



**ATLANTA CITIZEN REVIEW BOARD
AUGUST MEETING MINUTES**

55 Trinity Avenue, S.W., Committee Room Two
Atlanta, Georgia 30303
August 8, 2013
6:30 p.m.

The August 2013 meeting was called to order by *the Chair* at 6:45 p.m.

A G E N D A

ROLL CALL

(Eleven Members of the Board)

ACTIVE MEMBERS PRESENT

PAUL BARTELS <i>(Chair/Bartels)</i>	ALAN MORRIS <i>(Morris)</i>
OSA BENSON <i>(Benson)</i>	RYAN JOHNSON <i>(Johnson)</i>
BILL BOZARTH <i>(Bozarth)</i>	RUTH PRICE <i>(Price)</i>
WILLIAM HARRISON <i>(Harrison)</i>	MACEO C. WILLIAMS, Sr. <i>(Williams)</i>
LABRIAH LEE <i>(Lee)</i>	

ACTIVE MEMBERS ABSENT

BARBARA HUBBARD *(Hubbard)*
Atlanta Business League *(position vacant 13 months)*

STAFF ATTENDEES

SAMUEL LEE REID II *(Reid)*, Executive Director; **KENNETH LIVELY** *(Lively)*, Investigator; **SHEENA ROBERTSON** *(Robertson)*, Investigator; **MYOLA SMITH** *(Smith)*, Transcriber; **TRACY TAYLOR** *(Taylor)*, Community Liaison; **INARI BATINI** *(Batini)*, Office Support Staff

The *Chair* welcomed citizens announcing that public comments would be heard later in the agenda and speakers must sign up and limit comments to three (3) minutes. The *Chair* also welcomed members of the Atlanta Police Department (APD), Office of Internal Affairs: Major Elder Dancy and Lieutenant Jesse Webb.

APPROVAL OF MINUTES OF THE LAST MEETING, JULY 11, 2013

The *Chair* directed the Board's attention to the minutes for July 11, 2013 meeting. The floor was opened for discussion and corrections to the minutes.

Bozarth moved to adopt July 11, 2013 minutes with one noted correction. *Morris* seconded. Hearing no further discussion, the motion was approved by all.

“COLOR OF LAW” PRESENTATION BY AGENT ANDY VAN EPPS, FEDERAL BUREAU OF INVESTIGATIONS (FBI)

Special Agent Van Epps made a presentation a “Color of Law Investigations” presentation to the Board. Agent Van Epps is an original case agent on the Kathryn Johnston case that he spent eighteen months investigating. Agent Van Epps also worked on another case, U.S. vs. Brown, which was a death case at Fulton County Jail that happened shortly after the Johnston case, where an inmate died during an altercation with staff. When the investigation ended, three staff members went to jail as a result of that investigation.

Agent Van Epps noted the Kathryn Johnston case was an example of Color of Law investigations. He advised the Board of the resources that the FBI has to employ on major cases.

The following are highlights from the presentation:

FBI CIVIL RIGHTS PROGRAM

The mission of the FBI Civil Rights Program is to ensure that the Bureau protects the civil rights of everyone here in the U.S., regardless of citizen status. Whether you are a citizen or not, if you're here in the U.S. the mission is making sure that no one's rights are breached.

There are four sub-programs:

1. Color of Law (*includes excessive force by a police officer and it also addresses sexual assaults*)
2. Human Trafficking (*about a quarter of the cases and hot topic in Atlanta*)
3. Hate Crimes (*makes up another quarter of the cases*)
4. Freedom of Access to Clinic Entrances (FACE Act) (*a federal act that protects abortion clinics against threats and violence*).

CIVIL RIGHTS STATUTE FOR COLOR OF LAW CASES

The FBI Civil Rights Program and ACRB have common and overlapping missions. Both agencies address false arrest, false imprisonment, and excessive force including bodily injury or death. The issues that ACRB addresses and the FBI does not address are harassment and abusive language.

THE 18 U.S.C. § 242 LAW: ITS POWER AND LIMITATIONS

The element of this law addresses deprivation of a person's rights based on the following:

- The official act under Color of Law; how you identify whether or not the official is acting under Color of Law; was there an actual violation of the victim's federally protected right or constitutional right, and was it willfully. Three of these elements would be considered a misdemeanor. A felony has to have proof that involved a dangerous weapon, involved bodily injury, kidnapping, aggravated and sexual abuse, intent to kill, or resulted in a death, which is what happened in Ms. Johnston's case.
- Color of Law is not an issue of who is the officer on duty, and it is not that clear cut. The factors considered when trying to determine if the person was acting under Color of Law range from what clothing they were in and if they were wearing their uniform at the time of the incident; duty status...were they on or off duty; what equipment they used; were they using their issued equipment; were they using their issued vehicle; did they flash the badge; did they say I'm a police officer and did they give any commands or make an arrest?

- Rodney King is kind of your very typical example of physical assault. Sexual assault and failure to protect from harm, denial of medical care (*beyond not just getting medicine*), thefts, false arrest, false evidence, lying...all would be something that could be considered under Color of Law. However, constitutional law (*Fourth Amendment - search and seizure; Fifth Amendment - due process and Eighth Amendment - cruel and unusual punishment*) does have an effect on the FBI's ability to make these charges.

The Civil Rights Division for the Department of Justice is one of the Bureau's important resources. There is a criminal section in the Civil Rights Division with attorneys and their only job is to handle civil rights crimes. They make sure that the laws are applied equitably across the states, and they bring in expertise to the table with vast experience working these crimes. They are involved in the investigations from day one. There are 380 officers domestically and 60 officers internationally, and they are available to go anywhere in the world to conduct interviews with witnesses. The Laboratory Division and the scientific lab are other excellent resources that are available on cases to help juries and to help the prosecution's investigation.

Agent Van Epps concluded his presentation with these remarks, "We should've been out here to talk to you all sooner. I apologize, we really do have a lot of overlapping, and if there's something we can help you address, please give us a call."

EXECUTIVE DIRECTOR REPORT

Board members received a summary report from Clarification Mediation, regarding the retreat that was held in June.

Everyone was reminded that the art and essay contest were still underway. The last day of the contest is September 16, 2013.

Members discussed the length of the minutes and changes to the format and content of the minutes. The changes are being made to reduce the amount of staff time required to complete minutes and reduce the length of the minutes. The step is being taken as a step to encourage citizens to read the ACRB minutes.

When members have specific comments that they would like included in the disciplinary letters to the Chiefs, they were asked to vote and be very specific about the content.

The ACRB website will include videos of the Board members. The video recordings will take place during the month of September.

Reid provided a reporting form to allow Board members to easily report back to their appointing agencies.

Following the discussion, **Bozarth** motioned that the Board authorize the staff to condense at their discretion, the case discussion comments as a way of shortening the minutes. **Williams** seconded. With no further discussion, the motion was approved by all.

INTAKE REPORT FOR JULY 2013

A total of twelve (12) complaints were received for the month of July. Investigator **Robertson** read the following report:

1. Complaint Number: ACRB 13-56, Clinton Wilson alleging false arrest
Mr. Wilson alleges that someone at the Atlanta Municipal Court changed his not guilty plea to nolo contendere (*the charges stemmed from an arrest that occurred on May 24, 2013*).
Recommend dismissal for lack of jurisdiction.
2. Complaint Number: ACRB 13-57, Donnesha Jackson alleging abusive language

- Ms. Jackson alleges that on May 30, 2013 APD Officer Jon Ware was verbally abusive and rude towards her during a traffic stop. **Recommend investigation as an abusive language complaint.**
3. Complaint Number: ACRB 13-58, Michael Grimes alleging abusive language
On July 9, 2013, Mr. Grimes called the ACRB and alleged that on June 28, 2013, an unidentified APD officer called him retarded and threatened to arrest him. **Recommend dismissal because Mr. Grimes failed to file a complaint form that is required by city ordinance.**
 4. Complaint Number: ACRB 13-59, Regina Higgins alleging sexual assault
Ms. Higgins alleges that in February 2013, during her incarceration at the Gwinnett County Jail, she was sexually assaulted by a correction officer. Ms. Higgins was referred to the Gwinnett County Sheriff's Department. **Recommend dismissal for lack of jurisdiction.**
 5. Complaint Number: ACRB 13-60, Anonymous alleging hostile work environment
An unidentified female called the ACRB and alleged that Major Jackson is creating a hostile work environment for his staff at the Atlanta Detention Center. The caller was referred to the City's Ethics and Law Departments. **Recommend dismissal for lack of jurisdiction.**
 6. Complaint Number: ACRB 13-61, Christopher Russell alleging excessive force
Mr. Russell alleges that on July 1, 2013, he was physically assaulted by correction officers at the Muscogee County Jail. Mr. Russell was referred to the Muscogee County Sheriff's Department. **Recommend dismissal for lack of jurisdiction.**
 7. Complaint Number: ACRB 13-62, Natasha Alicia alleging inappropriate conduct
Ms. Alicia alleges that an unidentified OPS investigator engaged in inappropriate conduct during the investigation of her complaint against another APD officer. Ms. Alicia was referred to OPS, City's Ethics & Law Departments. **Recommend dismissal for lack of jurisdiction.**
 8. Complaint Number: ACRB 13-63, Wysheki Epps alleging false arrest and excessive force
Ms. Epps alleges that on May 5, 2012, she was falsely arrested by APD officers. She further alleges that officers used excessive force during the arrest. **Recommend dismissal because the incident occurred outside the 180 day time limit imposed by ordinance.**
 9. Complaint Number: ACRB 13-64, Douglas Turner alleging illegal stop and search
Mr. Turner alleges that on June 20, 2013, a DeKalb County police officer illegally detained and searched him and his friend. Mr. Turner was referred to the DeKalb County Police Department's Internal Affairs Division. **Recommend dismissal for lack of jurisdiction.**
 10. Complaint Number: ACRB 13-65, April Stinson alleging false arrest
On July 31, 2012, Ms. Stinson called the ACRB and alleged that on July 18, 2013, APD Officer Fletcher falsely arrested her. Ms. Stinson was mailed a complaint form to complete and return. **Recommend investigation as a false arrest complaint if signed complaint is received within the next few weeks. If the complaint form is not received recommend dismissal.**
 11. Complaint Number: ACRB 13-66, Reginald Francois alleging false arrest
Mr. Francois alleges that on July 7, 2013, he was falsely arrested by a DeKalb County police officer. Mr. Francois was referred to the DeKalb County Police Department's Internal Affairs Division. **Recommend dismissal for lack of jurisdiction.**
 12. Complaint Number: ACRB 13-67, Matthew Walker alleging unfair treatment
Mr. Walker alleged that a Clayton County police officer unfairly issued him a traffic citation. Mr. Walker was referred to the Clayton County Police Department's Internal Affairs Division. **Recommend dismissal for lack of jurisdiction.**

Discussion Summary. . .

There was some discussion regarding Case #13-62, Natasha Alicia's complaint and the type of inappropriate conduct of the OPS Officer. Reid explained that the nature of this alleged relationship may have impacted the outcome of her case, and also could lead to discipline against the officer.

However, there was not anything that would come under ACRB's jurisdiction. The original claim, had she brought it to the office during the 180 days, it would have fallen within our time frame, but as it stands it was outside the allowed time. Investigator Robertson explained that Ms. Alicia was referred to OPS, Law Department and the Ethics Department.

It was moved by **Williams** to accept the Intake Report. **Benson** seconded the motion. With no further discussion, the motion was approved by all.

REVIEW OF COMPLAINTS: ACRB CASE NO. 13-03, DEMARIO BATTLE

A. SUMMARY

Investigator Kenneth *Lively* summarized the complaints indicating that Mr. Battle and Mr. Scott filed complaints against an unknown Atlanta police officer, alleging false arrest, excessive force and abusive language. Mr. Battle alleged that on December 27, 2012, an unknown officer, approximately 6'9", kicked him in the face, used abusive language towards him, and also falsely arrested him for possession of illegal items that were not his.

Investigator Lively indicated that the case stemmed from an arrest warrant that the Southeast Regional Fugitive Task Force was attempting to serve. The task force consists of U.S. Marshals and officers from different jurisdictions in the Metropolitan Atlanta area. They were looking for a subject, whom they believed to be at a house where Mr. Battle, Mr. Scott, and two other individuals were present. When the Fugitive Squad made entry into the house, Mr. Battle and Mr. Scott both alleged that officers came in the house and kicked them in the face, cursed at them upon taking them to the ground and handcuffing them. Mr. Battle and Mr. Scott both alleged that an officer put a knee in their back. The complainants and all occupants of the house were detained and the house was searched.

B. DISCUSSION SUMMARY

Members were concerned and in agreement about the confusion surrounding which of the officers did what and what agency was at fault. To help clarify, Bartels indicated that some of the confusion was due to the fact that there were two different law enforcement agencies there and one being the Marshals, who actually went inside the house where the complainants and others were present, and there was also an APD officer assigned to the Marshals, Detective Fries, who also went in with the Marshals.

The complainant gave a description of the officer he believed was at fault. He described him as a black male, about 6'9", weighing about 225 lbs., and wearing a black mask. Because of this description, Harrison expressed concern and stated that since the complainant did provide a description of an officer who was alleged to have used excessive force and abusive language, a sworn affidavit should have been requested disputing that such an officer was present or not. He also was concerned that no federal marshals were interviewed. Investigator Lively indicated that he had interviewed Detective Fries, who is a member of the Task Force, and he did provide a sworn statement that no such officer was present that fit the description provided by the complainant. Regarding the Marshals, he said that the Marshals would not allow him to interview the U.S. Marshals assigned to the Fugitive Squad without going through formal channels involving the U.S. Attorney's office. He said without doing that they would not give him any information.

Williams expressed concern regarding the gun and drug charges, and he noted that those charges were dropped and he asked why. Investigator Lively indicated that the additional charges that were added on for the gun and the drugs were dropped by the Fulton County DA's office, but the initial arrest of the men was legitimate because all of them had outstanding warrants. In reference to the false arrest allegation, the majority of the members were in agreement with the staff's recommendation of unfounded, given there were legitimate warrants for the complainant and two of the other men. However, regarding the other allegations, the consensus was that the Board believed that something rough happened as alleged by the complainant both in terms of excessive force and abusive language but without an officer's name or to be able to identify the correct agency or officer, some members did not believe there was enough information or evidence to know that an Atlanta police officer did what was alleged by the complainants. Based on the confusion and the allegation being specifically against an unknown officer, the majority of the members believed the allegation could not be sustained.

Since the excessive force and abusive language complaints could not be sustained, members then discussed what could be done. Reid said, "Without a name, you can't really take action against an unknown officer, but you can let it be known that you find this type of conduct outrageous and send that type of message to the Chief."

It should be noted that a mug shot was presented of the complainant. Some members questioned that, while the complainant alleged that he was kicked in the face, the photo of him did not reveal injuries to the face. Investigator Lively indicated that the complainant never told anyone that he was kicked in the face and he never complained about being injured and never requested medical treatment.

Comments For the record...

Benson: *"We passed around a copy of the mug shot of Demario Battle. I believe everyone has had an opportunity to view the picture of Demario's face and how it appears from this booking photo and it does not appear there are any red marks, or any bruising to his face and of course, this is not the end all or determining factor with regards to whether or not he was kicked in the face, but it certainly is evidence of what his face looked like on that particular day. So I did want to make a comment as to what the photograph show."*

Williams: *"Let it also be noted the fact that sometimes people doesn't bruise as easily as other people do or as fast."*

Williams: *"This is all very confusing trying to decide if it was the Southeastern Fugitive Task Force, North Georgia or Federal Marshals or Atlanta Police; who had on a mask and who didn't. It is really confusing and the people need to know who they are and what happened."*

C. BOARD VOTES ON CASE NO. 13-03, DEMARIO BATTLE

Following the discussion, the Board voted the following:

- **False Arrest Allegation**
It was moved by **Bozarth** to accept staff's recommendation of **unfounded** based on the outstanding warrants. **Benson** seconded. Calling for the vote, the motion was approved with one nay vote (**Williams**).
- **Excessive Force Allegation**
 - *It was moved by **Harrison** to accept staff's recommendation of **unfounded**. Hearing no second, the **motion failed**.*
 - *Following some discussion, **Harrison** motioned again to accept staff's recommendation of **unfounded**. **Price** seconded. Calling for the vote, the **motion failed again** with five nays.*
 - ***Lee** moved to assign a finding of **not sustain**. **Bozarth** seconded. Calling for the vote, the motion was approved with two nay votes (**Williams & Johnson**).*
- **Abusive Language Allegation**
It was moved by **Bozarth** to accept staff's recommendation of **not sustain** based on the outstanding warrants. **Morris** seconded. Calling for the vote, the motion was approved with one nay vote (**Williams**).

REVIEW OF ACRB COMPLAINT, CASE NO. 13-07, JARVELL SCOTT

A. SUMMARY

Investigator Kenneth **Lively** summarized the complaint, indicating that Mr. Jarvell Scott (*Case No. 13-07*) and Mr. Battle (*No. 13-03*) filed complaints against an unknown Atlanta police officer, alleging false arrest, excessive force and abusive language. Mr. Scott's complaint slightly differed from Mr. Battle's complaint, arising out of the same incident that occurred on December 27, 2012. Like Mr. Battle's complainant, Mr Scott also alleged false arrest, excessive force and abusive language, but the description he gave was that of an officer in a uniform that was not consistent with the type of uniform worn by APD.

Mr. Scott, like Mr. Battle, also had an outstanding warrant and he was taken into custody. Mr. Scott also had additional charges of guns and drugs, but those charges were later dropped. He alleged that an officer wearing a shirt with Marshal written across it kicked him in the face, threw him on the ground, and put a knee in his back just as the previous complainant had alleged. He further alleged that an APD officer used profanity towards him. He described this officer as a

white male wearing a mask, but he specifically named this officer to be Officer Davis. He said he knew it was a policeman by the name of Officer Davis from Zone One, because he had previously arrested him and that is why he knew who he was. **Investigator Lively** stated that during the investigation, he discovered that Officer Davis was on family leave at that time.

B. DISCUSSION SUMMARY

Since Case No. 13-03 and Case No. 13-07 were companion cases, the discussion echoed earlier comments. The consensus being that members believed that some rough stuff happened, but there was not enough information to know that it was an Atlanta Police Officer. APD officers are the officers who come under the Board's jurisdiction.

*It should be noted that **Bozarth** indicated that the two cases discussed appeared to be the exact situation that is in line with the earlier FBI Task Force presentation. **Bozarth** recommended that the cases should be referred to the FBI for investigation into the conduct of the U.S Marshals. He said, "We can't sustain anything outside our jurisdiction, but something happened and it should be further investigated."*

*The **Chair** agreed and instructed the staff to follow-up on the recommendation. The **Chair** also stated that a motion was not necessary for this action. There was no objection to this recommendation.*

C. VOTE ON CASE NO. 13-07 JAVELL SCOTT

The Board voted the following:

- Allegation of False Arrest
It was motioned by **Lee** to accept staff's recommendation of unfounded, based on the outstanding warrant for Mr. Scott. **Price** seconded the motion. Hearing no further discussion, the vote was called. The motion was approved with one nay vote (**Williams**).
- Allegation of Excessive Force
It was motioned by **Bozarth** to accept staff's recommendation to not sustain the complaint of excessive force, as alleged by Mr. Scott. **Lee** seconded the motion. Hearing no further discussion, the vote was called. The motion was approved with three nay votes (**Williams, Johnson, and Benson**).
- Allegation of Abusive Language
It was motioned by **Bozarth** to accept staff's recommendation of not sustained based on the determination that there were no officers on the scene who fit the description provided by Mr. Scott. **Harrison** seconded the motion.

*Discussion before the vote...**Williams** asked, "For the sake of the individuals out in the audience, would you brief us in the definition of sustained and not sustained? **Reid** explained that **sustained** means there is clear and convincing evidence that the officer committed the alleged acts of misconduct. **Not sustained**-the investigation fails to prove or disprove that the alleged acts occurred.*

Hearing no further discussion, the vote was called. The motion was approved with one nay vote (**Williams**).

NACOLE ANNOUNCEMENT:

The **Chair** announced that two members of the Board, who made a request to go to the NACOLE Conference, next month, have been approved to attend. They are Mr. **Harrison** and Mr. **Williams**.

PUBLIC COMMENTS:

Two people signed up to speak: Synthia Jones and Sean Kornegay. It should be noted that Ms. Jones asked Mr. Kornegay to speak on her behalf.

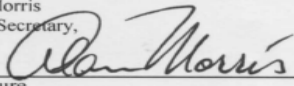
Mr. Kornegay's comments were about an incident that occurred on May 31, 2013. He indicated that he filed a complaint overnight on behalf of a deceased individual. He said, "On the date mentioned and after leaving a club on 13th and Crescent, the deceased was shot by two off duty police officers who were working at Club Opera. He was shot while holding a weapon that was holstered. He was in non-threatening stance. We have audio and video that provides evidence that one of those two officers never properly identified themselves as Atlanta police officers. While approaching him from behind, the video displays very clearly and via the video, there's a seven second gap between when they say "Drop the mother f—ing gun, drop the mother f—ing gun. Drop it", and then they actually start shooting. That gap is justified by the video, which shows exactly how far they are away, relative to that seven second gap that shows the distance they traveled before they eventually begin to open fire on the deceased, but the multitude of those shots being fired while he's on the ground. He was shot at over twenty-two times, and medical examiner proves that he was shot over ten times; so he has since passed. He lived for twenty-one days beyond that. We did have attorneys originally pursuing the criminal defense, because they charged him with aggravated assault to justify, of course, why they had to shoot him. After that transpired and he passed away, the civil attorney, who of course, was naturally supposed to step in, lost confidence in the case. The criminal attorneys that we had were halfway willing to pick up the case, but they wanted a retainer. So yesterday, I spoke with Leonard Jones with the National Action Network, and he recommended I come here before he lost it."

Chair Bartels thanked Mr. Kornegay for his comments indicating that a third person can file a complaint with this Board on behalf of a deceased person. He also added that the complaint will certainly be thoroughly investigated.

ADJOURNMENT

Chair Bartels entertained a motion to end the meeting. It was moved by **Harrison** to adjourn the meeting. **Williams** seconded and the meeting adjourned at 8:55 p.m.

*Approved as to form and content:
Alan Morris, Board Secretary*

Approved as to form and content,
Alan Morris
Board Secretary,

Signature

Date: September 12, 2013