

City of Albany
Citizens' Police Review Board
Minutes of 9/23/02 Meeting
Albany Public Library, HBH Room
Washington Avenue

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

Absent: Kenneth Cox and Herman Thomas

I. **Call to Order and Roll Call**

Michael Whiteman called the meeting to order at 6:05 pm. Mr. Whiteman called the roll by looking around the table and noting that the Chairman and Vice-Chairman were not present.

II. **Approval of Agenda**

The agenda was reviewed. Mr. Whiteman noted one addition to the agenda under Section VI. New Complaints for Review. Mr. Whiteman reported that Herman Thomas was assigned to report on CPRB No. 11-02, however, he was not present. Mr. Whiteman added that Paul Weafer was prepared to report on this complaint and therefore, recommended that the case be added back to the agenda as Item 3. Manuel Alguero moved to accept the agenda. The motion was seconded by Paul Weafer. The motion was carried unanimously.

III. **Approval of Meeting Minutes**

The minutes from the July 8, 2002 meeting were reviewed. Barbara Gaige moved to accept the minutes. Marilyn Hammond seconded the motion. The motion was carried unanimously.

The minutes from the August 12, 2002 meeting were reviewed. Marilyn Hammond moved to accept the minutes. Paul Weafer seconded the motion. The motion was carried unanimously.

IV. **Old Business**

A. **CPRB No. 7-02/OPS No. C02-88.** Karleen Karlson, Esq. of the Government Law Center gave a follow-up report on this complaint. On August 13, 2002, Ms. Karlson served as a mediator to an "informal mediation" involving the complainant, her husband, Commander Anthony Bruno and Commissioner John Nielsen. The parties met for approximately one hour. It was reported that the meeting was very productive.

According to Ms. Karlson, there has been significant activity since August 13th. Ms. Karlson has spoken with the complainant several times about concerns for her safety and issues in the neighborhood. Ms. Karlson has spoken with Commissioner Bruno several times. The complainant is pleased with how things are going. Ms. Karlson added that she may schedule another meeting to make sure that the issues are being dealt with.

Mr. Whiteman inquired as to whether the implications of the meeting would place the citizen in a position to reopen or continue the operation of her business. Ms. Karlson responded that it would not at this time, but may down the road.

Paul Weafer inquired about the citizen's concerns for her safety and asked if special patrols were going down around her house to make sure that her security is as best as it can be under the circumstances. Commander Bruno responded that it was.

Marilyn Hammond asked Commander Bruno if the person referenced in the complaint was getting out of jail, adding that she heard that the person would be released that week. Commander Bruno responded that eventually the individual would be getting out, but not that week.

B. CPRB No. 18-02/OPS No. C02-205. It was reported that a request was made by the Board to the Office of Professional Standards for some additional investigation to determine if the complainant's license was suspended. Barbara Gaige briefly summarized the complaint. The complaint was lodged by a gentleman who contended that his license was not suspended on the date of his arrest, but had been restored. He complained of unnecessary use of force - use of pepper spray. Ms. Gaige noted that the Board had requested OPS to investigate whether or not the complainant's license was suspended on 3/31/02.

Commander Bruno responded that the complainant had received suspensions on 3/31/01, again on 4/21/02 and as far back as 5/7/99. As of the 31st of March 2001, the complainant's license was suspended. Commander Bruno added that OPS had received a certified record to that effect from the Department of Motor Vehicles.

Upon being asked by Ms. Gaige about whether or not the license had been restored since the incident, Commander Bruno responded that it had not been fully restored.

Paul Weafer noted that the Board was confused during its last deliberation because the complainant had submitted a suspension notice to the Board that stated that the complainant's license would not be suspended until 4/21/02. Mr. Weafer added that the Board did not know that one year prior, the complaint's license was suspended on two different tickets. Commander Bruno, in providing an example, explained that if an individual were to receive tickets and is ordered to appear in Court on August 1, 2, 3, and 4 for those tickets, his or her failure to report to court would result in a license

suspension for every ticket and failure to respond. The individual's license would be suspended over and over again. Therefore, the document that the complainant had at the last meeting was a suspension notice, but it was on top of an already suspended license.

Mr. Whiteman asked whether or not the complainant had alleged that he had paid the prior tickets. Commander Bruno responded that the only requirement that was met was a suspension in 5/7/99 for failure to pay child support, which was cleared up on 7/22/99. According to Commander Bruno, the other three suspensions are still outstanding.

Paul Weafer added that the basis for stopping the complainant and asking him to get into the car was an unattended vehicle with the car running and noxious fumes being put out from the back of the car. According to Mr. Weafer, when the complainant was asked to sit in the car, produce his license, registration and insurance card, he wanted to go back into the house and he would not sit in the car. Mr. Weafer added that, according to the monitor's report and the police report, he became very argumentative.

Mr. Whiteman asked Ms. Gaige to review the preliminary findings of the Office of Professional Standards. Ms. Gaige gave a summary of the report and preliminary findings of OPS. Mr. Whiteman noted that there were two charges and that OPS has recommended that the officer be "exonerated" on both charges. Barbara Gaige stated that she concurred with the findings of OPS, adding that there are no witnesses to say that there was any "roughness," it was a he said, she said situation, and all of the officers interviewed agreed on the situation.

Judith Mazza stated that the report from Mr. Lenihan said that the minor son and the wife were interviewed. Ms. Mazza added that when the Board reviewed the complaint, the complainant complained that no one would talk to his minor son witness, but talked to other witnesses. Detective Kathy Hendrick, from the Office of Professional Standards, responded that the wife and son were interviewed regarding another complaint. Detective Hendrick added that the new girlfriend was interviewed, but had no new information to offer because she was in the house at the time.

Paul Weafer added that the records and documentation indicate that there was one witness who gave a statement that the complainant was fighting and resisting the officers as they were trying to handcuff the complainant. The witness tried to soothe him and calm him down, but the complainant would not listen to that witness. Ms. Gaige confirmed that this was a neighbor.

Michael Whiteman noted that the complainant was less than candid about the driver's license, the issue which underlies his complaint of false arrest, and that this undermines his credibility on other issues. The complainant allowed the Board to believe that he had received a notice that his license would be suspended on a date certain in the future, but that it was not suspended at the time of the incident. From the Commander's report, this was apparently not true.

Judith Mazza moved to make a finding of “exonerated “on both charges. Paul Weafer seconded the motion. The motion carried unanimously.

Barbara Gaige inquired about a recommendation made by the monitor assigned to the complaint, Richard Lenihan - that a medical form be used. Commander Bruno responded that there is already a screening sheet that is filled out for individuals being booked.

VI. **New Business**

A. *New Complaints*

Paul Weafer reported that there were eighteen (18) new complaints received since the 7/8/02 and 8/12/02 meetings. Mr. Weafer reported that at least half have had monitors appointed and approximately half of the complaints that have monitors deal with civil rights and the other half deal with excessive force. Justina Cintrón agreed to forward the new complaint summaries to the Board.

Paul Weafer gave a brief report of the complaint received earlier in the day to determine whether a monitor needed to be appointed. According to Mr. Weafer, the complainant indicated that she is black and alleged that an officer indiscriminately took two white drivers' statements that said she ran a light and refused to take the pedestrian's, saying that he had already spoken to two witnesses and was not going to talk to anyone else. Mr. Weafer added that the complainant alleged the other driver ran the light and that no tickets were issued to the best of her knowledge. According to the complaint, the officer would not take her statement at the Center Street station. The complainant claimed she took pictures of the intersection and the skid marks.

Eleanor Thompson commented that regardless of color, someone should look into the complaint. The Board unanimously decided to appoint a monitor to the complaint.

B. *New Complaints for Review*

1. **CPRB No. 37-01/OPS No. C01-490.** Marilyn Hammond gave a summary of the complaint. The complainant was arrested and charged with criminal possession of a narcotic drug with intent to sell and criminal possession of a controlled substance. The complainant alleged that the officer falsified the arrest report by indicating the officer had probable cause for the arrest. The complainant further alleged that the officer had detained the complainant on 8 separate occasions between May 2001 and October 2001, resulting in 3 arrests. An interview was conducted with the complainant. Attempts were made to contact the complainant's witness. Correspondence was received from the officers. The complainant had been arrested 58 times from 1991 to present. Thirty-six of these charges were drug-related. The complainant was re-arrested June 2002 for drugs. There is no record of the same police officer arresting the complainant on 8 separate occasions.

According to the investigative report, Ms. Hammond reported that the complainant is a known drug dealer in the South End and Arbor Hill neighborhoods and has been known to carry both fake and real drugs. He is currently serving time for the same charges.

Manuel Alguero asked if the complaint was about excessive use of force. Ms. Hammond replied that the complaint is that the officer was harassing him and that he was falsely arrested. According to information in the file, the police officer saw him throw crack on the ground. The complainant claimed that the police placed fake crack on him.

Judith Mazza added that the complainant alleged one particular officer harassed him 8 different times and then arrested him 3 times. Marilyn Hammond responded that she looked at his record, but didn't see that indicated. Ms. Mazza further commented that the complainant claims the police are constantly violating his civil/constitution rights - he feels he is being harassed and watched. It was reported that OPS made a finding of "exonerated" with respect to this complaint.

Marilyn Hammond recommended the case be closed with the finding of "exonerated." Paul Weafer seconded the motion. The motion carried unanimously.

2. **CPRB No. 10-02/OPS No. C02-120.** Paul Weafer gave a summary of the complaint. Mr. Weafer reported that the complaint involved two allegations: the first charge is excessive use of force by the police officer in effecting an arrest and the second charge is acting unprofessionally once the complainant was brought to the station and booked.

The complainant was stopped on Delaware Avenue to go to the market. In parking her car, she blocked a driveway. When the complainant came out of the market, the woman who lived in the house and owned the driveway was parked behind her. The woman prevented the complainant from leaving by parking close to the complainant's car. The complainant put her car in reverse and bumped the owner's car. The owner's husband came out, asked what she was doing and prevented her from leaving because he wanted to see if there was property damage. The complainant got out of the car and started arguing with the man. It is alleged that the complainant had a German Shepard in the back of her car. She went to the passenger side of the car and got the German Shepard out, proceeded toward the man with the dog and stated how would you like a piece of this dog. With that, the husband backed off. The complainant then got back into her car and drove off.

In the complaint, the complainant alleged that she called the police when she arrived at her house to explain what happened over on Delaware Ave. In the event a complaint was made against her, she wanted the police to know the facts of the situation. By that time, a police officer had responded to the owner's home/apartment on Delaware Avenue, had filled out a report, and ran the license plate. The officer drove over to the

address on the license. At first, the complainant reluctantly let the police officer into her home and asked why the officer was there. She was very uncooperative. The complainant then asked the officer to step out. The officer explained that there was a complaint and that they had to arrest her. The complainant said that she would not go and to step outside. She was not lucid at all times and highly emotional. According to the investigative report, the officer stepped out on two or three different occasions, at which time the complainant would lock the door, then unlock the door and open it a couple of inches. Finally, the officer said that he had to arrest her.

It was reported that the complainant looked out the door, saw a "paddy wagon," said that she was not going in a "paddy wagon" and tried to close the door again. She had begged for more time to bring a second dog in from the back yard and the officer gave her 3 to 4 minutes to get the dog. She brought the second dog in and when she opened the door again, this dog started to growl at the officer. By this time, a second officer had arrived, put his foot between the door when the complainant opened it, grabbed her by the wrist to bring her out into the hallway and handcuffed her.

While the officers were leading her from the apartment, she was waving her arms and locking her legs, trying to prevent them from walking her down to the police wagon. According to various statements, one officer explained why they had to go in the police wagon. She was very confrontational, disoriented and resistant. She did not understand why this had to be done. According to the complainant, when she got to the police station and was booked, she announced to the arresting officers that she was an attorney and the officers allegedly ridiculed her for a period of time.

OPS has concluded that this was a lawful arrest and has recommended that the allegations of excessive force be "exonerated." As to the ridiculing of the complainant, OPS recommended that the conduct of the officers be "sustained."

The Board's monitor, George Kleinmeier, gave credit to OPS for their investigation of the complainant's ridiculing allegation. According to Mr. Kleinmeier, OPS had gotten their information from persons in the jail at the time of the incident.

It was reported that the complainant, in her statement, admitted to backing into the car and shoving the man. Paul Weafer asked if there was damage to the car. Mr. Kleinmeier responded that an accident report was made.

Michael Whiteman asked whether a warrant was required to effect the complainant's arrest. Commander Bruno responded that the officers did not have a warrant. According to Commander Bruno, the complainant was partly out of the door when the officers attempted to arrest her.

Commander Bruno further explained that in order to arrest someone for a violation, the officer must witness the violation. However, to arrest someone for a crime, there must be a believable witness; the officer does not have to witness it. She was charged with

menacing. Generally, a warrant is required to arrest someone in the home absent exigent circumstances, which is why the officers spent time coaxing the complainant out the door.

Michael Whiteman summarized the two allegations in the complaint: (1) excessive and inappropriate use of force to effect the arrest (not false arrest) and (2) the inappropriate ridiculing and demeaning behavior of the two officers, although one is not identified. OPS made a finding of "exonerated" with respect to the charge of excessive use of force and "sustained" with respect to the conduct in the station house.

Paul Weafer stated that the booking clerk said the complainant was very emotional, but did not hear anything disrespectful said to the complainant. One officer said he did hear the complainant state that she was an attorney, but did not hear any ridiculing. He heard the target officer speaking to the complainant.

Paul Weafer asked how OPS came to the conclusion that there was ridiculing of the complainant. George Kleinmeier replied that there were 2 prisoners who heard the ridiculing. Paul Weafer asked if the target officer acknowledged, after the fact, that s/he ridiculed the complainant. According to Mr. Kleinmeier, she did not absolutely deny it. Paul Weafer moved to make a finding of "exonerated" with respect to the conduct of the arrest and "sustained" with respect to the ridiculing of the complaint.

Manuel Alguero inquired about the finding with respect to the allegation of excessive force. Mr. Kleinmeier responded that there were no witnesses. He added that after the second interview, the complainant said that it was not excessive force and admitted that she slightly exaggerated the first time. There were two witnesses at the jail - one said he did not see anything; the other said the complainant was screaming and uncooperative.

Dr. Alguero expressed that he was still unclear about the response on the warrant. Commander Bruno explained that the complainant had opened and closed the door several times. George Kleinmeier added that the officer was invited into the house and told the complainant that he had to take her in. At that time, she asked him to step outside.

The motion was seconded. The motion to adopt the findings of "exonerated" and "sustained" on the respective charges was carried unanimously.

3. **CPRB No. 11-02/OPS No. C02-122.** Paul Weafer reported that a monitor was not appointed to this complaint. Mr. Weafer summarized the complaint, noting that the complaint was approximately eight (8) lines long and alleged that the complainant was harassed and told to shut up. Mr. Weafer read the allegations of the complaint and the preliminary report of OPS. According to Mr. Weafer, OPS recommended that the investigation be closed as "exonerated."

Manuel Alguero asked Mr. Weafer what he recommended. Mr. Weafer responded that the complaint did not involve a civil rights violation or excessive use of force because no monitor was appointed. Based on the witness that saw the incident take place and under the circumstances of a burglary in the immediate area where three suspects were apprehended, the complainant fit the description of the 4th person to be apprehended, was stopped and, according to police, became abusive. After the officer realized that the complainant was not the suspect, the officer tried to explain the police procedure to the complainant. It was reported that the complainant allegedly continued to give the police a hard time.

Commander Bruno was asked whether the time period in which the complainant was apprehended was brief. Commander Bruno replied that it was minutes, and added that the complainant was not arrested.

Paul Weafer moved to uphold the recommendation from OPS and make a finding of "exonerated." Michael Whiteman seconded the motion. The motion carried unanimously.

4. **CPRB No. 16-02/OPS No. C02-176.** Barbara Gaige summarized the complaint. Incident occurred while the complainant was at traffic court. The complainant alleged that he had asked the stenographer about a traffic ticket and that he had been there several times about the ticket. According to the report, the complainant approached the stenographer for an address, but had been given information about how to get a transcript from the court assistant. It was reported that the complainant was told to leave the stenographer alone. The complainant was confronted about his behavior. He was told to sit down or he would be arrested.

The chief clerk described the complainant as "a time bomb ready to go off." The police officer stated the complainant made several comments to the arresting police officer.

Ms. Gaige reported that OPS had recommended that the complaint be closed as "unfounded" and read the OPS report. Ms. Gaige then made a motion to accept the finding of "unfounded."

Michael Whiteman commented that he understood several people in the courtroom said that the complainant was disruptive and asked whether or not the stenographer gave a statement. Barbara Gaige replied that she had not.

Michael Whiteman moved to make a finding of "unfounded." Judith Mazza seconded the motion. The motion carried unanimously.

5. **CPRB No. 20-02/OPS No. C02-195.** Manuel Alguero gave a summary of the complaint, noting that the complaint was made by a person of Hispanic origin and was translated by a member of the Board. Dr. Alguero also noted that a monitor had been appointed to this complaint. Dr. Alguero gave a synopsis of the interviews. George

Kleinmeier stated the complainant was interviewed with a translator. There were no witnesses to the incident. There was 47 calls in that area. OPS recommended that the case be closed with a finding of "not sustained."

Mr. George Kleinmeier added that the complainant could not produce any witnesses, she was in a known drug area, and the police indicated they did not search her in the way she alleged they did. Dr. Alguero commented that it appears the officers could stop someone, under those circumstances, if the person matches the description of a suspect.

Commander Bruno stated that the complainant matched the description in the same area where a call for service came in and was within a reasonable time. Factoring together time, location and description, there was a reason to stop the complainant.

Paul Weafer noted that it stated in the report that a suspected/known drug dealer gave the complainant a cigarette. George Kleinmeier added that the complainant was observed with a known drug dealer and an officer did see the complainant with this gentleman, who had his hands cupped showing her something.

Judith Mazza asked how officers deal with a language barrier; to understand what is going on takes certain level of language and comprehension. What recourse is there if someone does not speak English? Does the officer have recourse to stop the process to get someone to help with language? Commander Bruno responded that there is no policy. Several officers speak other languages (Spanish, Italian). The department utilizes an interpreter service that officers can call from the street to get an interpreter if necessary, but there is no policy to call if the person stopped does not speak English.

Judith Mazza asked if OPS's recommendation of "not sustained" was made because it cannot prove or disprove the allegations in the complaint. Ms. Mazza noted that there is a sense that, in such circumstances, OPS's finding is always in favor of the police officer. According to Ms. Mazza, the concern is that the tone of the complaint is such that there is a person who is trying to make sense of the situation, who was approached on the street, and felt intimidated and afraid. If she does not speak the language, it is even more intimidating. Since a female officer was called to the scene, a Spanish speaking person could have been appropriate. Commander Bruno acknowledged Ms. Mazza's point, but added that sometimes certain things are allowable to shorten the amount of time the citizen spends with the police.

Manuel Alguero commented that during the pat down, the complainant alleged she was required to open her mouth. It was reported that the officer denied this.

Judith Mazza pointed out that this was a case of he said, she said.

Dr. Alguero inquired about the reason for the pat down search and asked whether the search could have been avoided if the complainant spoke English fluently. Commander

Bruno responded that the complainant was patted down for safety reasons - to check for weapons.

Dr. Alguero made a motion to accept OPS's finding and make a finding of OPS "not sustained." Paul Weafer seconded the motion. The motion carried unanimously.

Mr. Kleinmeier was thanked for his reports.

C. *Appointment of New Members to Committee on Complaint Review*

The following Board members were appointed to the Committee on Complaint Review for October 2002: Paul Weafer, Marilyn Hammond (23-02), Eleanor Thompson (22-02) and Michael Whiteman (19-02). It was reported that the members of the Board present at the meeting could attend a special meeting for complaint review scheduled for September 30th.

D. *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 102, which included 46 active complaints, 52 closed complaints and 4 suspended complaints.

It was reported that four(4) individuals had been interviewed for a position of Board monitor/investigator. Ms. Cintrón noted that two (2) candidates originally scheduled for interviewed were not interviewed. It was reported that the names of the four monitors would be forwarded to the City and Common Council.

It was reported that registration information for the NACOLE Conference had been mailed to each Board member on September 11th. Ms. Cintrón added that the Government Law Center had been in touch with the City about funding for the conference. Manuel Alguero, Barbara Gaige, Judith Mazza, Eleanor Thompson and Michael Whiteman expressed their interest in attending the conference. Mr. Weafer responded that he could not attend.

Michael Whiteman inquired as to whether or not he is a permanent member for NACOLE. Ms. Cintrón responded that she would verify his membership status and report back.

It was reported that the terms of Barbara Gaige, Herman Thomas and Eleanor Thompson will expire in October 2002. Ms. Cintrón added that Judith Mazza asked that written letters be forwarded to the Mayor's office and the Common Council notifying them of the term expirations. It was reported that Ms. Thompson did not wish to be reappointed. Ms. Gaige expressed her desire to continue. Ms Cintrón agreed to follow up with Mr. Thomas regarding his reappointment. Judith Mazza suggested that the Chair contact the Mayor about reappointments and she would contact the Common

Council to reappoint.

Manuel Alguero indicated that when the Board reported to the Common Council Caucus, there was discussion of the need for youth representation on the Board.

Ms. Cintrón noted that the NACOLE Conference would take the place of the Board's September training program. It was noted that November 18th was set aside as a training day and would cover either FOIL/OML or collective bargaining/labor law issues.

Ms. Mazza indicated that she would like the Board to revisit the law. She noted that the Board made a series of changes to the law after its first year of operation. She asked that the Board review those proposed changes and identify two, three or four major issues that need to be changed/revised made stronger/clearer that should be brought to the Common Council. Ms. Mazza added that there should be an open meeting to get comments from the public as to what they think some of the issues are and the areas of the law that they feel are really important. According to Ms. Mazza, the board should look at the concrete areas, not simply the language, and there should be a special meeting about these issues. Michael Whiteman commented that it would be appropriate to convey to the Chair that the Board would like to have a special meeting, but would leave the scheduling of the meeting to the Chair's discretion.

It was reported that Ms. Cintrón and Ms. Mazza met to discuss the Board's outreach efforts. It was decided that the Board's brochure would be updated once the reappointments and/or changes to the Board's membership had been finalized, the brochure would be translated into Spanish and printed on yellow paper.

The Board was asked to review its Web site and identify items that require updating.

It was reported that Ms. Mazza suggested the Board should resume regular outreach/liaison meetings with the police union, the rank and file, the Mayor, the Common Council and the Commissioner. It was noted that Ms. Mazza also suggested that outreach meetings with the NAACP, CANA, GLCC, NYCLU, and CFLJ be scheduled so that the Board may attend and provide a Q&A session about its second year of operation.

It was also reported that a suggestion was made to create and disseminate a one-page newsletter to highlight some of the information contained in the Board's quarterly reports.

E. *Report from OPS*

Commander Anthony Bruno reserved his report for the September 30, 2002 special meeting.

VII. **Approval of Third Quarter Report**

Ms. Cintrón noted that the Third Quarter report was forwarded to the Board for review. The Board tabled approval of the report until the September 30th meeting. Barbara Gaige noted that she had received her Citizens' Police Academy certificate on June 25, 2002.

VIII. **Public Comment**

No public comment was offered.

IX. **Adjournment**

Michael Whiteman moved to adjourn the meeting at approximately 7:55 pm. The motion was seconded the motion. The motion carried unanimously.

Respectfully Submitted,

Michael Whiteman
Secretary