ATLANTA CITIZEN REVIEW BOARD
APRIL MEETING MINUTES
55 Trinity Avenue, SW, Committee Room One
Atlanta, Georgia 30303
May 10, 2012 / 6:30 P.M

ROLL CALL
(Eleven Members of the Board)

ACTIVE MEMBERS PRESENT
PAUL BARTELS (Chair/Bartels)   ALAN MORRIS (Morris)
BARBARA HUBBARD (Hubbard)      JOY MORRISSEY (Morrissey)
WILLIAM HARRISON (Harrison)    RUTH PRICE (Price)
CHARIS JOHNSON (C. Johnson)     MACEO WILLIAMS (Williams)
RYAN JOHNSON (R. Johnson)

ACTIVE MEMBERS ABSENT
PAMALA ALINIECE (Aliniece)

ONE VACANT APPOINTMENT
Office of the Mayor (vacant 10 months)

STAFF ATTENDEES
ROGER BHANDARI (Bhandari), City Law Department; SHEENA ROBERTSON (Robertson), Investigator;
SHARESE SHIELDS, Interim Executive Director; MYOLA SMITH, Transcriber (Smith)

AGENDA

MEETING CALLED TO ORDER

The meeting was called to order by Chair Bartels at 6:35 p.m. The Chair welcomed citizens and guest
announcing Public Comments will be heard later into the agenda, and if anyone cared to speak, to please sign up.
Comments are limited to three (3) minutes per person.

SPECIAL NOTE: Chair Bartels announced that this would be the last board meeting for founding member Joy Morrissey. He said, “I just want to thank you personally for all the time you put in and for all the work you have done. I appreciate it very much. Ms. Morrissey’s replacement I believe is ready to start or quite soon and we will continue to move on.”

APPROVAL OF MINUTES OF THE LAST MEETING
The Chair asked if there were corrections to the minutes of the last meeting held April 12, 2012. Morrissey moved to accept the minutes for April 12, 2012. The motion was seconded by Harrison. Hearing no discussion, the motion was approved by all.

INTERIM DIRECTOR REPORT

Interim Director Shields reported that today, the staff appeared before City Council and presented ACRB’s proposed budget for FY-13. She said, “There were four or five council members there and this is something that the city does every year around this time. Each department and each board has to appear before Council and discuss what has been going on in the past fiscal year and what new developments are on the horizon for FY-13. Today we appeared and really got what we felt was pretty good feedback from Council. We emphasized three major initiatives and undertakings and we used that as the basis for why we needed more funding. Those three major initiatives: 1) Community Outreach; 2) Board Training and 3) New Executive Director. I will tell you some of the comments I made and some of the questions Council asked.”

“With respect to Community Outreach, I informed them that this was not something that this Board has really devoted much energy and attention to prior to them drafting a community outreach plan, but we are reaching a point in our lifecycle that we have to take it to the next level. We have to start going into the community to finding out how we can better get the word out about the work we do and things we can do to instill greater public confidence in law enforcement. We need someone at the very least, on a part-time basis, who has the expertise to go out into the community and advocate for ACRB and find out what we need to be doing to better serve the community. That seemed to resonate pretty well with the council members who were there. They wanted more details. I provided as many details as I could; however, I indicated that would be something that we would not embark upon until we had new Executive Director in place. However, I estimated that modestly, it would require an additional $20,000 and to bring on someone part-time and on a temporary basis which we think probably fiscally makes the most sense, since we don’t need to go at it full steam right out of the box and again, they seem to be receptive to that. Initially, we proposed a budget that was roughly about $45,000 more than our budget last year and one of the things we were asking for was money for community outreach, and today was about explaining why we needed that money.”

“With respect to the Executive Director search, we explained to them that we were in the process and that we had a good number of candidates who were from other parts of the country and that we had looked at other parts of the country and looked at the salaries. Myola (Smith) and Sheena (Robertson) pulled some data from other jurisdictions to see what those executive directors were making and of course, we already knew, we were below market rate. They seemed very interested in that as well; although, some Councilmembers felt that Atlanta is unique and you can’t necessarily compare what they are doing in other places. We are offering a salary that is roughly 15 to 20% below market rate and we pointed that out and again, they seemed interested in that and that sparked some conversation about where we were in the search...the fact that the board had re-launch a whole new search but there were not a whole lot of questions that came from that.”

“Then we had a discussion about board training and that was something they were interested in. We explained that we have a couple of vacancies coming up and we have new board members who have been with us about a year or less and we need board training on the type of issues this board faces...excessive force, Fourth Amendment, Roberts Rules and Effective Meeting Management all of which is even more important because our board is changing. Very shortly, half the board will be new. We need the resources to retain the experts to come in and offer that kind of training.”

“They were very complimentary about the work the board has done and they needed additional information from us that provides greater detail about the money we need. So we are working on getting that to them pretty soon. Prior to meeting with them, we did send them a copy of the Biennial Report. The reason you all don’t have a copy yet is because this is not the final product. We put together just one together today for the budget meeting
and we are going to have them professionally bound. You all have seen a good draft and I am happy to past this one around, until we have the final product.”

“That is pretty much it. It was a good opportunity to let them know where we’ve been and where we are going.” Shields strongly encouraged members to reach out to the Council members regarding why the funding is needed. “I encourage you to do this sooner than later because Council will be voting on the budget June 18th.”

Shields concluded announcing that Investigator Marc Addington had resigned effective, April 24. She indicated that Robertson is now the sole investigator. She also said, “We have not done anything to post his position. I think that is something the next Executive Director is probably better suited to do…unless the board feels otherwise and wants us to go ahead and post it now, but you all have a lot on your plate already, but if you have any questions about that, see me and I’ll be happy to try to address them.”

Chair Bartels opened the floor for questions.

Discussion...
1. R. Johnson asked, “Under board training, when they referred to additional details concerning monies needed, were they talking about specific training that we would be interested in or is that going back to overall?”

2. Shields answered, “Well we brought it up they didn’t tell us that we needed more training. The Board is required by ordinance to be trained. This was our opportunity to tell them what we felt was necessary for us, not so much for them to tell us what they thought we should be doing.

3. R. Johnson also asked, “In regards to the monies needed was that to support the training that we brought to the table. Is that what they were asking for in more detail?

4. Shields responded, “It was more along the lines of community outreach and the Executive Director; not so much board training. By the way, the board hearings, including our presentation, are televised on Channel 26 in rotation and online. If any of you planned to have a conversation with your councilmember, I definitely encourage you to watch the presentation and you can see and hear what councilmembers had to say, their comments and questions. I can’t emphasis enough the importance of the Board taking this opportunity to talk with Council because I did feel like they were genuinely receptive to what to had to say and what we expressed as our needs.”

CONSIDERATION OF INVESTIGATION #11-78, COMPLAINT OF NOAH KILLINGSWORTH ALLEGING FALSE ARREST – SHEENA ROBERTSON INVESTIGATOR

A. ALLEGATION

Robertson reported that Mr. Noah Killingsworth filed a false arrest complaint with the ACRB. He alleges that on August 28, 2011, Atlanta Police Officer David Sutton falsely arrested and charged him with Disorderly Conduct.

B. COMPLAINANT’S ACCOUNT / NOAH KILLINGSWORTH

Mr. Killingsworth was interviewed by the ACRB staff. According to Mr. Killingsworth, on the day in question and at approximately 10:00 p.m., he and some of his friends parked their vehicles in a parking lot located at 1260 Glenwood Avenue and went to the Graveyard Tavern, a nightclub located on the opposite side of the lot. Mr. Killingsworth said that when they arrived at the club and found out that they had to pay an entry fee, they left and returned to the parking lot and found that their vehicles had been booted.
Mr. Killingsworth said one of his friends (whom he would not identify) called 911 and complained about the booting company, and shortly thereafter, four APD officers arrived. He said he and his friends tried to explain to the officers why they should not have to pay to get the boots removed; however, the officers disagreed. This exchange went back and forth for approximately 30 minutes. Mr. Killingsworth said at some point, one of the officers, later identified as Officer Sutton, asked him if he was going to leave the parking lot; he replied “Yes, I guess I’ll walk my ass home.” At that point, he said Officer Sutton ordered him to turn around and place his hands behind his back. He was then arrested for disorderly conduct.

Mr. Killingsworth claims that at no time during his conversation with any of the officers was he told to leave the lot. He further stated that at no time did he threaten or act violently toward the parking enforcement officers. He did state that one of his friends, whom he did not identify, spoke to the parking enforcement officer in a disrespectful manner.

He did acknowledge that it was a pay parking lot, but, at that time he did not see the pay sign that was posted because it was dark and not in plain view. He also acknowledged that he had been drinking; however, he did not consider himself to be drunk.

Mr. Killingsworth believes that Officer Sutton did not have probable cause to arrest him for disorderly conduct. He stated that the information contained in Officer Sutton’s police report is false.

He stated that his case was ultimately dismissed because none of the parties, including Officer Sutton, appeared in court.

C. INVESTIGATIVE FINDINGS

Police Radio Transmission, 911 Call and the Computer Aided Dispatch (CAD) Report

- The 911 portion of the recordings, along with the CAD Report reflect that at 12:39 a.m., a male, who identified himself as John Page, called and reported that he was at 1260 Glenwood Avenue. He said a black male threaten to shoot him if he did not remove the boot. Mr. Page also stated that the individual did not show a gun or any weapons. The 911 Operator told Mr. Page that she would send someone to the location.

- The Zone 6 police radio transmission and the CAD Report reflect Officer Sutton was dispatched to the location as a result of the 911 call from Mr. Page. Additionally, the CAD Report and APD records show that Sergeant Mark Benson, Officers Jamir Denson and Shawn Clark also responded to the scene.

D. WITNESSES INTERVIEWS

Robertson stated that when she interviewed Mr. Killingsworth, he provided names and contact information of two individuals who allegedly witnessed the incident; Japhia Maynard and Erica Dumas. After numerous attempts to contact and/or interview these individuals, ACRB staff was unsuccessful.

* John William Page, the parking enforcement officer telephone number was obtained from the 911 recordings and during the course of the investigation, Robertson called him. He said that he was employed by Stop and Park (S&P) Parking Enforcement Company as a Parking Enforcement Officer. He stated that on the day of the incident, he observed Mr. Killingsworth, along with several of his friends, park their vehicles in a pay for parking lot located at 1260 Glenwood Avenue and exit the lot without paying. Mr. Page said after they left, he proceeded to place boots on their vehicles. He said he was still in the parking lot when they returned and Mr. Killingsworth, whom he described as being drunk, along with his friends, began threatening him and calling him foul names. He said at some point, he called 911 and when the police arrived, he explained to the officers what had transpired and then he went across the street while the officers handled the situation. He said the officers were on the scene for maybe
approximately one hour trying to get Mr. Killingsworth and his friends to either pay the fee to get the boots removed or leave the property. He said at some point, he overheard one of the officers tell Mr. Killingsworth several times to leave the lot but he refused. He said eventually, Mr. Killingsworth was arrested and taken to jail.

During the interview with Mr. Page, he was asked if he appeared in court concerning this matter and he replied, “No, why waste my time.”

E. OFFICERS INTERVIEW

Robertson explained that interviews were conducted with all of the officers that responded to the scene, including the subject officer, Sergeant Mark Benson, Officers Jamir Denson, Shawn Clark and Sutton.

The officers described Mr. Killingsworth as being very irate, using a lot of profanity and appeared to be extremely intoxicated.

Officer Sutton said he repeatedly tried, without success, to get Mr. Killingsworth to pay the $75 fee to get the boot removed or leave the parking lot. He said Mr. Killingsworth became irate and began using profanity. He said at some point, Mr. Killingsworth said to him, “I would be wrong if I just go and punch him in the face” referring to the parking enforcement officer, Mr. Page. At that point, he said he made the decision to arrest him.

F. COURT RECORDS

According to the Atlanta Municipal Court records, Mr. Killingsworth was arrested on August 28, 2011 and charged with violation of Atlanta City Code Section 106-81(1), Disorderly Conduct. The records further indicate that the charge was dismissed October 25, 2011 because the witness failed to appear in court.

As stated earlier, during the interview with Mr. Page, he said that he did not appear in court concerning this matter because he did not want to waste anymore of his time with the matter.

APD was also contacted to ascertain if the department had any record of Officer Sutton receiving notification from Court to appear in this matter. According to the department’s Court Liaison Officer, they did not have any records of having received notification from the Atlanta Municipal Court requesting Officer Sutton’s appearance in this matter.

G. ACRB STAFF RECOMMENDATION

Robertson stated that the ordinance defines False Arrest as “arrest by a police officer of the wrong person without probable cause to believe a crime has been committed and/or with a warrant and/or when the arresting party knowingly holds someone who has not committed a crime.” In this case, the evidence seems to indicate that Officer Sutton had probable cause to arrest Mr. Killingsworth.

Therefore, given the facts presented, the ACRB staff recommends that the allegation of “False Arrest” against Officer David Sutton as alleged by Noah Killingsworth be assigned a finding of “EXONERATED” (the investigation established that the alleged acts occurred but were justified, legal or properly within Department policy).
H. BOARD VOTES ON STAFF RECOMMENDATION

The Chair entertained a motion.

It was moved Price to accept the recommendation of staff to Exonerate Officer David Sutton of the allegation of False Arrest as alleged. The motion was seconded by R. Johnson. Hearing no discussion, the motion was approved unanimously.

CONSIDERATION OF INVESTIGATION #11-1, COMPLAINT OF SCOTT BRAUSE ALLEGING FALSE IMPRISONMENT – SHEENA ROBERTSON INVESTIGATOR

A. ALLEGATION

Robertson reported that the case was investigated by Investigator Marc Addington. Due to Addington’s resignation, Robertson presented his findings.

Mr. Scott Brause filed an unlawful imprisonment complaint with the ACRB against Atlanta Police Officers Michael Payne and Brandon Hamberger.

B. INVESTIGATION

Interview with the complainant, Scott Brause:

Mr. Brause was interviewed by Investigator Marc Addington. According to Mr. Brause, on October 15, 2011, he and some friends were hanging out at the Opera Night Club located at 1150 Crescent Avenue in Northeast Atlanta. When it was time to pay his tab, he gave the bartender his credit card. The bartender ran the credit card and presented him with the bill for his signature. He signed it and the bartender looked at it and asked to see his ID. He gave him his Drivers’ License (DL). He said the bartender then told him that the signature on his license did not match the signature on the back of his credit card and told him to re-sign it. He did, but the bartender still was not satisfied and repeatedly asked him to re-sign the bill until he was satisfied that the signatures matched. He said that he began to get very upset and at some point, he asked to speak to the manager. Shortly thereafter, the manager appeared with two uniformed APD Officers, who were later identified as Michael Payne and Brandon Hamberger, who were off-duty and working an approved extra job and in a security capacity. Mr. Brause said the manager also told him that he would have to re-sign the bill until he was satisfied that the signatures matched the one on the back of the credit card. He said he signed the bill at least seven times before the manager was satisfied.

During the interview, Mr. Brause admits that neither of the officers threatened to arrest him nor did they verbally abuse him during the interaction. He further stated that they did not ask to see his DL or any other form of ID. However, he said that he perceived the presence of the officers as intimating and felt that he would have been arrested if he had attempted to leave.

Interview with Officers:

Investigator Addington also interviewed both Officers Payne and Hamberger. Officer Hamberger was working an extra job at the Club Opera and Officer Payne was working an extra job at the club (Flip Flop) next door. Officer Hamberger said he was notified by an employee that there was discrepancy between a patron and a bartender over the signature on a credit card. Officer Payne had just got off his job and was standing nearby so he accompanied him (Officer Hamberger) to where the area of the dispute was taking place. Both officers stated that they stood off to the side while the manager resolved the dispute and at no time did they assume an aggressive posture. Officer Hamberger stated that the only communication he had with Mr. Brause is when he asked him was that his signature. They stated that the manager made the decision that the final signature was acceptable and subsequently, allowed Mr. Brause to leave the location.
Interview with Witnesses:
At the interview, Mr. Brause provided the name and contact information of an individual who allegedly witnessed the incident; Page McGarity. Investigator Addington numerous attempts to contact and/or interview Ms. McGarity were unsuccessful; however, she did provide OPS with a statement and that statement was provided to Investigator Addington. In that statement, Ms. McGarity corroborated the officers’ account that the officers stood by as the manager insisted Mr. Brause re-sign the bill and the officers never threatened to arrest him.

C. ACRB STAFF RECOMMENDATION
The ordinance defines False Imprisonment as, “intentionally restraining another person without having a legal right to do so; physically detaining someone without the legal right to do so.”

Given the facts presented, Investigator Addington recommended that the allegation of “False Imprisonment” against Officers Michael Payne and Brandon Hamberger be assigned a finding of “EXONERATED.”

However, Robertson amended the Exonerated finding to UNFOUNDED. She stated, “I believe that he (Addington) really meant to assign a finding of Unfounded because the investigation established that the Officers did not commit the alleged acts of misconduct. Whereas Exonerated means the investigation established that the alleged acts occurred but were justified, legal or properly within Department policy and investigation proved the alleged acts did not occur.

D. THE BOARD VOTES ON STAFF RECOMMENDATION
The Chair opened the floor for questions.

Discussion...
1. R. Johnson asked Investigator Robertson why she believed the initial findings should be changed from Exonerated to Unfounded.
2. Robertson replied, “I believe it should be changed because the officers did not do anything to falsely imprison him.”
3. Bartels clarified, “Exonerated means that there is no dispute as to what actually happened and what happened is clear and within the departmental policy.”
4. Robertson added, “Unfounded means the officers did not commit the alleged acts and Exonerated means that they did but it was within the departmental policy.”
5. R. Johnson said, “I do agree that the officers were within their scope of what they were called to do; however, if there is an authority there and somebody is questioning you who could potentially put you in a bad situation, I would be a little intimidated by that. Me personally and that is not to say that the officers did anything wrong but I understand where this person was possibly coming from...he’s looking and talking to the person there, but they are on his side and he’s waiting to just give them the word and they want to lock me up. I’m just throwing this out there. I hear what this person is saying but were the officers acting appropriately, I have to believe they were.”
6. Bartels said, “I think that is a good point, it brings up the distinction between what is somebody’s subjective perception of the officers behavior or control is versus what’s objective. The objective is things like did they take the license; did they tell them to stay in a certain place; did they put their hands on them...but they didn’t do any of that.”
7. R. Johnson added, “That is objective and again, we hear the citizen’s side. From a citizen’s perspective, I understand what he is saying, but I have to be objective and also say, technically, they didn’t do anything.”
8. Bartels said, “I think when we are doing more community outreach and giving information to the public about how to interact with police, I think people need to be encourage to, if they
want to question the situation or ascertain their rights, to do that in a way that the officer would not perceive it as being threatened. 'Officer am I being detained or am I free go? Can help clarify the matter.

9. Investigator Robertson further clarified her reason for changing the finding. She said, “The reason I made that amendment, is because, if you read Investigator Addington’s conclusion that’s basically what he was saying. He indicates in his conclusion that there is no evidence implicating the officers.”

Following the discussion, the Chair entertained a motion.

It was moved by Harrison to accept staff recommendation of Unfounded. Morrissey seconded. Hearing no further discussion, the vote was called and the motion was unanimously approved.

INTAKE REPORT FOR APRIL 2012

The monthly Intake Report was presented by Investigator Robertson. She reported that two (2) complaints were received for the month of April and they are:

- ACRB Complaint #12-06 filed by Robert Lee alleging False Imprisonment by APD. Staff recommends investigation as a false imprisonment allegation.

- ACRB Complaint #12-07 filed by Scott Dechesere alleging Harassment by Social Security Disability Federal Investigators. Staff recommends dismissal because the complaint involves allegation against federal authorities and is not within the Board’s jurisdiction.

The Chair entertained a motion.

It was moved by Williams to accept the staff report and recommendation. The motion was seconded by C. Johnson. Hearing no discussion, the vote was called and the motion was unanimously approved.

PERSONNEL SEARCH COMMITTEE REPORT

Committee Chair Bill Harrison provided the Board with an update on the activities to date. He reported that a total of 113 people applied and of that number, 13 qualified. He said, “The Personnel Committee will review those 13 applicants and come up with the top five (5) and that top five will be presented those to the Board. Regarding the time frame for doing that, I would have wanted to look at the 13 applicants this past weekend, but we didn’t get a chance to get all the applications in, and with Mother’s Day being this weekend, we will pass on meeting this weekend and pick it up next week. I will probably speak briefly with the members of the committee after this meeting to get a feel for a date next week to meet. That’s where we stand and hopefully, we can select an Executive Director within the thirty (30) days.”

Discussion...
1. R. Johnson asked if the committee will be able to see the other 113 applicants or just the 13.
2. Harrison responded, “Just the 13 applications and if we needed to, we can request that, but these are the top 13 based on the criteria we set up in our job description.”
3. Smith indicated that according to HR, 100 of the 113 did not qualify.
4. Bartels asked about the interview process regarding the number of candidates the committee actually planned to interview.

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5. Harrison stated, “The Personnel Committee plans to review all 13 applications and amongst our committee members, we will come up with the top five (5) and interview those five (5).

6. R. Johnson said, “You are saying we want to do this within this month so we need to be expecting a potential special meeting request so that the board can see our top-five list.”

7. Harrison responded, “It may be a special meeting request or it may not be, depending on our time frame and what it looks like in terms of what we can do and can’t do.”

PUBLIC COMMENTS

Chair Bartels opened the floor for public comments reminding each speaker of the three (3) minutes time limit allowed per person. The following people spoke:

1st Speaker: Edward Strange

Ms. Strange spoke about the importance of transparency and posting the Board’s by-laws. He said, “You state that you want to have transparency, but I understand that your by-laws, at one time, were on the website. Any organization that has to be involved with meetings and procedures, even when it is internal, understands that their by-laws are most important and also, it is most important to the citizens. Other places such as San Diego, Florida, California all of the major cities, post their by-laws. I ask the board to put away the myth that you are hiding something and put your by-laws back on your website.

A special note: Shields pointed out that the Board’s by-laws were never posted on the website at any time. She stated: “However, that is something that the Board may want to consider.”

ADJOURNMENT

Chair Bartels entertained a motion to adjourn. Harrison moved to adjourn the meeting.

The meeting adjourned at 7:25 p.m.

Alan Morris,
Board Secretary

Approved as to form and content.

[Signature]

May 14, 2012
Date: