

Approved: April 9, 2014



**ATLANTA CITIZEN REVIEW BOARD
MARCH MEETING MINUTES**

City of Atlanta City Hall
55 Trinity Avenue, S.W., Committee Room Two
Atlanta, Georgia 30303
March 13, 2014
6:30 p.m.

The March 2014 meeting was called to order by the *Chair* at 6:35 p.m.

A G E N D A

ROLL CALL

(Eight Members of the Board)

ACTIVE MEMBERS PRESENT

WILLIAM HARRISON (<i>Chair/Harrison</i>)	RUTH PRICE (<i>Vice Chair/Price</i>)
PAUL BARTELS (<i>Secretary/Bartels</i>)	ALAN MORRIS (<i>Morris</i>)
OSA BENSON (<i>Benson</i>)	MACEO C. WILLIAMS, SR. (<i>Williams</i>)
GERALD SOUDER (<i>Souder</i>)	

ACTIVE MEMBERS ABSENT

BILL BOZARTH (*Bozarth*)

VACANT BOARD SEATS

APAB – NPU G-L (*Pending City Council Confirmation*)
Office of the Mayor (*vacant 7 months*)
Atlanta Business League (*vacant 21 months*)

STAFF ATTENDEES

SAMUEL LEE REID, II (*Reid*), Executive Director; **SHEENA ROBERTSON** (*Robertson*), Investigator; **MYOLA SMITH** (*Smith*), Transcriber; **AKUA COPPOCK**, Associate City Attorney, attending on behalf of **SAUL SCHULTS**, COA Department of Law, Appointed Counsel for ACRB.

Chair Harrison welcomed citizens announcing that public comments would be heard later in the agenda. The public is required to sign up to speak and limit comments to three (3) minutes. The Chair also welcomed Major V. Dalton and Lieutenant J. Webb of the APD Office of Professional Standards.

APPROVAL OF MINUTES OF THE LAST MEETING, FEBRUARY 20, 2014

The **Chair** directed the Board's attention to the minutes for February 20, 2014. The floor was opened for discussion and corrections to the minutes. **Reid** clarified that the draft copies issued contained an additional change with reference to the discussion comments on officer training and abusive language in the Quartez Goodman case as made by **Benson**.

Benson moved to accept the minutes with noted comments. **Morris** seconded. Hearing no further discussion, the motion was approved by all.

EXECUTIVE DIRECTOR REPORT

Highlights from Director **Reid's** Report:

- **Mediation Update** – Since the last board meeting, ACRB has met twice with the City Attorney's office to iron out concerns with the process of mediation, and how it will impact the Atlanta Police Department's Internal Affairs procedure. Another meeting is scheduled for next Friday, 21 March, 2014.
- **Annual Report** - Annual report is not available today, though it is near completion.
- **Reports to Appointing Agencies Reminder** - **Director Reid** reminded boardmembers to continue to report to their appointing organization, and keep them in the know on ACRB Board happenings.
- **Community Engagement Training** – Reid announced that he would like to have community engagement training. The purpose of the training is to discuss what community engagement means to our organization and from a broad spectrum, how it benefits our organization, from our interaction with the police to the interactions with citizens and local officials and also how we can take advantage of those opportunities when they come. **Reid**: "It's starting to get warm, so there's going to be more increased contact between citizens and officers, and there's going to be increased opportunities for us to be able to engage with the public, because each one of you represent a segment of Atlanta." **Reid** indicated that it may be best to conduct the training on two different dates so that it is convenient for everyone to attend. "I will find two dates and hopeful those dates will be able to work for everyone." The training will last for two hours. The Board was agreeable to the two dates, preferably a Wednesday and Thursday, with the training starting at 6:30 p.m.
- **Budget Season** – ACRB met with the Department of Finance and the Administration on March 5th. **Reid**: "We met with the Administration and I'm hopeful that we'll be able to see some additions, but nothing is in stone yet, so as soon as I know something, I will give you an update."
- **Minutes** – **Reid** reiterated to the Board's that in order for comments to be captured in the minutes it is important to state that the comment is "*for the record*".

Comments/Questions:

1. *Regarding the topic of minutes, Harrison asked Reid to explain the City Attorney's position with regards to taking minutes in meetings and having a quorum and not having a quorum.*

2. **Bartels** asked for clarification on whether taking minutes would apply to committee meetings or not.
3. With respect to **Harrison's** question related to the Open Meetings Act, **Attorney Coppock** read the following opinion submitted to the Board:

“In a situation where a duly scheduled and noticed CRB meeting is held at which a quorum is not present, Georgia Open Meetings requirements should still be complied with in order to maintain consistency across all of the entities (city council, boards, commissions, etc.) that are part of or representative of the City. In this instance, this would mean that although no formal business could be conducted by the CRB because of a lack of a quorum, meeting notes should still be generated and made available to the public.”

4. **Bartels**: “My question would be if it’s not a regularly scheduled board meeting, but it’s a committee that’s appointed to draw up a policy or whatever and there’s less than a quorum would that still apply?”
5. **Attorney Coppock**: “I would say yes, but I will double check that.”

INTAKE REPORT FOR FEBRUARY 2014

A total of nine (9) complaints were received for the month of February. **Investigator Robertson** reported the following:

1. Complaint Number: **ACRB No. 14-008, Ambrose King** alleging Excessive Force
Mr. King alleges that on January 31, 2014, APD Officer Joseph Daniels forcibly entered his home. *Recommend investigation as an excessive force complaint.*
2. Complaint Number: **ACRB No.14-009, Will John** alleging Rude Behavior
Mr. John alleges that on February 9, 2014, an APD officer was rude and nasty towards him during a traffic stop. Mr. John was informed that ACRB is not authorized to investigate this type of complaint and was referred to the Office of Professional Standards (OPS). *Recommend dismissal for lack of jurisdiction.*
3. Complaint Number: **ACRB No. 14-010, Nakesha Head** alleging False Arrest
Ms. Head filed a complaint on behalf of Eric Howard alleging that he was falsely arrested on February 13, 2014. Mr. Howard was mailed a complaint form to complete. Once the signed complaint is received and Mr. Howard’s criminal case has been resolved in his favor, and then recommends investigation as a false arrest complaint. If the case is still pending, then suspend the investigation. However, if the signed complaint is not received within the next few weeks, then recommend dismissal.
4. Complaint Number: **ACRB No. 14-011, Jeremy Busbee** alleging Rude Behavior
Mr. Busbee alleges that on February 15, 2014, APD Officer Brian White yelled and accused him of cutting off another motorist, which he claims was false. He said the officer then smacked his mirror as he drove by, which caused him to stop, get out of his car, and ask the officer why he did that. He said the officer did not respond but instead asked for his license and registration. The officer then proceeded to issue him two citations. *Recommend dismissal for lack of jurisdiction.*
5. Complaint Number: **ACRB No. 14-012, Peter John** alleging Excessive Force & False Arrest
Mr. John alleges that he was falsely arrested by a GA State Patrol Officer in 2008. He further alleges that the officer applied the handcuffs extremely tight. *Recommend dismissal because complaint is outside the board’s jurisdiction.*
6. Complaint Number: **ACRB No. 14-013, Taurus Jackson** alleging Negligence

Mr. Jackson alleges that the Atlanta Municipal Court was responsible for having him falsely arrested due to an error in their system. Mr. Jackson was referred to Atlanta Municipal Court. *Recommend dismissal for lack of jurisdiction.*

7. Complaint Number: **ACRB No. 14-014, Jerome Perlotte** alleging False Arrest

Mr. Perlotte is alleging that he was falsely arrested by APD Officer Brian Johnson on January 29, 2014. A complaint form was mailed to Mr. Perlotte for him to complete and return. Once the signed complaint is received and if Mr. Perlotte's criminal case has been resolved in his favor, then recommends investigation as a false arrest complaint. If the case is still pending, then suspend the investigation. However, if the signed complaint is not received within the next few weeks then recommend dismissal.

8). Complaint Number: **ACRB No. 14-015, Sylvester Clark** alleging Excessive Force & False Arrest

Mr. Clark alleges that he was falsely arrested on January 8, 2014. He further alleges that he was forcibly thrown to the ground by the officers and as a result, he injured his foot. Preliminary investigation revealed that according to the Atlanta Municipal Court records that Mr. Clark plead guilty to charges. *Recommend investigation into the excessive force allegation only.*

9). Complaint Number: **ACRB No. 14-016, Mark Veazey** alleging Fraud & Corruption

Mr. Veazey alleges that several APD officers conspired to steal over \$15,000. Mr. Veazey was referred to the Law Department's Compliance Unit. *Recommend dismissal for lack of jurisdiction.*

Reconsideration of Complaints:

1. Complaint Number: **ACRB 13-104, Patrice James** alleging Abusive Language

Ms. James alleged that in October of 2013 APD officers were verbally abusive towards her. The ACRB has been unable to interview Ms. James concerning this complaint and due to its vagueness, the ACRB is unable to proceed with the investigation. Therefore, *recommend dismissal.*

2. Complaint Number: **ACRB 13-120, QuaEisha Pittman** alleging False Imprisonment

Ms. Pittman alleged that her sister RoyUnique Abercrombie was improperly detained by APD officer on December 9, 2013. Both Ms. Pittman and her sister have not been cooperative with this investigation. They have failed to show for their scheduled interviews and respond to the subsequent messages and letters that were sent to them. *Recommend dismissal for lack of cooperation.*

It was moved by *Williams* to accept the Intake Report. *Bartels* seconded the motion.

Hearing no further discussion, the vote was called and the motion to accept was approved by all.

REVIEW OF COMPLAINTS

CASE NO. 13-76, ANDREA PERRY

A. ALLEGATION SUMMARY:

Ms. Perry filed a false arrest and a false imprisonment complaint. She alleges that on July 19, 2013, Atlanta Police Officer Javed Narian falsely arrested her. She further alleges that Officer Narian improperly detained her for over two hours. It is noted that Officer Narian resigned from his position with the Atlanta Police Department prior to the initiation of this

investigation. Therefore, the ACRB did not get an opportunity to interview him concerning Ms. Perry's allegations.

1. False Arrest

Ms. Perry did not have probable cause to arrest and charge her with violation of OCGA Section 40-6-96, pedestrians on or along the roadway. Based on the testimony and documentary evidence obtained during the course of this investigation, there is insufficient evidence to conclude that Ms. Perry's arrest was not justified. According to OCGA 40-6-96 is against the law for a person to walk in the roadway. APD record show that Officer Narian was dispatched to the incident location, because of a report of a female walking on the highway, which Ms. Perry admits to doing. Furthermore, the fact that the prosecutor declined to prosecute Ms. Perry does not necessarily mean that the officer lacked probable cause to arrest her. Therefore, the ACRB staff recommends that this allegation be assigned a finding of **not sustained**.

Discussion...

- a. **Bartels** said because the officer has left the force, the Board would have no knowledge of what Officer Narian would have said in terms of where she was and what the report was, and also somebody seem concerned enough about where she was to call the police. "I don't think there is not enough information to determine that there was not probable cause. I'm inclined to go along with the recommendation."
- b. **Williams** commented that it is known that people walk on the highway. "The officer quit before he was able to be questioned about anything, so it throws a question mark up in my mind anyway about his intention. I just want to let that be known for the record."
- c. **Benson's** concern was whether Ms. Perry was in the emergency lane and out of danger as far as vehicles are concerned or whether she was actually walking into the line of traffic. She stated, "I do not see an indication of something expressed specifically that she was in the roadway, on the expressway, yes, but not in the roadway. I do know that when there are emergencies and vehicles break down, you see people walking to get gas or to get help in those instances, and that should be noted for the record."
- d. **Chair Harrison** asked Investigator **Robertson** to address **Benson's** concerns.
- e. **Robertson:** "She said she had been walking on the highway for over two hours. Her version is that she wasn't, of course, on the highway. She was walking alongside the highway. The issue was that an unidentified motorist did call 9-1-1 and said that someone was walking on the highway."
- f. **Benson** asked **Robertson** if the call was out of concern for Ms. Perry needing help, or was it with regard to her being a danger.
- g. **Robertson** read the investigative report simply stated, "A black female walking on the roadway." **Robertson** indicated that she surmised that the call was made so she wouldn't get hit."
- h. **Bartels** said according to the statute, that he brought with him, basically, it prohibits that if there is a sidewalk, the pedestrian can't go into the roadway. And if there's no sidewalk, but there's a shoulder, the pedestrian has to stay as far away from the highway as possible. And when there's no sidewalk or shoulder, they have to stay as far away from traffic as possible.

- i. **Williams**: “In the report, the individual was an employee of the CDC, so that tells me one thing there, the person wasn’t homeless. Then another thing that says that the person was steamed, because she was mad the person was supposed to pick her up that didn’t pick her up. Okay, she might have been just trying to walk off some steam at the same time, you know, in a straight path, so it wouldn’t be anything going, you know, ins and outs.”

Morris moved to accept staff’s recommendation of **not sustained**. **Bartels** seconded. The vote was called and the motion was approved with **Williams** and ***Benson** voting nay.

It should be noted that **Benson asked the Board to allow her to amend her vote from a yea to a nay with regard to the allegation of false arrest. “I would like to vote nay with a notation that the statute in the investigation states that pedestrians on or along the roadway is illegal, and based on **Mr. Bartels** recitation of the specific language, not all pedestrian traffic is illegal when on the expressway.”*

2. False Imprisonment

Ms. Perry further alleges that she was improperly detained by Officer Narian for over two hours. The city ordinance defines false imprisonment as intentionally restraining another person without having the legal right to do so, physically detaining someone without the right to do so. As previously indicated, Ms. Perry was arrested for walking in the roadway, which based on the information obtained in the course of the investigation, appears to have been justified. Therefore, Officer Narian had a legal right to detain her. The facts do not support Ms. Perry’s allegation that she was detained for over two hours; however, the record supports that she was in Officer Narian’s custody for approximately one hour and twenty-eight minutes. During that time period, Officer Narian conducted a computer check on Ms. Perry, and transported her to Zone 3 Precinct. She had been searched by a female officer, prepared the necessary paper work, and later transporting her to Atlanta Pre-trial Detention Center. This amount of time does not appear to be unreasonable given the circumstances. For this reason the ACRB staff recommends that this allegation be assigned a finding of **not sustained**.

Discussion...

- a. **Bartels** said that since there’s not enough information to decide by clear and convincing evidence, that he can’t conclude that it was not justified.
- b. **Williams** pointed out that when Officer Narian applied the handcuffs, Ms. Perry asked the officer if she was under arrest. He said, “No,” then taking her to a location to sit so he can run a check, then relocated her to the station. He lead her on and could’ve have said at the time she was in handcuffs, that she was under arrest.
- c. **Bartels** added that if someone is put in handcuffs and is put in the patrol car and driven to another location, they are under arrest. She wasn’t told that by her account.
- d. **Williams** further added that from the expressway until the time she was in the jail it was more than two hours.
- e. **Robertson** said it was an hour and twenty minutes.
- f. **Williams** also questioned the motive of Officer Narian’s resignation having not been on the force for very long and without the chance to interview the officer.
- g. **Robertson** responded saying the officer resigned in good standing and decided personal leave [indistinct].

Morris made a motion to accept staff's recommendation of **not sustained**. *Bartels* seconded. The vote was called and the motion was approved with three opposed: *Williams, Souder and Benson*.

CASE NO. 13-90, JAIROBE MCPHERSON

A. ALLEGATION SUMMARY:

Mr. Jairobe McPherson alleges that September 23, 2013, Atlanta Police Officer David Passarella falsely imprisoned him when he followed him for no justifiable reason. He further alleged that Officer Passarella engaged in excessive force when he approached him with his firearm drawn.

1. Excessive Force

In staff's notes, a police officer's drawing of his or her firearm is a show of force. When the courts analyze excessive force claims, the initial inquiry is whether the officer's action was objectively reasonable. In light of the facts and circumstances confronting him, the fact is that the courts consider in making that determination depends on several factors, including the severity of the crime at issue, the threat posed by the subject to the officers or others, and whether the suspect was resisting arrest. In this case, Officer Passarella stated that the reason he was following Mr. McPherson was because he was speeding, which was a traffic infraction and not a serious offense, which would not have justified Officer Passarella drawing his firearm if he had conducted a traffic stop. Furthermore, there were no exempted circumstances to indicate that Mr. McPherson posed a threat to the officer or resisting arrest. Therefore, Officer Passarella's drawing of his firearm was not objectively reasonable, and constituted excessive force. The ACRB staff recommends a finding of **sustained**.

Discussion...

- a. *Souder* questioned if Officer Passarella has any other disciplinary history on his record.
- b. *Robertson* responded that there were no prior disciplinary histories. Officer Passarella has been on the force since March of 2012.
- c. *Benson* asked if Mr. McPherson had any prior criminal history that the officer may have been aware of.
- d. *Robertson* said that Officer Passarella did run his tag, and everything checked out ok.
- e. *Williams* said Mr. McPherson asked Officer Passarella if there was a problem. Officer Passarella replied, "Do you want there to be problem?" *Williams* questioned why the officer replied in such a fashion to a general question.
- f. *Benson* alluded to the Use of Force Training saying, "Even an officer approaching someone during a traffic stop with his hand on his gun was inappropriate, when there was no indication that there was need to because of officer safety."
- g. *Williams* added there are manuals that note that the officer would be in danger if he can't see both hands, but if someone has both hands on the wheel, he doesn't fear the officer won't have to go for his gun. The question was did the

complainant behind the wheel present a problem for the officer to have his hand on his gun.

- h. **Bartels** said that it's a balance and the line isn't always clear, but he agrees with staff when there's no indication he was in danger it's excessive.

It was moved by **Bartels** to accept staff's recommendation of **sustained**. **Benson** seconded. The motion is approved by all

B. DISCIPLINE RECOMMENDATION BY THE BOARD FOR EXCESSIVE FORCE

Investigator Robertson reported that Officer Passarella was hired in March 29, 2012 and has no prior disciplinary history. This is his first occurrence of a category 'C' violation, which has a penalty of four (4) to fifteen (15) day suspension, demotion or training. **Robertson** also brought to the Board's attention that a harassment allegation can never be investigated due to what is defined by the ordinance.

Motions made by the Board...

- **Price** recommended training and a written reprimand. No second was made and the motion fails.
- **Williams** moved to recommend four days suspension to include training. **Bartels** seconded. Calling for the vote the motion was approved with **Price** and **Morris** voting nay.
- To clarify the type of training, as an amendment to the recommendation, specifying the type of training. **Bartels** moved to include Fourth Amendment training and Use of Force training. **Williams** seconded. The motion was approved by all.

2. False Imprisonment

Although Officer Passarella was following Mr. McPherson, he did not initiate a traffic stop. Mr. McPherson stopping of his vehicle and getting into a verbal confrontation with Officer Passarella was of his own doing; therefore, the ACRB staff recommends that the allegation of false imprisonment against Officer David Passarella be assigned a finding of unfounded, meaning the officer did not commit the alleged acts of misconduct. False imprisonment is intentionally restraining another person without having a legal right to do so, physically detaining someone without the legal right to do so.

The staff recommendation is assign a finding of "Unfounded" (*the investigation established that the officer did not commit the alleged acts of misconduct*).

Comment...

Bartels threw out, for the Board's consideration, that there is evidence that would support either sustained or not sustained in this case. "It is clear that the officer didn't blue light him. Mr. McPherson pulled over voluntarily. The officer gets out of his car and draws his gun and points it at the ground. From the standpoint of the driver, if an officer gets out in uniform and has a gun drawn, would you feel like you are free to go or would you feel like you're being detained? But then on the other hand the officer told Mr. McPherson that he didn't stop him."

Morris moved to accept staff's recommendation of **unfounded**. **Price** seconded. The motion was approved with ***Benson** and **Williams** voting nay.

Benson noted, "While recognizing the language of the statute, I would like to take Mr. **Bartels notation in consideration, that while this young, black male questioned the officer as to why he was following him at the time that he drew his gun, he probably did not feel free to leave."*

Robertson said that it is recognized that there appears to be some underlying other issues going on, that ACRB doesn't have policy to investigate. She suggested that they be sent to the Atlanta Police Department for further investigation.

Bartels made a motion to refer policies concerning this case that does not allow ACRB to investigate over to the Office of Professional Standards (OPS) that may be in violation. **Souder** seconded. The motion was called, and the motion to accept was approved by all.

OLD BUSINESS

A. COMMITTEES AND APPOINTMENTS:

Policy and Bylaws

Chair Harrison appointed **Paul Bartels** to head the committee. Other members of the committee will include **Price, Harrison, and Williams** and staffed by **Director Reid**.

Community Outreach

Chair Harrison asked **Williams** to Chair the committee. **Williams** declined then reversed his decision to accept the position of Community Outreach Committee Chair. No other members volunteered. **Bartels** called to the Board's attention that two members of the Board were not present, and suggested to instead send a group email asking for volunteers.

Chair Harrison proposed that the committees are to try to meet at least monthly or once every two months. "The next order of business is a report from the Policy and Bylaws Committee, done last month (February) but not for the month of March." **Bartels** indicated that he will send out a group email to see what times this month will work for the other members of the By-laws Committee.

NEW BUSINESS

Harrison welcomed and introduced the Office of Professional Standards' new leader Major V. Dalton. Major Dalton replaces Major Dancy as head of OPS. Major Dalton has been with the Atlanta Police Department for twenty-seventh years. "It is my second tour at OPS. I was there in '96 or '97 so I have come back home." She also said, "I'm excited about one of the differences in this tour then the last tour, is having this body in place. We didn't have that during that first tour and I am excited about working closely with this body to make sure we are servicing the community."

The Board welcomed Major Dalton in her new position. *Price* praised the Major for her professionalism and *Williams* declared his respect indicating that he looked forward to working with her in the future.

PUBLIC COMMENTS:

Let the record reflect that there were no public comments from the audience.

ADJOURNMENT

The *Chair* entertained a motion to end the meeting. It was moved by *Williams* to adjourn the meeting. *Bartels* seconded. The meeting adjourned at 7:45 p.m.

*These minutes were officially approved by the
Atlanta Citizen Review Board on April 9, 2014.*

A handwritten signature in black ink that reads "Paul E. Bartels". The signature is written in a cursive style and is positioned above a horizontal line.

PAUL E. BARTELS
ACRB Secretary