravated unlicensed operation of a vehicle.

Mr. Lenihan added that the complainant challenged the authority of the police for stopping him.

According to Mr. Lenihan, the complainant believed that the officers did not have the authority to turn off the car. However, Mr. Lenihan added that the officers did have the

authority because the car was in violation of Vehicle and Traffic laws. Mr. Lenihan added that police officers, attending to a domestic disturbance down the street, approached the complainant. He explained that one police officer approached, and a second police officer assisted. He noted that witnesses could not corroborate verbal or physical abuse before, during or after the arrest.

The complainant states that he was denied medical attention. Mr. Lenihan recommended that a form be used in the future regarding medical assistance to evidence that a request for medical assistance was or was not made.

Mr. Lenihan commented that he believes the investigation by OPS was thorough.

The complainant was recognized. The complainant stated that he never challenged the officer, he merely questioned why the officer needed the information. The complainant found his car no longer running and found his keys missing. The complainant stated the incident had occurred in front of his home and he had provided ID to the officer when asked. The complainant explained he questioned the officer because he didn't believe he should sit in the car. He questioned why he had to be in the car. The complainant said he explained to the officer that his registration was in his house because his wife had an accident and needed the information.

According to the complainant, the police officers called a third officer. The complainant asked to look for the registration and told the officers again that his registration was not in the car, but in his home. At that time, he was sprayed.

Barbara Gaige stated she didn't see the information in her files that he had told the police officers that his information was in his house. The complainant indicated on his complaint where that information was located.

Paul Weafer asked the complainant, if, after he was asked to sit in the car, he remained in the car. The complainant stated that he did because he had finished placing the items for the Salvation Army in his car by that time. The complainant explained that he had gone into his home a total of 2 or 3 times before being approached by the officers.

The complainant gave the police officers his license and asked the police officer to explain why he needed his license. The police officer said because the car was left unattended. Upon providing the license, the police officer said to get the registration/ insurance card and get into the car. The complainant stated he questioned this because he didn't know why he had to get into his car.

Vice Chairman Thomas asked the complainant if his license was suspended. The complainant said no. The complainant responded that he provided the Board with the DMV records, which indicate that it was not suspended. The complainant added that he

had paid the fines, so there was no AUO in the 3rd. Vice Chairman Thomas asked when his license was suspended. Mr. Lenihan responded that it was suspended in March 2001.

Paul Weafer asked the complainant if he paid off the tickets after the incident or prior. Mr. Lenihan stated that at the time of the incident, his understanding was that the complainant was a scofflaw. Barbara Gaige stated that everything she saw indicated that it was suspended at the time of the incident.

Paul Weafer asked if any witnesses confirmed what the complainant said. Mr. Lenihan stated they did not. Mr. Lenihan asked the complainant to explain why no one saw him verbally or physically abused. The complainant responded that the investigators refused to talk to his wife and son.

Paul Weafer stated that one neighbor said the complainant was highly exacerbated. The complainant replied that he was from the pepper spray. Mr. Weafer asked why the police officer sprayed him. The complainant stated he did not know and commented that if it concerned the car, why didn't the officer go to the front door.

Barbara Gaige asked the complainant if the police officer took the keys because he was trying to get the complainant's attention. The complainant said no, he could have confronted him.

Paul Weafer explained to the complainant that there were two motor vehicle violations: (1) leaving the car unattended and (2) causing a public nuisance (smoke). The complainant stated that this was never presented to him by OPS.

Manuel Alguero asked if any part of the report, which indicated that the complainant was asked to turn the car off. Mr. Lenihan said no. Mr. Alguero asked if the officers indicated why they removed the keys prior to asking the complainant. Mr. Lenihan stated that they did not. He added, however, that the V&T law gives officers the authority to remove the keys.

Manuel Alguero asked if it is reasonable to assume that the police officer didn't know who the owner of the car was. Mr. Lenihan responded he is unable to make that assumption. Manuel Alguero asked if it is reasonable to ask. Mr. Lenihan replied that it was.

Paul Weafer asked if it is proper procedure to ask an individual outside a vehicle to get into the vehicle to ascertain if he/she is properly licensed. Commander Bruno replied that it is proper procedure.

Judith Mazza asked the complainant if he was arguing with the officers when he

explained that the registration/insurance information was in the house. The complainant replied that he did not argue. He added that he was not resisting and did not make a motion toward the officers. The officers sprayed him, cornered him and kept spraying. According to the complainant, the more he cooperated, the more he was sprayed. He added that his wife was told that he was sprayed because he refused to give his license.

Herman Thomas, Judith Mazza and Paul Weafer asked whether the complainant provoked the officers, resulting in being sprayed. The complainant responded that if he did all of those things, which the officers claimed, then he should have been charged for this conduct. He stated that the police officers looked at his license after he went downtown and that he did not know that he was under arrest until the next day when he received the police reports from the incident.

Paul Weafer questioned whether the complainant was unlicensed at the time. Mr. Lenihan replied that he was. Both Michael Whiteman and Eleanor Thompson agreed that it did not appear as though the complainant was unlicensed.

The complainant explained that he filed two complaints, the first one in April 2001. He added that on December 3, 2001, he paid the full fine balance dealing with the tickets, which should have validated his license and put him on probation for 6 months. In March 2002, this incident occurred and the DMV records were provided, showing that his license was not suspended.

The complainant contended that he was never told the car was smoking and he was not under the impression that his license was invalid. The complainant, upon being taken downtown, was not fingerprinted or photographed. He was issued an appearance ticket. On April 1, 2002, the next day, he was detained for fingerprinting.

Vice Chairman Thomas made a motion to send the complaint back to OPS for further investigation.

Paul Weafer moved to amend Vice Chairman Thomas' motion requesting that OPS ascertain whether the complainant was licensed or unlicensed on the date the complainant was arrested and this incident occurred. Eleanor Thompson seconded the motion. The motion carried unanimously.

CPRB No. 21-02/OPS No. C02-196. It was noted that there was no monitor assigned to this complaint. Paul Weafer gave a summary the complaint. The complainant alleged that he went to South Station to inquire about the detective involved in a complaint he filed for grand larceny. He asked why nothing had been done and asked to see a superior officer. He alleged an officer came from behind the desk, ranting and

raving and wanted a physical altercation with the complainant. The complainant alleged that he was threatened with disorderly conduct.

According to OPS, the complainant was disorderly. There were no witnesses to back up the complainant's allegations, and OPS, therefore, closed the case as "unfounded."

Paul Weafer moved to accept OPS' finding of "unfounded." Vice Chairman Thomas seconded the motion.

Judith Mazza inquired about the definition of "unfounded." The definition was read. Ms. Mazza asked what is meant in the definition by "misconstrued." Commander Bruno responded that it means either the acts did not occur or were misunderstood or misconstrued. However, in this case, a finding was made that the acts did not occur.

The motion carried unanimously.

CPRB No. 24-02/OPS No. C02-233. It was noted that Theresa Balfe was the monitor assigned to this complaint. Judith Mazza gave a summary of the complaint. The complainant was traveling east on State Street. Police officers were responding to a call regarding a person with a gun. The first police officer approached State Street and Pearl and turned left. The second officer approached Pearl and State Street. The complainant was hit in the back by the second police officer going through the intersection. The complainant alleged that he was ticketed by the officer to cover the fact that the officer caused the accident. The police officer stated the light had turned green to yellow when he turned left onto Pearl Street. The witness and the complainant said the light was red on Pearl. The police officer stated it was green, so he proceeded into intersection, but the complainant went through the red light. At trial, the witness confirmed the police officer's statement, adding that the complainant didn't see the police car. In the complaint there was no mention of lights, but at the trial the complainant testified that he saw lights flashing and heard sirens.

According to Ms. Mazza, OPS made a finding of "exonerated." The complainant received two tickets. One ticket was issued for failure to yield the right of way.

Judith Mazza asked Theresa Balfe if her findings were similar. She answered yes.

The complainant was recognized. He commented that his driving record is clean. A witness confirmed that the police officer was turning on the red light and that the officer went through the light and hit the complainant, but did not confirm that the complainant's light was green. The judge in the case said the witness' credibility should not be taken into account because the witness had other issues with the city. The complainant added that his witness lives on Pearl Street and there is also an older woman who witnessed the incident.

The complainant explained the accident. He stated that he was uninjured and the car was not damaged. He was ticketed for not yielding to an emergency vehicle. He stated it was a blind corner and that it had been raining. He was there for two hours before the ticket was issued. First, the police officer gave him a ticket for failure to yield. Second, the police officer gave him a ticket for going through the red light. It was 20 days before the police report was ready, which was supposed to be ready within 24 hours. The judge went against the complainant in the court case. His attorney said the police officer's word was taken over the complainant's word. The police officer was traveling at 40 miles per hour, but he said he was only traveling at 25 miles. The complainant's car has \$5,000 worth of damages. According to the complainant, the police officer's conduct shows that he can do what he wants.

Judith Mazza stated that the witness said the police officer stopped at the light heading north on Pearl Street (confirming what the police officer said) and that he heard sirens behind him. The police cars were heading north, went around the witness, stopped at the intersection, and then proceeded.

The complainant said there were two police cars. The first car stopped, took a left turn and proceeded. The second car didn't stop.

The complainant stated the witness approached his car and gave him a card. Judith Mazza said the witness refuses to talk with OPS and will only talk in court.

Judith Mazza said the police officer was on his way to a call with lights and sirens. He had the right of way. The complainant was ticketed for failure to yield.

Barbara Gaige asked if the policy was to stop or slow down before going through a light. Commander Bruno stated that officers must use reasonable care.

Michael Whiteman commented that the court has already determined the issues presented by the complainant, and that the complainant was represented by counsel in those proceedings. Mr. Whiteman opined that the Board does not have any basis to do anything other than to concur with OPS' findings. Based on the record, Judith Mazza agreed with Mr. Whiteman.

The complainant asked if OPS had made a finding. Judith Mazza responded that OPS had, and that the finding was "exonerated."

The complainant stated that he has no problem with the finding, but stated that the officer ran the red light and he is concerned. Manuel Alguero clarified with the complainant that he was not complaining about the failure to yield, but is concerned about being ticketed under false pretenses for going through a red light. The complainant responded yes.

Manuel Alguero asked if the complainant would be satisfied with a ticket for failure to yield. The complainant responded that he would and acknowledged that he should have been attentive.

Manuel Alguero asked him if he presented this to court? The complainant replied that he had.

Manuel Alguero asked the complainant if he understood that this has been adjudicated before a court, that he had been represented by a lawyer and that a determination was made by the court. Dr. Alguero commented that the Board sympathized with the complainant, but noted that there no opportunity to give the complainant a remedy.

Judith Mazza moved to accept OPS' finding of "exonerated." Eleanor Thompson seconded the motion. The motion carried unanimously.

CPRB No. 28-02/OPS No. C02-263. Marilyn Hammond gave a summary of the complaint. The complainant alleged that he is being harassed by the Albany Police Department, claiming that the police have been going through his mailbox and breaking in to steal answering machine and video tapes. The complainant refused to meet with OPS despite their attempts.

The complainant called the FBI and the NYS Police Department. The complainant stated that the APD doesn't know who they are dealing with. The complainant claims that he had been paying the DMV to run license plate numbers and felt that because they came up as "no hit," they must be APD vehicles.

Michael Whiteman asked what is meant by "no hit." Ms. Hammond responded that it means that the wrong plate number has been entered.

The complainant cancelled his appointment with OPS, called a Board member and took photos, but didn't produce them. He claims he is receiving untraceable phone calls from the APD. Michael Whiteman commented that all calls are traceable.

According to OPS the complainant has a pistol permit and should be taken seriously.

Marilyn Hammond had inquired about the difference between a finding of "unfounded" and a finding of "no finding." The definitions were read.

Michael Whiteman commented that Ms. Hammond seems to have a lot of information from the complainant that is not in the original complaint, and inquired about where it came from.

Marilyn Hammond replied that she received the information from the transcripts in the file. The complainant had spoken with Detective Rissberger at OPS and noted that Commander Bruno was present.

Commander Bruno stated that the complainant claimed that he was followed by an officer and he in turn followed the officer back to OPS. At that time, the complainant gave his complaint to OPS.

Paul Weafer noted that he had spoken to the complainant at length, and added that the complainant was excitable.

Marilyn Hammond moved to accept OPS' finding of "unfounded." Paul Weafer seconded the motion. The motion carried unanimously.

CPRB No. 30-02/OPS No. C02-264. Paul Weafer asked if the complainant wanted to go into executive session due to the nature of the complaint. The complainant responded that he did not.

Manuel Alguero gave a summary of the complaint. The complaint alleges that the complainant was ordered by three officers to be evaluated at the VAMC. He was told by the officers that his car would be towed and he would be only responsible for the towing fee. He stayed at the VAMC for 1½ months. He was charged \$25.00 per day for storage. The complainant is seeking reimbursement of the fee.

Commander Bruno reported that OPS recommended that the complaint be closed as "unfounded" because there is no complaint against the officers; the officers acted properly. According to the Commander, the complaint is with the towing storage company and that a request for reimbursement must be forwarded to the Corporation Counsel.

Manuel Alguero added that the CPRB has no authority to force the city to reimburse the complainant.

The complainant was recognized. He wanted to clarify the complaint. There were two male police officers and one female police officer. The male officer decided to send him to the VA hospital. The complainant asked that his car be towed to the VA because it was free and could be secured by VA police officers. He didn't remember telling the police why he wanted the car brought to the VA hospital. The complainant asked one of the male officers to get his car to the VA. The officer didn't tell the complainant that he would take it to the VA. He was evasive and only indicated that it would be towed. The complainant gave police officers the key and left it up to them. It was their decision. He made his request. Before being admitted to the VA, the police officer told him the car went to Central for safe keeping; the complainant assumed this was free. He accepted what they decided and thought it was okay. He had to pay for the tow. When he got out of the hospital, he was told it was put in storage for \$25 per day. He commented that he cannot afford to pay for it.

Manuel Alguero asked him if he received notification from OPS as to the steps to seek reimbursement. The complainant responded that he was told to file his request with the attorney for the city. The complainant believes OPS didn't do what he requested.

Manuel Alguero asked if there was any acknowledgment of the complainant's request. Commander Bruno replied that police officers cannot drive someone's car, they can only give it to an authorized company. However, the Commander added that they can only tow the car to another place if payment is provided by the person making the request. He acknowledged that the tow company storage fee was inappropriately charged, stated that he shouldn't have been charged for storage and agreed to assist the complainant in his request for reimbursement to the Corporation Counsel.

Manuel Alguero moved to accept OPS' finding of "no finding," and to allow the complainant and OPS to work out the details of the complainant's reimbursement. Marilyn Hammond seconded the motion. The motion carried unanimously.

C. *Approval of Second Quarter Report*

Manuel Alguero moved to accept the Board's second quarter report. Paul Weafer seconded the motion. The second quarter report was accepted unanimously.

D. *Appointment of Members to the Committee on Complaint Review for August 2002*

The following Board members were appointed to the Committee on Complaint Review for the August meeting: Paul Weafer, Herman Thomas, Manuel Alguero, Barbara Gaige and Marilyn Hammond.

E. *Report from the GLC*

Staff Attorney Justina Cintrón gave the report. It was reported that the total cases filed with the Board as of the date of the meeting was 82, which included 31 active complaints, 47 closed complaints and 4 suspended complaints. Ms. Cintrón directed the Board's attention to the summary of new complaints filed and the file inventory detailing the status of each complaint filed.

It was reported that the Board had received two letters: one from complainant 42-01 and the other from complainant 38-01. Ms. Cintrón thanked Michael Whiteman for his assistance in drafting the letter to complainant 38-01 and noted that both Chairman Cox and Mr. Whiteman had an opportunity to review each letter. She asked that Board members contact her with comments or suggested changes to the correspondence by Friday of that week.

It was reported that the Board had received, just prior to the meeting, correspondence drafted by the GLC on behalf of the Board to complainant 41-01, notifying him that the Board had voted not to review his complaint. Ms. Cintrón asked that Board members review the letter and forward any comments or suggested changes to her by the end of the week.

It was noted again that the Board had participated in an outreach/training program with One Hundred Black Men, and that Herman, Eleanor and Barbara were in attendance. Ms. Cintrón reported that there was discussion at this meeting about the Board's efforts to increase its outreach/community education campaign. It was suggested that the Board expand its list of organizations that are current recipients of the Citizen Complaint Forms and brochures to include clinics, churches and other advocacy services. Board members agreed to assist in the effort to reach these additional organizations. A suggestion was made to target smaller publications and newsletters. Ms. Cintrón suggested that the GLC and the Board's Outreach Committee touch base to coordinate these efforts.

It was reported that the Board's training program will resume in September 2002, and that two sessions would be scheduled for the Fall, one in September and one in November per the request of the Chairman. Ms. Cintrón added that the two tentative topics for training include an Open Meetings Law/Freedom of Information Law Refresher and a program on labor law, police unions and collective bargaining agreements. However, she welcomed the Board's input with respect suggestions for alternative topics.

F. *Report from OPS*

Commander Anthony Bruno gave the report. He provided a summary of the statistics for May and June 2002, which included:

- 36,681 calls for service city wide in 3 months,
- 33,420 calls for service (excluding crank/test calls),
- 5,973 police officer initiated calls (just over 16%),
- 2,452 traffic stops,
- 1,602 calls at stations (i.e., walk ins),
- 1,211 details where police officers are posted at an establishment (i.e., special event), and
- 244 persons with weapons.

From April through June 2002, there were:

- 2,236 arrests city wide,
- 3,945 summons,
- 21 shooting calls, and
- 96 shots fired.

Overall, 19 incidents generated 22 complaints. Of those, there were:

- 11 involving arrest procedures,
- 4 involving conduct standards,
- 5 involving the use of force,
- 5 relating to general call handling,
- 1 other, and
- 1 involving an off duty officer.

According to Commander Bruno,

- 148 cases were handled by OPS, which included civil claims and injured prisoners, and

- background checks were conducted for:
 - 8 police officer candidates,
 - 3 telecommunications specialists, and
 - 9 security officers.

Paul Weafer asked if any police officers were disciplined. Commander Bruno said yes. Although he didn't have the statistics with him, the Commander estimated that there were 4 or 5 cases where discipline was imposed. He added that this was about

average, maybe a little higher than usual, but he would have more details next month.

Commander Bruno announced a new unit member - Detective Dermott Whalen, who served several years in NYC, and will be replacing Detective Rissberger who has since taken a job with Community Services.

G. *CPRB Comments*

Manuel Alguero wanted to know if everyone is working on the same page with the complaint form because the old police department form is still being used.

After reviewing the form Dr. Alguero was referring to, Commander Bruno noted that it was an old form and doesn't know where the complainant got it. Dr. Alguero suggested that a memo be sent to all of the organizations currently receiving forms asking the organization to discontinue the use of the old forms. Commander Bruno agreed to make sure the old forms are no longer being used by the Police Department.

VII. Public Comment

Louise Roback was recognized. She reported that she is leaving the NYCLU. She commended the Board for its obvious hard work and dedication, and encouraged the Board to follow up with the APD on its racial profiling policy. She introduced Christian Smith Zacharas noting that he will be taking over as interim Director when she leaves, and added that she will be heading the Maine Chapter of the Civil Liberties Union.

The board congratulated Louise and welcomed Christian.

Judith Mazza commented that the Board appreciated Louise's ongoing investment of time and comments of support for the Board.

Ann Pope was recognized. She wanted to know if the Board had received a complaint from Kyle Wilkerson. Paul Weafer responded that it had.

VIII. Adjournment

Vice Chairman Herman Thomas moved to adjourn the meeting at approximately 8:00 pm. Manuel Alguero seconded the motion. The motion carried unanimously.

Respectfully Submitted,

Michael Whiteman
Secretary