

**City of Albany
Citizens' Police Review Board
Albany Public Library
161 Washington Avenue
October 11, 2004
6:00 p.m. – 8:00 p.m.**

Present: Ken Cox, Barbara Gaige, Marilyn Hammond, Judith Mazza, Paul Weafer, and Michael Whiteman.

Absent: Manuel Alguero, Eleanor Thompson, and Herman Thomas.

I. Call to Order and Roll Call

Chairman Kenneth Cox called the meeting to order at 6:27 p.m.

II. Approval of the Agenda

The agenda was reviewed. Chairman Cox made a motion to amend the agenda and table review of three complaints: CPRB No. 30-03/OPS No. C03-786; CPRB No. 8-04/OPS No. C04-203; and CPRB No. 16-04/OPS No. C04-390. Chairman Cox reported that Vice-Chairman Herman Thomas, the Board member assigned to present one of the three complaints, had been called away on a work related emergency; new information had been received with respect to one of the complaints; and the monitor assigned to present the third complaint had not yet had an opportunity to complete his report. Chairman Cox noted that CPRB No. 7-04/OPS No. C04-178 and CPRB No. C20-04/OPS No. C04-308 would remain on the agenda for review.

Michael Whiteman seconded the motion. The motion carried unanimously.

III. Approval of the September 2004 Meeting Minutes

The September meeting minutes were reviewed. Chairman Cox moved to approve the minutes. Paul Weafer seconded the motion. The motion carried unanimously.

IV. New Business

A. *New Complaints*

1. Two (2) new complaints received since the September 13, 2004 Meeting.

CPRB No. 23-04 *A monitor had been appointed to this complaint.*

CPRB No. 24-04 The complainant claims that during his arrest, the arresting officer made numerous comments regarding disciplinary actions if the complainant was not cooperative. He alleges that while in custody, but prior to being

processed, the arresting officer drove him to Clinton Avenue where a witness observed the officer assault the complainant in the back seat of the police cruiser. The complainant further alleges that during the assault, a second officer opened the rear door of the cruiser and dragged the complainant out of the cruiser by his feet, while still handcuffed. According to the complainant, that is when the first officer drove his knee into the back of the complainant's neck, thus, causing his face to hit the pavement. The first officer then began to grind the complainant's face into the pavement, thereby, causing the complainant to suffer injuries to the right side of his face. *A monitor was appointed.*

CPRB No. 25-04

The complainant alleges that he was stopped at a traffic light with other motorcyclists on Central Avenue and North Main Street when an officer approached the riders and ordered them to pull over. The complainant states that, following the officer's order, one of the riders pulled away. The complainant alleges that immediately thereafter the officer drew his weapon, and, from a foot away, aimed it directly at the complainant's head. The complainant claims that he stood still, in fear that if he "moved in any way the officer might react in a very dangerous manner." The complainant further claims that at no time did he appear to be a threat or act as if he was a threat to the officer and, therefore, the officer had no reason to draw his weapon.

2. Two (2) new complaints for review.

CPRB No. 7-04/OPS No. C04-178 (Presented by Judith Mazza)

Ms. Mazza summarized the complaint. The complainant alleges that he was coming out of a store on Clinton Avenue at 2:30 in the morning, at which time he was stopped for "no reason" by an officer. He was asked his name and he showed a photo ID. The officer told him to stand against the car and the complainant was pat down. After the frisk, he asked why the officer had stopped him. The officer told him to put his hands on his head, and he did. He was then placed in handcuffs. Another officer arrived. The complainant kicked at the officers. The officers subsequently placed the complainant in shackles and got him on the ground. The complainant claimed an officer pulled his pants down and retrieved a bag of crack cocaine. The officer then took his keys and towed his car. The complainant's car was "sniffed" by police dogs. According to the complainant, his car was legally parked and shouldn't have been towed away. The complainant alleges that the officers stated he was stopped because of traffic violations. The complainant alleges he was unlawfully strip searched and subjected to an unlawful search and seizure.

It was reported that a monitor was appointed to the complaint. Ms. Mazza reviewed all of the information. She stated that three officers were involved. The first officer, Officer, A, had been on patrol in the area and noticed the complainant driving around the block, slowing and stopping, and then coming back to park his car and going into a store to meet with people inside.

The complainant would then get back into the car. Officer A was called to another call and came back and saw the complainant doing same thing. This occurred in a high drug traffic area.

Officer A claims the complainant started yelling at him. The officer stated that the complainant did give his name. The complainant was told to put his hands on his head and was handcuffed. Thereafter, the complainant kicked the officer a number of times. Officer A called for backup. Officer B arrived, placed the complainant in shackles, and got the complainant down on the ground between two police cars. The third officer, Officer C, arrived. There were two witnesses to the incident, the complainant's wife and the cousin of the complainant's wife.

The wife of the complainant stated that she wasn't around, but that she and the complainant had been together for about two hours driving around previously. She got out of her car on Clinton and was coming back from a friend's house when the arrest of the complainant took place. She was told to move away or she'd be arrested. A cousin of the complainant's wife saw everything take place. He stated that he didn't know what the complainant was up to. He did say, however, that the officer did pull the complainant's pants partly down. The officers claim the complainant had his hands behind his back and was putting something down in the back of his pants. The officers weren't sure if the complainant had a gun because they couldn't see well. The officers wanted to secure the complainant because he kept kicking and fighting.

Ms. Mazza stated that an officer did put gloves on and reached in the complainant's baggy shirt and pants. He could feel something, so he reached in and took it out. The officer found cocaine and arrested the complainant. The officer subsequently had the car towed for security purposes.

Ms. Mazza summarized the OPS's preliminary findings as follows:

Arrest Authority and Procedures - it was recommended that the case be closed as *exonerated* "where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper." This finding was based upon the actions of the complainant and the observations of the officer. The complainant had his hands behind his back and the officers wanted to make sure that he was not reaching for a weapon.

Call Handling - it was recommended that the case be closed as *exonerated* "where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper."

Conduct - it was recommended that the case be closed as *not sustained* "where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint." There were no independent witnesses to substantiate the complainant's claim, and the wife and cousin's statements were conflicting.

Michael Whiteman noted several observations. Mr. Whiteman commented that he read the monitor's report and the attached documents, and was comfortable that the OPS had made the correct conclusion. He added, however, that the crucial step in this process was the original stop, which appeared to be reasonable under the circumstances. He noted that he believed the officer to have been on solid ground, but found that the OPS was entirely conclusory in its report. Mr. Whiteman commented that he wished the OPS's reports were more complete and less conclusory.

Mr. Whiteman also commented that he does not know why the officers' gender and ethnicity is redacted/excluded by the OPS in their reports. He stated that in many instances, gender and ethnicity may not be relevant, but this information could suggest a pattern of conduct, it doesn't make sense to redact/exclude this information.

Mr. Whiteman added that he would concur with the findings of the OPS.

Ms. Mazza commented that she would agree to concur with the findings of the OPS. She added that it wasn't until she went through the file that she understood how and why the officers got there to begin with. In the beginning, Officer A noticed the complainant and watched his behavior. The officer then got a call and left the area where the complainant was. When the officer came back, the complainant was still doing the same thing. In fact, the complainant admitted what he was actually doing; his complaint was about how he was searched.

Ms. Mazza then moved to concur with the OPS's findings. Mr. Whiteman seconded the motion. The motion carried 5-1 with Paul Weafer abstaining. Mr. Weafer noted that he did not receive the packet of information containing the complaints for review and had not had an opportunity to fully review this complaint.

Ms. Mazza commented that she took exception to the monitor's conclusions at the end of the report. Barbara Gaige noted that a monitor had made an inappropriate comment in a report submitted to the Board for the previous month's meeting. Ms. Gaige then asked whether or not the monitors meet. Government Law Center Staff Attorney Justina Cintrón Perino responded that the monitors meet from time to time, and have participated in several training sessions. Ms. Cintrón Perino added that the section of the Board's Operating Procedures that address the Board's monitors are incomplete and can be used to address these issues should the Board choose to do so.

Mr. Weafer commented that the Board needs to have a broader base of monitors.

Chairman Cox asked if Mr. Whiteman wanted to make a motion that the officers' race and gender not be redacted/excluded from the OPS's reports. Mr. Whiteman so moved.

OPS Detective Kathy Hendrick reported that the OPS was instructed, early in the process, to redact all information identifying the officer(s). OPS Detective Sergeant Eric Cook commented that this was done to protect against bias.

Mr. Weafer commented that the Department should consider looking at this and providing the Board with its rationale for redacting the information. Mr. Whiteman withdrew his motion.

Mr. Weafer then moved to request that a letter be drafted and sent to the command staff of the Police Department, the OPS, and the Corporation Counsel inquiring as to why the officers' ethnicity and gender information is redacted/excluded from complaints and reports of the OPS and the justification for redacting/excluding this information, if this practice is to be continued. Marilyn Hammond seconded the motion. The motion carried unanimously.

CPRB No. 20-04/OPS No. C04-308 (Presented by Barbara Gaige)

Ms. Gaige summarized the complaint. She noted that the monitor was not present. The complainant alleged she was a passenger in a vehicle that was rear-ended. EMS arrived on the scene and the complaint was treated for injuries to her neck and shoulder. At the scene, the officer asked her about the nature of her injuries and stated to the complainant that if she was filing a false report, she would be arrested. According to the complainant, the officer used an intimidating tone.

Ms. Gaige reported that she reviewed the transcript from the complainant's interview, the Motor Vehicle 104A form, and the transcript of the phone interview with the other driver. The driver of the complainant's car did not respond to requests from detectives for an interview.

The officer was dispatched for a 911 personal injury accident where he found two cars on North Pearl Street with no damage to either car. He learned that the first driver and the vehicle the complainant was riding in had moved up with traffic and the second driver tapped the first car. The second driver didn't even feel the tap according to Ms. Gaige. The complainant, according to the officer, was screaming in agony and the officer did question the legitimacy of her injury and did caution her against filing a false report. Ms. Gaige stated that EMS was dispatched. When EMS personnel attempted to put the complainant in a cervical collar and backboard, the complainant became irate and jumped into the ambulance. The other driver stated that the officer was professional and not obnoxious, but did assert himself when the complainant screamed at the officer.

The OPS made a preliminary finding of *exonerated*. The officer admitted that he questioned the complainant's injury because the complainant didn't appear to be injured and there was no damage to either vehicle. Additionally, the officer had just been through a training on insurance fraud, which may have been foremost in his mind during the incident. The officer did complete an investigative report and a required Motor Vehicle 104A form.

Ms. Gaige moved to accept the findings of the OPS. Marilyn Hammond seconded the motion. The motion carried 5-1 with Paul Weafer abstaining.

B. *Appointment of two new members to the Committee on Complaint Review for November 2004*

The following members were appointed to the Committee on Complaint Review for November 2004: Barbara Gaige, Marilyn Hammond, Herman Thomas, Paul Weafer, and Michael Whiteman.

C. *Policy Review/Recommendations*

Ms. Cintrón Perino reported that the Center had not yet received communications from the Common Council or Mayor's Office regarding new Board member appointments. She stated over the past month, the Center had received several inquiries from citizens interested in applying for a position on the Board and added that each inquiry was directed to the offices of the Mayor and the Common Council.

Michael Whiteman inquired as to what kind of training would be provided by the Center to the new Board members. Ms. Cintrón Perino responded that the Center would be putting together an agenda and materials for the program, which would cover the organizational and procedural aspects of Board business and operations. She added that the Center had not yet decided what the length and format of the training would be, but would include, at minimum, participation from the current members of the Board, the OPS, the Corporation Counsel's Office, and the Center staff. Mr. Whiteman noted that the orientation program is described in Section 43-349 of the Board legislation, and should comply with that section of the law as well as the Board's By-Laws.

Mr. Weafer commented that although the Board's quorum requirement had been reduced from seven (7) members to five (5) members, it is very important that members come to meetings because the Board might fail to meet the quorum requirement in November and December if new member appointments are not made by then. Ms. Mazza reported that she was informed that the Common Council's appointments would be made by end of the week, beginning of next week.

Mr. Whiteman noted that the Board's By-Laws provide that members of the Board shall continue to serve until their successors have been appointed and qualified and shall stay until their successors have been thoroughly trained. Mr. Whiteman and Mr. Weafer encouraged the current members to continue to serve until their successors are named.

D. *Approval of the Third Quarterly Report for 2004*

The Board's Third Quarterly Report for 2004 was reviewed. Ms. Cintrón Perino requested further clarification on one item prior to the Board's approval of the report. She inquired as to whether a meeting of the Police Review/Recommendations Committee had taken place in May 2004. Barbara Gaige and Judith Mazza responded that the meeting did not take place due to scheduling conflicts. Ms. Mazza then moved to approve the report subject to

deletion of the information regarding the policy review meeting. Ms. Hammond seconded the motion. The motion carried unanimously.

E. *Report from the GLC*

GLC Staff Attorney Justina Cintrón Perino gave the report.

It was reported that there were 16 active complaints before the Board for review. Five (5) complaints remain suspended and 147 complaints have been closed. A total of 168 complaints have been filed with the Board since it began hearing complaints in 2001.

It was reported that the Center had drafted a letter, on the Board's behalf, to Chief Turley requesting additional training of the officer involved in CPRB No. 12-04/OPS No. C04-317. The letter was reviewed. Mr. Weafer asked if this was the complaint involved the accident that took place on New Scotland Avenue. Ms. Cintrón Perino responded that it was. Ms. Gaige made a motion to approve the letter. Ms. Hammond seconded the motion. The motion carried unanimously.

It was reported that the Annual Conference of the National Association for Civilian Oversight of Law Enforcement (NACOLE) was scheduled to take place October 17 – 20, 2004. It was reported that the City had agreed to send four members to the Conference: Barbara Gaige, Marilyn Hammond, Judith Mazza, and Herman Thomas. She added that hotel, airfare, and registration expenses had already been taken care of by the Center. She noted that members would be responsible for incidental expenses, but would be reimbursed for transportation-related expenses to and from the airport upon submission of receipts.

It was reported that the Center had hired a new law student intern to work with the Board. It was reported that Kyle McCauley, the Board's current law student intern, would continue to work with the Board and cover Board meetings. Laura Cail, a second-year law student working at the Center on a citizen oversight publication, was in attendance at the meeting and was introduced to the Board.

F. *Report from the OPS*

OPS Detective Sergeant Eric Cook gave the report.

It was reported that Commander Steven Krokoff had been transferred out of the OPS into the Detective Division and that Assistant Chief Stephen Reilly would be assuming responsibility for oversight of the OPS. It was reported that the OPS's quarterly report would be delivered to the Board at its next meeting.

G. *Nominations for Board Officer Positions*

Chairman Cox reported that at the Board's September meeting, nominations for officer positions were made. Judith Mazza commented that according to the Board's By-Laws,

elections are supposed to take place in January. Therefore, Ms. Mazza added that the Board should work with an Acting Chair until January. The Board agreed that the By-Laws provide that the Vice-Chair is the Acting Chair in the absence, resignation, death, or refusal to fulfill the powers and duties of the office of the Chair. Thus, the Board agreed that Mr. Thomas would succeed Mr. Cox as Acting Chairman.

Ms. Mazza made a motion to table the election of new officers until January and to operate with Herman Thomas serving as Acting Chairman until elections. Marilyn Hammond seconded the motion. The motion carried unanimously.

V. Public Comment

The floor was opened for public comment.

Dr. Alice Green was recognized. Dr. Green commented that there is one issue that needed to be clarified by the Board. In a meeting between herself and Chief Turley, the Chief indicated that he had communicated with the Board and that the Board is concerned with Board policy and not Department policy. Ms. Gaige responded that the Board is very interested in Department policy and had two meetings scheduled with Assistant Chief Paula Breen to discuss Department policy. Ms. Gaige clarified that when the Board refers to “policy” at its meetings, it is referring to two separate categories of policy, Board policy and Department policy. Dr. Green replied that Chief Turley is under the impression that the Board is simply concerned with Board policy. Ms. Mazza stated that the Chief’s impression is incorrect; the Board is concerned about Department policy. She added that it is incumbent on the Board to be more proactive in getting back together with the Chief and Assistant Chief Breen to discuss Department policy and will make an effort to do so.

Dr. Green inquired about the Board’s contract with SUNY to provide annual reports to the Board. She noted that she has not seen any of these reports. Mr. Weafer stated that it was his understanding from Commissioner Nielsen and Chief Turley that this was going to happen, but the Department was still trying to finalize the terms of the contract.

Dean Patricia Salkin, Director of the Government Law Center, commented that there is a section in the CPRB legislation that directs the Center to “contract with one or more local colleges, universities, or research institutions to conduct surveys of complainants concerning the level of their satisfaction with the process and to conduct surveys of the community to get feedback concerning the CPRB and the Police Department.” She noted that these are not reports to the Board, but rather reports to the Center. She added that if the Center is instructed to make the reports available to the public, she would be happy to share these reports with Dr. Green.

Dr. Green thanked Chairman Kenneth Cox, personally and on behalf of the Center for Law and Justice, for his service on the Board and for the positive work he has accomplished in the City.

On behalf of her colleagues on the Board, Barbara Gaige congratulated Chairman Cox on his last meeting with the Board, thanked him for his service, and presented him with a token of appreciation from the Board. Paul Weafer added that the Chairman has been an excellent leader and noted that the Board would not be where it is today without his leadership. He commented that Chairman Cox continued to fight for transparency and has held a group together with strong personalities. Dean Salkin also thanked Chairman Cox for his service, guidance, amazing vision, and great wisdom. She added that he has left a legacy and big shoes to fill.

Chairman Cox thanked Dr. Green, Dean Salkin, and his colleagues for their kind words, and commented that it has been an honor and privilege to serve the City of Albany. He thanked Dr. Green for always challenging the Board to do what the Board has been charged to do. While he steps down from this task, he stated that he hopes to still be involved in community relations in a different capacity. He added that he will still continue to be present at meetings. He concluded by saying that his service on the Board has been an extension of his ministry and thanked his wife and his church. He added that he will pray for each and every person involved in the Board's process as they continue to do the necessary work to improve the City of Albany.

VI. Adjournment

Chairman Cox moved to adjourn the meeting at 7:19 p.m. Judith Mazza seconded the motion. The motion carried unanimously.

Respectfully Submitted,

Michael Whiteman
Secretary