

City of Albany
Citizens' Police Review Board
Minutes of 9/30/02 Meeting
Albany Law School, Room 300
New Scotland Avenue

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

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

Rev. Kenneth Cox called the meeting to order at 6:00 p.m.

II. **Approval of Agenda**

The agenda was reviewed. Rev. Cox moved that the agenda be approved. Paul Weafer seconded the motion. The motion was carried unanimously.

III. **Old Business**

A. **CPRB No. 30-01/OPS No. C01-428.** Justina Cintrón gave an update regarding the complaint. At the May meeting this case was referred to mediation. Recently, it was discovered that the case is in settlement discussions with the city. It has been referred to the attorneys. As a result, mediation has been suspended.

B. **CPRB No. 3-02/OPS No. C02-01.** Justina Cintrón gave an update regarding the complaint. At the Board's May meeting, this complaint was referred to mediation. The request was forwarded to the police department at that time. It is our understanding that an agreement (by the officer and the Commissioner) to participate in the mediation has not yet been made. Karleen Karlson, Esq. has been following up with Commander Bruno and Commissioner Nielson. It was reported that the complaint is still an ongoing, open and active case.

C. **CPRB No. 8-02/OPS No. C02-84.** Judith Mazza gave a summary of previous action on the complaint. Ms. Mazza reported that the complaint was returned to OPS for further attempts to contact the complainant's passenger. This was unsuccessful because the passenger is believed to be in rehabilitation and cannot be located. OPS previously reported that all attempts to contact the passenger have been unsuccessful.

Ms. Mazza summarized the allegations in the complaint and noted that she had an opportunity to review the items in the complaint file, including information from

the corporation counsel regarding stops and searches.

Ms. Mazza noted that there appeared to be three allegations in the complaint:

1) failure to report the reason for the traffic stop - it is unclear as to why the complainant's vehicle was stopped. There was conflicting information from the officers and the complainant. According to OPS policy, when stopping a vehicle on the highway, the officer calls it in and is supposed to tell why they are making the stop. That was not done. It is often not done and is an inconsistent policy. As to the stop, Ms. Mazza recommended that a finding of "ineffective policy or training" be made. Ms. Mazza added that since it was not reported, the Board has no indication as to why the stop was made - lane change, dim light, speeding. The complainant was given a ticket for inappropriate lane change without signaling. If an officer calls it in and says why, you would have a record of the stop and the reason would be clear.

2) civil rights violation – the complainant alleged that her passenger was ordered out of the vehicle, subjected to pat down search and had his wallet removed from his pocket by the officer. During this incident, the complainant was not allowed to get out of the vehicle or answer questions about the stop. It is unclear to the Board who removed the wallet. The officer patted down the person. There was no weapon found, but the wallet was found.

During the incident, the passenger claimed he did not have his ID with him. He gave his name, but did not have identification. When the wallet was found, according to the officer, the officer asked if it was his wallet. The passenger said that it was and removed the wallet. The officer claims that the passenger gave the officer his ID. The complainant alleged the officer removed the wallet. According to Ms. Mazza, this is a case of he said, she said.

Ms. Mazza referred to a memo written by corporation counsel regarding protective frisks. It appears that under the circumstances, the frisk should have stopped. Therefore, Ms. Mazza recommended that a finding of "sustained" be made with respect to this allegation.

3) racially-motivated traffic stop - according to Ms. Mazza, there is no reason to believe this allegation. She noted that the complainant's car had tinted windows and that the car was stopped at night. There is not enough information to prove or disprove this allegation. Therefore, she recommended that a finding of "not sustained" be made with respect to this allegation.

Paul Weafer asked if there was an arrest warrant for the passenger. Judith Mazza replied that there was, but added that the complaint was about the removal of the wallet from the passenger's pants.

Paul Weafer inquired as to how a police officer looks at a car with tinted windows, asking whether the car is more prone to being stopped at night. Sergeant Connelly responded that, in his personal opinion, no. Sergeant Connelly added that it is difficult at night because of police safety. However, noted that in his opinion, tinted windows are not a reason to stop a car. Judith Mazza added that if a record was made, the reason for the stop would have been known.

Judith Mazza summarized her proposed findings and moved to accept them: 1) “ineffective policy or training” as to the traffic stop; 2) “sustained” as to the removal of the passenger’s wallet and 3) “not sustained” as to the racially-motivated traffic stop.

Paul Weafer inquired about the finding of “not sustained”; adding that a finding of “unfounded” is more appropriate. Judith Mazza agreed and revised the “not-sustained” finding to a finding of “unfounded.” Paul Weafer seconded the motion. The motion carried unanimously.

IV. **New Business**

A. *New Complaints for Review*

1. **CPRB No. 19-02/OPS No. C02-208.** Michael Whiteman summarized the complaint, noting that it contained essentially two allegations: 1) the police officer was threatening and rude to the complainant and 2) the police officer, in concert with other, manufactured evidence and broke gate or door where the incident took place.

The target police officer arrived at the scene to investigate a stabbing at a bar. The report of the stabbing came from Albany Med where the victim voluntarily went for treatment. The complainant was at the bar where the stabbing allegedly occurred. The complainant insinuated herself into the investigation and confronted the target police officer. The complainant claims the target police officer taunted her because the Board found her previous complaint “unfounded,” threatened to arrest her and “do the same thing again.” She took that to mean hurt her again. Police officers said the complainant was intoxicated and belligerent. The police officer spoke with her in an authoritative tone to get her to stay away from the crime scene - that could be construed as threatening.

The target officer claims he never kicked in the door. Other police officers say they didn’t see him do it. The target officer does not recall any discussion of the prior incident and the other officers say they did not hear any such discussion. They all denied that anyone threatened her, but acknowledge that an authoritative tone was used that she could have construed as threatening. There was confusion about the bar personnel/owner and security officer (possibly

bouncer). Also, there was someone described as a doorman. It is not clear if the doorman and bouncer are the same person. The bouncer said the gate was broken in a fight. The doorman accused the target police officer of having broken the gate.

The owner did not see or hear the conversation. He heard the complainant saying something about "last time." The owner said the target police officer was nasty and rude. Few people at the bar were forthcoming with information. The victim of the stabbing was also less than forthcoming. This was a scene with tension between the police and patrons of the bar.

OPS made the recommendation of "unfounded" with respect to the allegedly threatening and rude conduct on the grounds that it did not occur or was misconstrued. The monitor reports that, in his opinion, the investigation was thorough, competent and professional.

Mr. Whiteman made an observation that there was some evidence, although it was not known how reliable, that the target officer and maybe only the target officer was somewhat rude.

The monitor assigned to the complaint, Al Lawrence, was recognized. Mr. Lawrence reported that he only saw the complainant and did not see the police officer or people on the street.

Paul Weafer inquired as to the time of the incident - 3:30 or 4:00 a.m. Michael Whiteman responded that it was in the wee hours and the owner was in the process of closing. Michael Whiteman reviewed the transcripts of the interviews of the police officers responding to the call. There were also two investigative reports and a reference to the liquor authority, something that is routinely done when there is an incident in or around a licensed premise. The reports are consistent in saying that the complainant was intoxicated and somewhat belligerent.

There is corroborative evidence that the complainant asked the police officer repeatedly for their names and shield numbers. One police officer said every time she asked, he gave it to her. There is no evidence that any of the employees or the bartender were intoxicated or involved.

Paul Weafer asked if she was arrested. Michael Whiteman replied no, the only reason for an arrest would be if the crime scene was disturbed. She managed not to do this. The complaint is that the first police officer responding was rude.

Sergeant Connelly was asked why the complainant was not arrested. Sergeant Connelly replied that the complainant was not arrested because of manpower issues that night, and that it would have been counterproductive to have arrested

her. According to the Sergeant, if they lose a police officer for booking, it would reduce manpower at a busy time. Michael Whiteman replied that the basis for arresting was marginal at best. Sergeant Connelly responded that if a person does not comply with an order to stay clear of a crime scene or is obstructing government administration, then there may be an arrest.

Herman Thomas asked about blood at the scene. Al Lawrence replied there were just a few drops so it was unclear whether there was a stabbing. It could have been just a fight, which the bouncer concurred and stated that was when the gate was broken.

Michael Whiteman moved to accept OPS recommended finding of "unfounded." Manuel Alguero asked if there was any caveat to add to the recommendation. Michael Whiteman replied, not in the case of this complainant, based upon two complaints. The complainant is combative when she has a couple of drinks. Michael Whiteman stated that he doubted this was a case for mediation. Paul Weafer seconded the motion. The motion carried unanimously.

2. **CPRB No. 22-02/OPS No. C02-215.** Eleanor Thompson gave a summary of the complaint. While outside her apartment, her son approached on bike and stated he was being chased by the police. An officer exited the car with his weapon drawn, aimed and cocked and allegedly pointed at her and another party. It is alleged that the officer kicked the door that was closing, yelling "stop or I'll shoot." It is alleged that the officer entered the residence pointed the weapon at the son, yelling lay down, put your hands behind your back. It is alleged another officer entered the residence and pushed the complainant against a door. The officer returned his weapon and pulled out a can of mace. The complainant alleged she asked what was happening and was told to shut up, no one had to tell her anything.

OPS's preliminary finding recommended that the investigation be closed as "unfounded." Ms. Thompson read the report. The officer was chasing the complainant's son due to the fact that he had just committed a crime of criminal mischief. A witness observed the son cutting the tires of his girlfriend's car and pointed the son out to the officer. The officer lawfully entered the complainant's apartment in that the officer was in hot pursuit of the son. The officer admitted having his weapon drawn due to the fact that the officer did not know if the complainant's son still had the weapon in his possession which he had used to commit the crime of criminal mischief.

A monitor was assigned to this complaint. George Kleinmeier said the complainant did not understand why they put others in danger and they had no reason to think her son was armed. Mr. Kleinmeier recommended it should be closed as "unfounded" because the officer was chasing the complainant's son because a crime had just been committed. OPS did a well documented and

complete investigation. Eleanor Thompson recommended that the Board make a finding of “unfounded.”

The complainant was recognized and was very upset. The complainant replied that she had no reason to lie. The police officer could not have seen her door. The police officer came up and stopped at the corner. She explained the position of her door in relation to the others. She did not see the officer get out of the car. Her son was on his way in the door. His gun was directly with her eyes. The gun was not down by his side. When the police officer came around the corner, her door was closing. The police officer kicked the door in and yelled “stop or I’ll shoot.” The complainant explained that she yelled at her son to stop and was yelling to the officers that she had grandchildren in the house. The officer still had the gun out. Her son put the bike down and laid down. She was afraid her grand kids would get shot. She was holding the door open. The second officer came in and knocked the complainant against the wall. He also had his gun out and drawn. The first officer put his gun away and pulled out a can of mace, and finally cuffed him and took him out. When she asked what was going on, they said they didn’t have to tell her. They then said that they would tell her in a minute. According to the complainant, the officers did not know what they were arresting him for. It had not just happened.

According to the complainant, the girlfriend had said he was riding down the street and harassing her. Now, the officers were saying he cut the tires earlier in the morning and someone saw it. They had no reason to come into her house with guns drawn. It wasn’t something that had just happened. The complainant talked to the girlfriend earlier and she claimed he had cut her tires, but she didn’t see him do it. The police officer did not know there was an order of protection against the girlfriend. The police officer had the son’s address from the witness/young lady who filed complaint.

Paul Weafer replied that he appreciated her taking the time to come down; it sounded like a very stressful situation. He asked the monitor, if the slashing of the tires happened then or earlier. Mr. Kleinmeier replied that it had happened around 11 o’clock that morning. According to Mr. Kleinmeier, the police got a call that the tires had been slashed. While in the process of writing the report, the officer and witness saw the complainant’s son go by, the witness verified and pursuit began.

Paul Weafer asked if the officer lost sight. The complainant replied that the officer did because “you cannot see the door to her apartment from where the car stopped.” She added that there is no way you can stay in their sight at all times.

Manuel Alguero asked the monitor if he had an issue with line of sight. Mr. Kleinmeier replied yes, he had a question. Manuel Alguero asked Michael Whiteman of the legal opinion regarding line of sight. Michael Whiteman replied

that he does not know the law with respect to hot pursuit, but if the officer lost sight, he suspects that it cannot be hot pursuit. However, if sight was lost for only a moment or two, then probably not.

Chairman Cox noted that this issue was discussed in the monitor's report. Manuel Alguero asked if there was an investigation to determine if there was a possibility of losing line of sight because there appears to be a disconnect between the time of hot pursuit and the commission of the crime. Mr. Kleinmeier replied that the witness was with police officer taking a report when the complainant's son walked by. At that time, the witness pointed him out.

Chairman Cox commented that he is concerned with the officer lost sight and inquired as to whether or not the officer had to secure a warrant. Mr. Kleinmeier replied that the son had threatened the girlfriend by saying "I'm going to f*ck you up." The complainant alleged the girlfriend told her he rode down the street and threatened her. According to the complainant, the girlfriend did not see him cut the tires, the cousin did. She added that the police officers knew he did not have a weapon, he was riding a bike and it was more than seconds that they lost sight of him because he came up and talked to her.

Mr. Kleinmeier noted that the tires sustained \$610 in damage. Manuel Alguero stated that no one interviewed the girlfriend, she just made a statement. Manuel Alguero added that there are many issues surrounding this complaint, including immediacy of the incident, weapons or no weapons, warrant, line of sight, that required further inquiry. Sergeant Connelly responded that it would be inappropriate for him to comment on this case because he was at the scene after the complainant's son was in handcuffs.

Paul Weafer asked about the department's policy regarding hot pursuit and search warrants. Mr. Weafer was cautioned about thinking of hot pursuit in a vacuum. They give weight to the officer on the street who is about to apprehend someone. Paul Weafer asked when the threat came. Mr. Kleinmeier replied 30 minutes prior.

Marilyn Hammond commented that the Board was not ready to make a finding on this case, but rather needed to table it and re-investigate.

Michael Whiteman asked for a description to the entrance to the building and apartment and inquired as to whether it is a public corridor. Paul Weafer questioned the usefulness of the information. Michael Whiteman replied that if the corridor was public, then there is no entry issue.

Eleanor Thompson recommended that the complaint be remanded and returned for further investigation. Marilyn Hammond seconded the motion. The motion carried unanimously.

Paul Weafer directed that when the report is returned that the Board be notified of whether this was a slashing, a slashing and harassment, a slashing and harassment, plus a threat.

Michael Whiteman commented that, without limiting scope of further investigation, he would like a couple of things to be brought out:

- 1) there seems to be considerable conflict about what the police officer said to Ms. Graham
- 2) there seems to be conflict in the statement of the arresting police officer. The officer claimed that he held the gun in ready position, but also claimed that s/he aimed it at the person arrested.
- 3) seems useful to try to break the complaint into 3 separate complaints:
 - a. the dangerous use of gun under circumstances that did not warrant use of the gun;
 - b. rudeness; and
 - c. wrongful, warrantless arrest in a private residence.

3. **CPRB No. 23-02/OPS No. C02-212.** Marilyn Hammond summarized the complaint. The complainant allegedly led police on a high speed chase. He stopped and jumped out of the vehicle and a foot pursuit began. The complainant stopped and put his hands in the air and was “rushed” by the officers. The complainant alleged he was struck with a flashlight in the left side of his face and chest. The complainant also alleged that once on the ground, the officer’s kicked him in the head and struck him with a nightstick.

The complainant denies that he was out with anyone prior to the traffic stop or that he was at the Bottoms Up bar. The complainant stated while engaged in the altercation with the officers on South Swan Street, he observed a friend walking up on the scene. The complainant stated prior to the incident the friend had been at the Bottoms Up Bar and that she was walking with two other girls that he did not know. The complainant stated that as soon as he was struck with the flashlight he was knocked unconscious. He stated he suffered a knot on his head and was struck above his left eye and left side. The vehicle he was driving was his own, which was registered to his sister. Two days after the arrest he had the car registered in his name.

The preliminary finding was that the friend stated that she was home when a guy, whom she refused to identify, came by and told her the police were chasing the complainant. The friend stated as she was driving over, she observed the complainant running with another officer coming over South Swan from Madison. The officer struck the complainant in the chest with the flashlight.

A monitor, Mr. Lawrence, was appointed to this complaint. Marilyn Hammond replied that after reviewing, she did some investigation on how long it would take to walk (9 minutes) and drive (3 minutes) from South Swan to Myrtle. The complainant said his witness walked to the scene, the witness said she drove to the scene. She said she lived at 25 Myrtle, then 26 B but there is no 26. It is a vacant lot. The mother of the witness was interviewed and she has the police looking for the witness (her daughter) on a/the grand larceny charge. Marilyn Hammond reviewed medical records and conferred with the report. The scrapes are consistent with contact with the concrete and not with a nightstick or kick. There were no chest contusions in the photos, not consistent with alleged injuries. The stories changed several times. A Copy of the radio transmission showed the entire incident lasted 2 minutes 3 seconds from beginning to end.

Paul Weafer questioned if the plates were stolen. Marilyn Hammond replied yes, and he was stopped because he was going the wrong way on a one way street. The chase lasted only 2 blocks. The complainant claimed that it lasted 5 blocks.

Marilyn Hammond recommended a finding of “unfounded,” adding that the facts were misconstrued and the witness still remains at large.

Michael Whiteman asked why the monitor was not present for the interview of the witness who drove around, lurked under trees, looked around and left without identifying herself. Al Lawrence replied that he did not know. Detective Hendrick added that an appointment had been scheduled to interview the witness and the witness showed up before the scheduled appointment.

Marilyn Hammond made a recommendation to accept OPS’s finding of “unfounded.” Michael Whiteman seconded the motion. The motion carried unanimously.

B. *Third Quarter Report*

The Board’s third quarter report for 2002 was reviewed. Justina Cintrón noted two or three substantive revisions made to the report. Manuel Alguero recommended approval of the report subject to any changes that members may like to make after reviewing the changes. Paul Weafer seconded the motion. The motion carried unanimously.

C. *Report from the GLC*

Justina Cintrón gave the report. Due to the backlog of complaints, a decision was made in which each member on the Complaint Review Committee would be asked to present two cases each at the next two monthly meetings to eliminate the need for special meetings.

It was reported that no new complaints had been received since the last meeting.

Pursuant to the Board's recommendation at the last meeting, letters were drafted to the Mayor and Common Council with respect to the reappointment and expiration of the terms of some of the members on the board. Board members were asked to review the letters and note any changes.

It was reported that the City agreed to cover the Board's registration, room and travel expenses for the NACOLE Conference. Each Board member should have received a letter from the Mayor to this effect. Ms. Cintrón asked that each member planning to attend the conference fill out and return their registration forms to the Government Law Center as soon as possible so that the Center could make the appropriate arrangements. She added that the conference runs from October 31 through November 3 and noted that all conference registration information must be in by October 10 to secure the lower, early registration rate. Once the registration information was received, a confirmation letter would be sent to each member with all of the details.

D. *Report from OPS*

Sergeant Connelly apologized for Commander Anthony Bruno's absence at the meeting and added that the Commander would present OPS's report at the Board's October meeting.

E. *CPRB Comments*

Paul Weafer made a recommendation to allocate 10 minutes for monitor reports and 5 minutes for non-monitor reports at the next meeting.

Michael Whiteman inquired as to whether it was possible to review records at OPS on the weekends. Sergeant Connelly noted that the office is closed. However, if members of the Board contact the office, they can make arrangements to review the files after normal business hours, after 4:00 or 5:00 p.m., rather than reviewing the files over the weekend. It was noted that OPS's office is still located downtown.

Judith Mazza noted that there were issues to discuss, noting that it is important that the Board looks at complaints in and of themselves. She commented that there is a problem when the Board has police background on a complaint, which may be used to bias the Board. According to Ms. Mazza, the Board needs to be mindful of the fact that each individual has the right to be treated with respect and have an objective review. The Board should not be finding out if a complainant has a criminal record or done anything else before the Board reviews the complainant or the monitor reviews it. Whether it is part of a policy or not, it ought to be.

Manuel Alguero added that each case should be looked upon independently of whatever happened prior or in the past. Judith Mazza agreed. Paul Weafer commented that during the Board's review, credibility has to be weighed and if a person has a prior arrest for the same type of conduct that he has been arrested for in this case, then that affects their credibility. He added that it would in court.

Judith Mazza responded by saying the Board is not "court." She added that the Board is not investigating the crime; the Board is looking at whether or not the police officer acted appropriately at that time and is looking at how people are being treated.

Paul Weafer responded by saying that he would generally agree. However, in the case of appointing a monitor, was a person telling the truth or was there evidence that he had been arrested in the past for the same conduct. If so, it affects the credibility.

Judith Mazza and Manuel Alguero disagreed. In looking at the findings, looking at the background of the action of the officer might be justifiable.

Judith Mazza replied that just because a complainant has had prior dealings, it does not mean the police treated the person well this time.

Barbara Gaige commented that if the credibility was being questioned, wouldn't it be important to have a monitor there to determine this.

Judith Mazza replied that we are questioning the credibility prior to investigation. The complainant has certain rights whether you like the person or not. Her concern is that in a public meeting, the board is not bringing objectivity to the complaint. There is concern that the Board should be approaching the complaints more objectively.

Michael Whiteman added that credibility judgments should be made after the report is received.

Paul Weafer commented that he would like to hear the evidence in unusual circumstances because he does not want to embarrass an officer needlessly.

Judith Mazza added that, if the Board is bringing objectivity to the process, then just because someone is arrested 58 times does not mean he deserves to be mistreated by a police officer in a disrespectful or unjust way. She commented that the complainant is still a person with rights and should be treated as a human.

Chairman Kenneth Cox commented that the Board has to protect the process and themselves so that they don't cross that line.

Marilyn Hammond commented that it is hard when you live in the community; you try to be as objective as possible. The Board is there to be fair to both parties and added that it is tough to be objective when you know certain things.

Barbara Gaige commented that a Board member should recuse himself or herself in those situations.

Marilyn Hammond noted that she has in some circumstances, even if she does not know the complainant personally.

V. **Public Comment**

No public comment was offered.

VI. **Adjournment**

Meeting was adjourned at 7:46 pm.

Resentfully Submitted,

Michael Whiteman
Secretary