

**City of Albany  
Citizens' Police Review Board  
161 Washington Ave. - Albany Public Library  
Large Auditorium  
October 10, 2005  
6:00 p.m. – 8:00 p.m.**

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

**Absent:** Jason Allen, Beresford Bailey, Ronald Flagg and Herman Thomas.

Chairman Gaige noted the promotion of Justina Cintrón Perino to Senior Staff Attorney at the GLC. She also noted that Ms. Perino is editing a book for the ABA on Civilian Oversight of Law Enforcement, which is in production now and should be out in late fall or early winter. Contributors are all people who are well respected in this area.

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

Chairperson Barbara Gaige called the meeting to order at 6:04 p.m. She noted that a quorum was present.

**II. Approval of the Agenda**

The agenda was reviewed. Paul Weafer moved to accept the agenda. Judith Mazza seconded the motion. The motion carried unanimously.

**III. Approval of the September 2005 Meeting Minutes**

The September 2005 meeting minutes were reviewed. Paul Weafer moved to approve the minutes. Marilyn Hammond seconded the motion. The motion carried unanimously.

**IV. New Business**

A. *New Complaints*

1. New complaints received since the September 2005 Meeting

Chairperson Gaige reported that two (2) new complaints had been received by the Board since its September 12, 2005 meeting. Judith Mazza read a summary of each complaint.

**CPRB No. 27-05** Following a stop at a traffic safety checkpoint, the complainant was arrested for driving with a suspended license and registration, and his vehicle was towed. The complainant alleges that he was searched following the stop and placed in the back of the patrol car, but at no time did the officer or anyone

else read him his rights or inform him of where he was being taken. When the complainant arrived at the South Station, he was searched again, and shackled, by his ankle, to a bench. The complainant alleges that he was given the opportunity to call family members in an effort to post bail, but that the officers made rude comments to him while he was on the phone. The complainant further alleges he was denied an opportunity to use the restroom when he asked and was given the run around when he tried to locate his towed vehicle the following day. The complainant feels as though he was treated as a "violent felon," which he believes was "more than unacceptable."

**CPRB No. 28-05** Following a dispute, the complainant alleges he was running from the scene to avoid a problem when he heard "stop or I'll shoot." The complainant claims he stopped running and put his hands above his head when all of the sudden he was tackled by multiple officers who immediately handcuffed him so tight that he was bleeding. According to the complainant, at least two of the officers were on his head and back, kneeling him very hard in his head, neck, back and side area. The complainant claims that while he was on the ground, an officer was yanking his arms up in the air by his handcuffs and he heard one officer state "I know this scumbag mother f\*cker." The complainant alleges the officer then began grinding and pushing his face into the sidewalk, saying "this is for Kelly you scumbag mother f\*cker." The complainant further alleges other officers starting kneeling and hitting him on his body. The complainant claims that when the officers were done beating him, they picked him up by the handcuffs and he heard his shoulder rip. According to the complainant, the officers were celebrating and laughing at him before they threw him into the paddy wagon, which resulted in bruises on both of his hips. The complainant alleges he was never read his Miranda rights or fingerprinted; he was treated like "sh\*t" in the booking room; that officers threw a wet paper towel at him and told him to wipe up the blood coming from him before he gets AIDS all over the place; and that he was denied use of the bathroom for two hours. The complainant claims he was beaten for personal reasons because his ex-fiancé works or worked in the detectives office and has in the past threatened that he would get his. He further claims that he suffered both physical and mental injuries from this incident.

It was asked if monitors had been assigned to these complaints. Ms. Perino explained that the complaints were recently received, but would be circulated at the meeting for the Board's review and a decision as to whether monitors should be appointed.

2. New complaints for review

Chairperson Gaige reported that two (2) new complaints were on the agenda for review.

Judith Mazza summarized the complaint.

This complaint was filed by a gentleman for his son. The complaint alleges that the son was walking home from Livingston Middle School when a fight broke out. Police officers were trying to stop this fight. When a police officer went to break up the fight, there were a large number of young people around throwing snowballs at the police officer. The complainant said that he walked by an officer, who was struck in the head with a snowball, and started laughing and continued to walk on. The officer reached out and sprayed pepper spray in the young man's face. The gentleman said his son turned his head and kept on walking and later on he got on Judson Street where things continued to heat up. More snowballs were thrown and more officers were there and starting to chase the kids, except for this one young man. He believes his son didn't throw any snow balls at the officers, but an officer went after him and started beating him and sprayed pepper spray on his jacket. The young man was angry about getting his jacket messed up and was yelling at the officer and asking him if he was going to pay for the jacket. At which point the officer took the young man hit him on the leg with a baton, struck him in the face, then bent his hands back, and handcuffed him and arrested him. The father was not there.

By the time the complainant got to the scene, he said he was told that his son had hit an officer and then later on was upset that his son was suspended from school for five (5) days. There was a monitor assigned to this complaint.

When Ms. Mazza looked at the file, the Office of Professional Standards (OPS) attempted to contact the witnesses that were given a number of times, but phones were disconnected. One number was answered by another person who said he didn't know this person at all, didn't know the witness, nor was he a witness to any incident. Another had a music recording on it, another had no answer and no machine, and one that they received later on, the number was not in service. There were witnesses in the area that were interviewed. One witness actually saw a large group of kids fighting and the officer tried to break it up and told the kids to leave and go home, but they kept fighting. The witness saw an officer in a struggle with a kid on the ground and that was somebody the officers actually did arrest. The witness didn't see any inappropriate actions by the officers. The kids were throwing ice and snow and anything "they could get their hands on." The officers were telling other people to go home and leave the area and some of them did not do that.

Another witness saw the officer place the other kid under arrest. Another saw a kid being taken to the ground by the officer and he was the one placed under arrest, but he couldn't see if the kid was fighting the officers. According to people in the area and the officers, the complainant in this did not throw any snow balls, but when he saw the other young man being arrested, he went over and was yelling at the officers to get off of him, to leave him alone. The officers kept telling him to leave the area. He wouldn't. There was a large group of kids – numbers anywhere from 50 to 100, 200, you don't know, but

there was obviously a lot of people in the area. The officers were on the ground trying to arrest this other young man and when the complainant's son came up to them and the officer felt threatened, he told him to go away, move away. The complainant wouldn't, he kept yelling at the officer to get off the other kid. He did use pepper spray and sprayed him. He was down on the ground and sprayed up and hit him in the chest and shoulder on the jacket. The complainant's son eventually did move away, but was still yelling and threatening the police and this large crowd was there watching and shouting.

After they arrested the other young man, the officers approached the complainant's son, who was still in the area, to arrest him. He started to resist. He was hit with a slapjack in his leg so he would go down on the ground. He would not put his hands behind his back for cuffs; he had his hands underneath him, under his stomach. They kept trying to force his hands from underneath him. The officer did hit him in the shoulder and forced his arms back behind him. His fingers were scrapped when his hands and arms were forced behind him in order to cuff him.

The OPS interviewed the young man about 20 days after the incident. He came in with his father. They did get his hospital records. His father said they had photos, but didn't get the photos until after May 5. There was nothing in the hospital report that indicated that he had been injured other than the scraps on his fingers. He was sore, but there weren't any marks on him.

The monitor, Albert Lawrence was recognized. Per his report, there were some varying descriptions by the witnesses of what occurred, which is understandable given the fact that it was a chaotic situation. None of the versions substantiated the complainants' son's version. Judith Mazza replied that as she looked it over, she thinks that the father felt the son was arrested for hitting an officer, which no one claims he did. He was not arrested for screaming about his jacket. He ultimately got arrested because they felt he was interfering - obstruction of justice or obstruction of governmental administration. The officers felt that he was interfering because there was such a large crowd of kids and he continued to harass the officers who were on the ground arresting this young man. As he approached the officers, they didn't know what he was going to do, whether he had something in his hand, or was going to throw something and hit them. He wouldn't move away. The officer did use pepper spray and it did get on his jacket. Afterwards, he was still in the area, he wasn't chased.

The officers ended up arresting him for not leaving, not doing what he was told at the time. He was released to his father and dealt with in family court. The recommendation of the OPS was that the complaint be *exonerated*, where the acts which provided the basis for the complaint actually occurred, but the investigation shows the acts were proper.

In fact, he was arrested, his fingers were scrapped, he kept his hands underneath his body when they were trying to arrest him, he wouldn't put his hands behind his back and his knuckles were scrapped. There were no other apparent injuries on him. He did go to hospital to Albany Med and the reports were consistent with what he said.

Ms. Mazza moved that the Board accept the preliminary finding of *exonerated*. It was seconded by Marilyn Hammond.

Michael Whiteman directed a question to the monitor. It appears from the monitor's report, that whatever the kid shouted and however he moved his arms, he eventually went off and the police officers had to go looking for him and they found him standing in the street two blocks away. Mr. Whiteman asked if this was correct? Mr. Whiteman noted that he was with the rest of the crowd (reading from Page 5 of Mr. Lawrence's report). He added that the report says on the street, a couple of houses away, not a couple of blocks.

Ms. Mazza reported that this was a large group and he was still in the crowd when they got up from arresting the other kid and put him in the car. They turned around and found this kid down the block.

Michael Whiteman commented that he cannot judge what should have happened or should have been done with a large crowd present. He added however, that he is not certain why the officers had to go looking for someone a couple of houses away, who had just moved off, and who hadn't in fact done anything, except shout. He noted that almost any argument can escalate. It just takes two people to escalate the argument.

Judith Mazza responded that he did approach the officers, he was up to the officers at the time they were arresting the other young man. He did approach them. He wasn't just part of the crowd. Michael Whiteman replied that is what one side said. The other side stated he was walking home and was walking pass them, so of course he was getting closer. He replied that he's not sure what to do. He looks at cases like this and doesn't find the reports very helpful.

OPS Sergeant Eric Kuck commented that it is not helpful if the complainant's son or the complainant's father do not show up to assist the discussion. Judith Mazza responded that the complaint has been on the agenda a couple of times and has been put off, but does not know why they aren't at the meeting tonight. This isn't the first time it has been on the agenda. However, this may not have been a good time for them to come, if they have been ready to come other times.

Sgt. Kuck said, based on the information that they received from the memos and reports from the officers present at the scene and from subsequent investigation – it appears that everything was in order for probable cause to arrest the party on the charge of obstruction of governmental administration. According to Sgt. Kuck, it wouldn't be any different from any other charge, such as criminal mischief. If the officers have probable cause to arrest, they can do so whether they arrest at the scene or around the corner; the individual is still guilty of the same charge. It would still be a proper arrest.

Judith Mazza replied there were different ideas on what people saw, so many kids, so much going on at the time. It was a little hard to sort through some of it. Sgt. Kuck

commented that the witnesses that were interviewed did have different variations of what happened, which is not uncommon. The best that they could go with is that none of the versions that they received from independent witnesses, as best as could be gathered from the neighborhood, backed up the complainant's allegations of what occurred.

Michael Whiteman commented that it does appear that there was an effort to arrest the young man, that he attempted to resist the arrest and whatever injuries he experienced were in the course of that. Due to that, he would go along with the recommendation of the monitor, for that reason, having made the observation, however, that the critical point in most of these cases that the Board sees is not the moment of arrest, but what happened in the 10 minutes before. The question that remains in his mind is whether there ever needed to be the confrontation. With the confrontation having taken place, it appears that the young man resisted arrest by all reports, and he was injured in the course of that. It does not seem to him that there is any basis, with respect to that moment, to second guess the monitor or the OPS report. He simply repeated what he said before; there needs to be more attention, in his mind, as to what happens before the officer and the complainant get to the moment of confrontation, so perhaps there won't be unnecessary confrontations. There are obviously going to be some sometimes.

Chairperson Gaige disagreed with Michael Whiteman. She went on to say the young man did approach the officers who were in a tussle with someone else. One witness even indicated that he thought he saw him kick the people on the ground. Even the officer never said he got kicked.

Michael Whiteman replied that the chief thing that they seem to complain about was that he walked away swearing and flailing his arms in a threatening way. Whatever that means.

Judith Mazza commented that in reading the reports and statements of all the officers that were there that seemed to witness this, the complainant kept going towards the two officers on the ground who were trying to arrest the young man. The crowd was still yelling, screaming as young people will do, depending upon how many people were there – again, the numbers range anywhere from 50 to 200. Even if there were 50 people, that is a lot of teenagers all in one place throwing snowballs at police officers. They felt when they sprayed him with the pepper spray, he was complaining about the pepper spray on his jacket, that he was that close to them, and that he approached them on the ground. They felt, as he came toward them and they said go away, stay away, he didn't and he came close enough to get sprayed with the pepper spray. That's the issue – the reason the officers ended up arresting him. Not for anything that was before, but at the moment he came toward them screaming about them getting off this kid that they were arresting. Had he left, who knows what would have happened.

Ms. Mazza commented that the Board is second guessing what was going on. She agreed with Mr. Whiteman that the problem is how these situations escalate to what they do, what decisions are made based on a judgment at that moment. She added that it is hard to know what you do in those situations with teenagers, it is a whole other ball game that

you are dealing with. She also added that she is not sure what to do with the arrest issue.

Paul Weafer agreed with Mr. Whiteman's general premise that the Board does see an awful lot of complaints where diplomacy and restraint on the part of the law officers would be beneficial. In this particular case, Mr. Weafer noted that he could not agree with Mr. Whiteman because this is a situation where, whether it is 50 or 100 or 150 children, they were bombarding the police officers with not just snowballs, but ice balls and it was a very volatile situation. Under those circumstances, Mr. Weafer believed the police acted with restraint. Mr. Weafer added that he supported Ms. Mazza's motion. Marilyn Hammond agreed with Paul Weafer. Ms. Hammond commented that she has seen this type of situation first hand where it has gotten to that point where there has been many kids, and the kids can be very, very nasty. She added that it can get out of hand very, very quickly; she has seen it and has seen it a lot. She noted that it happens all the time and it is not a very good situation to be in.

The motion was seconded, and carried unanimously.

**CPRB No. 7-05/OPS No. C05-92 (Presented by Michael Whiteman)**

Michael Whiteman summarized the complaint.

Mr. Whiteman commented that he was not sure how far the Board would get with the complaint because the monitor's report had not yet been received and the monitor was unable to attend the meeting.

The event took place at about 11:50 p.m. on New Year's Eve, down alongside St. Mary's Church. The complainant saw two men wrestling on the ground. He described one of them being much larger and holding the other in a leg hold. The other one was screaming help. The complainant said that he told the two people to break it up. Somebody else came along, according to the complainant, appeared to be intoxicated, and jumped on the back of the fellow who had the leg hold (the larger fellow), then a woman in the vicinity flashed what appeared to the complainant to be a badge of some sort and said that the fellow who had the leg hold on the other fellow was a police officer and that the complainant should get out of there.

The fellow with the leg hold was an off-duty police officer. Some other officers showed up to assist. After they had subdued the fellow, who was apparently being arrested for public urination, the passer by, who had initially jumped on the back of the police officer and then had changed his position and was purportedly trying to assist the police officer, chased after the complainant and said you wait, he's going to want a piece of you. The complainant says he then went over to other police officers to carry on a discussion of some sort; the discussion was not disclosed. The off-duty officer then came up to him, the one who had been holding the smaller man in the leg hold, according to the complainant, screaming obscenities saying that if ever happened again, he would arrest

him and on second thought he would arrest him anyway and he was given an appearance ticket for disorderly conduct.

The report that the Board received from the OPS, reflects an investigation that was not terribly probing. There is a statement from the arresting officer. However, it appears that there was no interview of the complainant. The report goes entirely on the complaint. There is no interview of a witness who also furnished a written statement, or at least it does not appear that there was, or of any of the other people who were supposedly with the complainant that evening. The complainant had said he had come in a group of 4 or 5 or 6 people. There was no interview that took place of the independent witness, the fellow who came along and was described as having first jumped on the back of the off-duty police officer and then of having switched, except by telephone. There is no explanation of what makes this fellow an independent witness.

Mr. Whiteman commented that he was not prepared, on the basis of what was presented by the OPS and without having received the monitor's report and having an opportunity to review it, to go much further with the complaint. Mr. Whiteman added that he could not tell for certain whether anybody really knows what happened that night or not.

Michael Whiteman requested that the complaint be tabled until the appointed monitor, Joel Pierre-Louis, was available to present his report. Judith Mazza seconded.

Paul Weafer inquired as to when Mr. Pierre-Louis was appointed. It was reported that the complaint was made on February 22, 2005, and that the monitor was appointed on March 10, 2005. Mr. Weafer asked whether or not the Board had any idea why his monitor's report is not done. Barbara Gaige replied that she understood from OPS Detective Kathy Hendrick that Mr. Pierre-Louis was in to review the file the last week of August and had to leave for some reason and said he would be back within a few days. He has not returned to date.

Ms. Perino added that she had receive a call from him, explaining that he was experiencing a backlog, but would be able to complete his report by next week. Michael Whiteman noted that the OPS report is dated August 31<sup>st</sup>. He added that he would not characterize the report as late because it is unclear as to what happened, but presumably there was something going on through the spring and early summer that was delaying the process. It may have been a wait for the disposition of the disorderly conduct charge.

Paul Weafer asked if he thought it would be advisable to get a preliminary observation by the complainant, if the complainant is here, or the independent witness. Mr. Whiteman commented that since the monitor was not present, he was not sure if the Board should proceed in his absence.

Chairperson Gaige asked if there were any other issues that Mr. Whiteman wanted addressed other than having the monitor's report. Mr. Whiteman replied, that at this juncture, it would not be very fruitful for OPS to go back and re-open its investigation. He noted that nine (9) months have elapsed since the event.

Mr. Weafer asked whether the man, who jumped on the back and wasn't assisting the police officer because he didn't know it was a police officer and then he began assisting the police officer, was ever interviewed. Sgt. Kuck responded that he was interviewed by phone. Mr. Weafer commented that, at this point, it is not known whether the monitor had a chance to hear what the independent witness had to say. He added, presumably not. Sgt. Kuck commented that the OPS investigator took notes of the conversation, but they do not have recordings of the conversations.

Judith Mazza asked whether or not the Board knows what makes him an independent witness. According to Ms. Mazza, from the little that she read from the complaint and the report, this person came out of nowhere and jumped on the police officer, then decided he is going to help the police officer and jumped on the other guy. Mr. Whiteman added that it appears that the only reason the complainant was stopped is that the man stopped him.

Ms. Mazza asked why is it that this man's opinion matters. Sgt. Kuck replied that although he doesn't have the case in front of him to refer to, based on there being no affiliation with the complainant or the officer, this would have led the person to be neutral. Sgt. Kuck added that there is no problem or issue with re-opening and re-investigating this complaint if the Board is uncomfortable with the OPS's findings.

Michael Whiteman noted his support of the motion, but added that the motion should include a request to recommence the investigation *de novo*.

Mark Mishler was recognized. Mr. Mishler noted that he represents the complainant. He commented that he appreciates the Board's concerns about the way that the OPS has handled this complaint. He added that he is very disturbed that this is nine (9) months after the complaint was filed, and wanted to clarify and emphasize that his client was never contacted by the OPS to be interviewed. He also added that the complainant had submitted a statement from a witness with the complaint, but that the witness was never contacted by the OPS. He stated that he does not know how that can be considered an investigation of an event that is described in some detail in the complaint and the supporting affidavit from a witness as well. He noted again that it is very disturbing to be here nine (9) months later, and hear these words. He commented that he supports the Board and would encourage the Board to send it back for a new investigation.

Mr. Mishler clarified, factually, a comment made by Mr. Whiteman about an appearance issuance. He noted that the complainant was, in fact, physically taken into custody and brought to the police station. He wasn't just issued a ticket at the scene. He was arrested and taken to the police station. At best, this was all over his effort to just try to help somebody who he believed was being harmed by another person, who he didn't even know at the time. Mr. Mishler commented that it appears there was someone else standing there – a woman who seemed to be somehow associated with the off-duty police officer and, as is alleged in the complaint, this woman had a police badge in her hand and identified herself as a police officer. Mr. Mishler added that he does not believe that she is a police officer, and if that's true, and somehow she had the officer's badge and for

some reason identified herself as a police officer – that is quite serious as well and it appears OPS did not look into that issue at all. There was a brief discussion about this point.

Chairperson Gaige responded that the Board would table its review of the complaint until the monitor is able to be present. The Government Law Center was directed to contact the monitor and advise him that the Board would like to hear the complaint at its next meeting. Chairperson Gaige noted that part of the motion was that there be further investigation of the complainant. She added that if there were other witnesses that were present, those names and addresses need to be given to Sgt. Kuck.

Michael Whiteman then moved that matter be tabled for further investigation by the OPS and for a report by the monitor. Paul Weafer seconded the motion. The motion carried unanimously.

B. *Appointment of two new members to the Committee on Complaint Review for November 2005*

The following members were appointed to the Committee on Complaint Review for November 2005: Jason Allen, Judith Mazza, Herman Thomas, Paul Weafer, and Michael Whiteman.

C. *Policy Review/Recommendations*

Judith Mazza reported that Policy Review Committee did not meet last month – the Chief was unavailable to attend. She noted that the meeting for this month was cancelled due to the holiday.

D. *Report from the Government Law Center (GLC)*

Government Law Center Senior Staff Attorney Justina Perino gave the report.

Status of Complaints

As of the date of the meeting, it was reported that there were 19 active complaints before the Board for review. Six (6) complaints remain suspended, and 175 have been closed. A total of 200 complaints have been filed with the Board since it began reviewing complaints in 2001. Last month, it was reported in error that there was 182 closed complaints and 208 total complaints filed to date. The report should have included 172 closed complaints and a total of 198 complaints filed to date.

Training

It was reported that two members of the Board would be attending this year's NACOLE conference – Chairperson Gaige and Marilyn Hammond – on October 23-26, 2005 in Miami.

## Mediation

It was reported that the GLC sent a follow-up email to Lauri Stewart, mediation consultant from Portland, Oregon, inquiring as to when her findings would be made available to the Board. It was reported that the Center is awaiting a communication back, but would keep the Board informed of any new developments.

## Appointments-Reappointments

It was reported that on September 30<sup>th</sup>, letters were sent to both the Mayor and the President of the Common Council regarding the Chairperson Gaige's and Vice-Chairman Herman Thomas's appointments, notifying them of the need to reappoint Chairperson Gaige and appoint a new member to fill the vacancy to be left by Vice-Chairman Thomas.

It was reported that the Center had received a communication from the Corporation Counsel's Office regarding Jason Allen's appointment. According to the Corporation Counsel's Office, Jason Allen was appointed to fill the unexpired term of Eleanor Thompson, which would have expired this October. Therefore, his term is also expiring in October. The Center drafted a letter on the Board's behalf to the Common Council notifying the Council of the need to reappoint Mr. Allen or select a candidate to replace him.

Chairperson Gaige asked if the Board had heard anything back from Assistant Corporation Counsel Patrick Jordan about the outstanding and suspended cases. Ms. Perino responded that Mr. Jordan had reported to her that he would be meeting with Sgt. Kuck to review these cases. It was reported that these cases include cases from 2002, 2003, and 2004 that require input from the Corporation Counsel's Office. Once Mr. Jordan has an opportunity to meet with Sgt. Kuck, he will report back to the Board, and next steps can be discussed.

Judith Mazza commented that one of the issues that relates to some of the outstanding complaints is the issue of standing, and the Board needs to make a decision as to who has standing in making a complaint. According to Ms. Mazza, the Board has a couple of complaints in which there has been some discussion of this issue and she doesn't believe the Board has ever made a decision as to who can make a complaint and have it addressed by the Board. She proposed to have a Board discussion, a policy discussion, at the next meeting as to who actually has the right to make a complaint that will be dealt with through the process.

Chairperson Gaige asked if there was any objection by anyone on the Board to making standing an agenda item for next meeting. No objection was made. Chairperson Gaige noted that it would be placed on the agenda for the next meeting under New Business.

The Board asked whether or not it would be helpful to have a copy of the ordinance for the discussion. Judith Mazza responded that there isn't anything in the Board's By-laws about standing – the Board has never addressed it before.

E. *Report from the OPS*

Detective Sergeant Eric Kuck had nothing new to report.

V. **Public Comment**

The floor was opened for public comment.

Dan Jabonowski was recognized. He lives in Loudonville and is with the Coalition for Police and Government Accountability. They had filed a complaint in July and they were wondering what was its status. Chairperson Gaige replied that the Board is still trying to come up with a reply, but that the Board has been advised by the Corporation Counsel that the Board really can not look into these complaints. Judith Mazza commented that this is the issue around who has standing to make a complaint and are they specific complaints or not. She noted that there is disagreement on the Board and there is certainly disagreement from Corporation Counsel to the Board about that. At this point, since we have no agreement, we have discussed it, but haven't done anything as far as moving it or made any formal decisions regarding it. It was noted that the complaint went to the OPS, but the Board does not know where it stands with the OPS.

Mr. Jabonaski offered the following comments:

The main reason I got involved with this issue stems from December 31, 2003. David Scaringe was my daughter's fiancée. Policy and procedures were broken that evening. As far as I know, there has been no one held accountable. Kinsella, the special prosecutor, even he made a statement that there was wrong doing by the APD. The grand jury voted – 7 members of the grand jury voted not to indict the police officers, but 8 members of the grand jury voted to indict the police officers. Which leads me to believe that the majority of the voting members thought that there was something wrong there and needed to be addressed. It wasn't through the court system, it should have been addressed through the APD. Internal investigation, apparently did nothing. I went to a Common Council meeting. When I first started going, I really thought the Common Council was there for the people. Now I know they are not there for the people. They are there as a political organization, and that's all. That is the reason why I have come to this Board because I am hoping that, unlike the Common Council, you people are here for the good of the general public.

Chairperson Gaige commented that when it was returned to the police department for action, it then becomes a personnel issue and the Board is not privy to information regarding personnel issues. Once the grand jury refused to act on it, and sent it back to the department, it then becomes a personnel matter.

Mr. Jabonaski read directly from the Albany Police Department Policy and Procedures Manual, page 211 "openness of operations – law enforcement operations in a free society must not be

shrouded in secrecy. It is necessary that there be full public disclosure of policies and an openness in matters of public interest.” This has been a shroud of secrecy. I really believe, and I feel like I’m living in Iraq. Pursuit situations – this was the case on December 31st, as it was the same case just several weeks ago, a police chase that ended in the serious injury of a neighbor of mine. Two blocks from my house. One hundred yards from St. Gregory’s School for Boys. Pursuit is the chase and hopeful apprehension of a suspect for an offense, and then in big italics, pursuit situations are high risk, extreme caution is necessary. Officers involved in a pursuit must continually question whether the seriousness of the violation reasonably warrants the continuation of this pursuit. Pursuit shall be discontinued when there is an exceptional danger to the public or the pursuing officers. Officers must consider present danger, length of pursuit.

On New Year’s Eve, the length of pursuit was over 5 miles. I believe it lasted about 7 minutes. That in my opinion is crazy. Driving through the streets of Albany at 70-80 miles an hour on New Year’s Eve, there is something wrong with that. The pursuit that ended in my neighborhood, all the way from Albany, miles away, and ended in front of St. Gregory’s School for Boys. It could have been a bus, children on that bus. The possibility of identifying the suspect at a later time and determining whether or not to consider pursuit. Mr. Reed was arrested; he was the fellow they were chasing that New Year’s Eve. He was arrested later on, with no incident. There was no reason for the pursuit in the first place, let alone shoot 7,8,9 shots. I don’t know how many shots were fired on the corner. I don’t know if you have ever stood on that corner, but you ought to do it some time, just stand on that corner, at the corner of State and Lark at 4:30 in the afternoon, let alone New Year’s Eve. Just imagine, anybody, not a police officer, but anybody taking 7-11 shots. Somebody had to be killed or injured. There was another person injured also. He was lucky, he got away with just a graze. I wonder where all the other bullets are. People three or four blocks down on State Street could have gotten hit by bullets.

Again, in italics (*referring to the police department’s procedures*) it says all officers involved in a pursuit will be held accountable for the continuation of the pursuit when circumstances indicate the pursuit should have been discontinued. I just want you to take into consideration that this was a very serious matter on New Year’s Eve, and this last one, and it does seem to be systematic of the police department. I would hope that you people would at least try to get to the bottom of this matter.

Another member of the Coalition for Accountable Police and Government – Betsey Mercogliano, who was also present when the complaint was filed in June, was recognized. Ms. Mercogliano offered the following comments:

I am in complete support of Mr. Jabonaski. I would also like the Board to get to the bottom of this. I understand you guys told us that when we filed you were in a corner. I would ask, as a member of the coalition, that you at least respond in writing to whatever is going on. Its been 4 months. If you are in discussion, in debate, or being told you can’t talk, I hope that we are not in a situation in our city where you can’t at least let us know, in writing, that you are under discussion, that you are not in agreement as a Board, and that the Board needs to hash this one out. An interesting feeling inside of me thinks that Corporation Counsel is telling you that you can’t talk. I hope that is not the case. Given that the Corporation Counsel advises all the city

boards, are they being a part of the problem? I am asking as a member of the Coalition, that you at least respond, and maybe, Ms. Mazza, what you put on the agenda for next month is the appropriate place for us to be able to hear how you are hashing this one out. If this is one of the cases that is suspended, because you need to hash it out. As I said, when we filed our complaint, you said you didn't know whether you could look at this, which I understand. My point was where do we go with this? What does somebody do? We've taken it to the Common Council, we've taken it to you. Where does a citizen go with this kind of complaint? If we don't have checks and balances in our city, what do we do? I would really appreciate a response.

Lynda Porter was recognized and expressed her sympathy to Mr. Jabonowski and his daughter for his loss. Ms. Porter offered the following comments:

I want to commend all of you, who I believe are volunteers on this Board, for taking on such a tough job. I'm sure there are a lot of cities outside of Albany that don't have this, and I am very excited to find that it exists. On the flip side, I filed a complaint back in April when a police car, unwarrantedly pushed me off the sidewalk. I think you probably remember the case. I just want to say in respect, I guess I wrote this down when you were talking about the Livingston student whose father wasn't here, that I was not notified. I was notified when the meeting was cancelled in August, I believe, but I was not notified that my case was going to be addressed in September, I guess. I was not notified and neither was I given anything in writing after you decided that it was not an Albany policeman who had done it. I question that decision, but I was not notified in writing that it was going to be on the agenda nor was I notified afterwards how you came to your decision. I believe, too, it should be put in the person's hand who has filed the complaint. Chairperson Gaige responded that there was a clerical error in September, which resulted in notices not being sent out - not only for the complainants, but also for the police department, and the monitors. Ms. Porter asked if the Board normally notifies complainants of its decision after it has been rendered because she hadn't received anything from the Board. I'm going to write a letter to volunteer to help you guys in anyway that I can. I just think this is a terrific idea and it is absolutely necessary.

Ms. Perino explained that Ms. Porter had contacted the Board and asked to speak with Chairperson Gaige, and that Chairperson Gaige requested that Ms. Porter's findings letter not be sent until she had an opportunity to communicate with her. Ms. Perino apologized for the delay, and reported that the findings letter had been mailed and that Ms. Porter should expect to receive it shortly.

Paul Weafer commented that he was not present during the review of Ms. Porter's complaint in September, and asked whether or not the Board determined what agency was involved in the incident, since it was not the Albany police department. Chairperson Gaige responded that OPS could not determine where the unmarked car came from - it could have been AFT, FBI, Federal Marshalls. It did not fit the description of the Albany Police Department's unmarked cars because Albany cars have red and white strobes on the front and they operate on one switch. The red lights can be operated without the white but not vice versa and the car she saw had white strobes that pushed her off the street. Other agencies don't check in with dispatch or with the officers at the scene.

Dr. Alice Green was recognized. She offered the following comments:

I want to comment briefly on the discussion regarding the snowball case. I was happy to hear the comments of Mr. Whiteman. I believe a really serious problem in our community is that a lot of kids are brought into the system prior to the arrest situation and charged with obstruction of governmental operations. When they sit there hanging around, they don't realize that when they are waving their hands or saying something to a police officer that they are violating any kind of law. It is a serious problem because kids are brought into the system and often times it affects their schooling, their jobs. Some of them are actually convicted and this follows them for the rest of their lives. It's very serious. I think this Board might want to think about how to work with the department in addressing that problem. Something needs to be done to sensitize police officers to this problem. The Board might also want to look at any kind of stats. I don't have any stats on it, but I assume that a lot of young, particularly black males are arrested and charged with resisting arrest or obstructing governmental operations.

In terms of the policy review representation and the committee that was set up. I know we pushed very hard to have that issue on the agenda so that the Board would look at policy and make some recommendations. I am very disappointed that after, I don't know how many years now, we've had it on the agenda and there is a policy review committee. I still have not seen anything that has come out of the committee other than a meeting with the police chief a couple of times and talking about key issues. There are issues that have policy that have not been dealt with. We go back to the profiling issue again, and the department has never made a definitive strong statement of opposition to that policy. The other thing is, when you are discussing that you will have the standing issue on the agenda next time, I really think that one of the problems here that I pointed out, probably years ago, is that the Board still has not wrestled with and made any decisions about what its role is to be when there are police uses of deadly force. I've talked about that many, many times, but you feel very uncomfortable about it and now you're talking about standing, but you still haven't dealt with that particular issue and I think it is very important.

The other thing is that we did get a complainant who stopped into our office at the Center for Law and Justice, and complained that she had gone to the public safety building to file a complaint against the police and they took an oral complaint. They did not even tell her that there was a complaint form to be used. It is my understanding that the complaint, in the ordinance, is described as a written statement. I'm wondering if that is true. They took an oral complaint and did not give her a form, so they were not able to make that written statement. What happens to any of those verbal complaints that are made – does the board actually get a copy of them and do they follow through the same way as they do a written statement?

Chairperson Gaige asked the OPS if it received verbal complaints, how those complaints are handled, and why the Board doesn't see those complaints. Sgt. Kuck responded that the complaint is handled in the same way as those received from the Board through the Government Law Center. Sgt. Kuck stated that the OPS investigates them the same way, it just doesn't go through the Government Law Center, it comes directly to the OPS. Chairperson Gaige then inquired as to why the complaint doesn't come to the Board. Sgt. Kuck replied that it is not a civilian complaint case. Sgt. Kuck explained that if it is verbal, then it is not a civilian complaint

typically because people, for whatever reason, don't want it to be or they just prefer us (*the OPS*) to take care of it ourselves. Dr. Green commented that in this particular case they did want to have a written complaint – that's why they came to her office.

Concerns were raised as to how the department handles these verbal complaints. Judith Mazza commented that any verbal complaints that have been made, the Board does not know about them, nor does it hear about them or receive a report on them. According to Ms. Mazza, the only complaints the Board deals with are those that are written and it doesn't matter the point of origin, whether they started at the police department or the Government Law Center. The only ones the Board sees, reviews, and get reports on are the ones in writing.

Dr. Green asked whether the OPS should at least inform the complainant that they can submit the complaint in writing. Sgt. Kuck responded that when a complainant goes to the OPS, he or she is explained the options. The policy is that the complainant should be told. However, it is a problem if this is not being done.

Chairperson Gaige offered the following comments:

What if someone isn't offered the opportunity? If I came in and said I want to make a complaint and you sit down and interview me and don't say to me, alright you can put this in writing also, if you never say that to me and you have taken notes, and I don't know that there is another process or something, if you don't give that to me, does that mean that I didn't want it or do you assume that I didn't want it? This is the problem because people don't have knowledge that there are different routes, it's not explained to them, they don't know they have this other option to go with, having a written complaint filed.

Sgt. Kuck offered the following response:

I can only speak for my office. When people come in and they want to make a complaint, we explain all the different procedures to them and let them make their decision on how we will follow up. It's not up to us to make that decision for them. Isn't it policy that they are supposed to be told no matter where they go? That's correct. But they're not. That's why I'm saying I agree with you 100%, that is a problem, because they are not being told.

Paul Weafer asked how many people actually come to the Government Law Center to fill out the complaint there, or is it more the majority are actually mailed to the Government Law Center. Ms. Perino responded that the majority are mailed. Ms. Perino explained that the Center receives quite a few calls from complainants, and explains to them if they wish to file a complaint, they should do so by filling out and mailing back the complaint form. She added that complaint forms are forwarded to complainants who request them. She noted that the Center does not take oral complaints, explains that the complaint should be in writing, and directs complainants to organizations that are willing and able to assist the complainant in filling out and filing his or her complaint.

Paul Weafer asked Dr. Green if she has complaint forms in her office and assists people in helping to fill out the complaints. Dr. Green responded that she does. Mr. Weafer then asked

how soon after this oral incident the person come back and told her that the police department didn't take a written statement. She replied that she didn't know the exact timing, but soon thereafter. He then asked if, at point, her office helped the complainant fill out a written complaint. Dr. Green responded that the complainant asked what he or she should do, if someone could supply a form and assist in completing the form. Mr. Weafer asked if Dr. Green knew whether the individual filled out a written complaint. Dr. Green commented that the complainant is in the process of doing so.

A comment was made that the crux of the problem is the uniformity of procedure throughout all the stations, and if someone wants to make a complaint and it sounds like a citizen complaint, it ought to be in writing and the police officers ought to tell the people that. Sgt. Kuck responded that's correct and believes that is what is dictated in their policy as well.

Chairperson Gaige commented that what concerns her is that the statistics mean nothing. She added that if the Board is saying it had "X" number of complaints in this quarter, the Board does not have the complaints that are made verbally, so it has no clue as to how many real complaints there are.

Sgt. Kuck responded that the ones that the Board does not get are administrative complaints. According to Sgt. Kuck, all the civilian, like our C cases, are the ones that the Board and the OPS both work on. Chairperson commented that if somebody didn't put it in writing, if they came to the OPS and gave their complaint verbally, the Board wouldn't see the complaint. Sgt. Kuck responded yes. Chairperson Gaige added that the Board doesn't know how many of those are out there. Sgt. Kuck explained that in their quarterly reports, the OPS gives an overall accounting of how many complaints were received, a portion of which go through the Government Law Center and the CPRB and the rest of which are administrative complaints.

Sgt. Kuck was asked if the OPS would take a complaint orally without giving the opportunity to a person to see how the OPS types that complaint up and signs that complaint themselves. Sgt. Kuck explained that the OPS explains the options and basically gives complainants the pink form and they can fill out the complaint, go to the Government Law Center and have it filed. He added that the OPS can take care of it in a written manner through their office, depending on if it's a complaint of rudeness or something of a more minimal nature, we can also have it taken care of with a supervisor inquiry, where the supervisor addresses the officer and we keep those reports on file as well.

Marilyn Hammond inquired as to what an administrative complaint is. Sgt. Kuck explained that it is basically anything that would not go through the CPRB. Sgt. Kuck was asked whether an administrative complaint means it goes to the supervisor and does not get investigated. Sgt. Kuck responded in the negative - the OPS investigates the complaint whether it does go to the supervisor or not.

Chairperson Gaige commented that there is no real difference then between the complaints that are taken orally and the complaints that are written and come to the Board other than the way they are presented to the OPS. Sgt. Kuck responded that this was correct. Chairperson Gaige noted concern, and offered the following. She explained that one of the OPS detectives had told

her that a person came in to make a complaint and the person had a relative who had a complaint the month before. The detective started to take the report. The person said she would like it to come to the Board. The detective said something to the effect of “well then it’s going to take longer, but you have to fill out this form.” Apparently, the offer to fill out the form was not made until the person at some point during the interview said I want it to go to the Board, and then she was told that it was going to take longer if it had to come to the Board. Chairperson Gaige commented that she has a problem with this scenario, and added that this is something that the Board and the OPS ought to talk a little more about.

A woman was recognized. She asked why the father and the son who filed the snowball complaint were not present at the meeting. She added that if they were notified that this was coming up tonight, and given that they were bumped numerous times, how much follow through is made. She added that she’d be quite upset if she found out the case was handled without her being here. Chairperson Gaige commented that the complainants were notified this month. She noted that it is not unusual for complainants not to come to the meetings. In fact, it’s more usual that they don’t come than that they do come.

Ms. Perino was asked by the Board to explain the notification process for the benefit of the public. Ms. Perino explained that the Board notifies the complainants at all stages of the complaint review process to make sure that they are informed about what is going on in relation to their complaints. She noted that it is very rare for a complainant not to receive notification. She explained that the law does not require notice, but that the Board goes above and beyond what is required by the statute. She added that complainants and officers are invited to attend meetings because the Board has taken the position that is very important for the complainant and anyone involved in the process to receive notice. Before any meeting, the complainant, officer and any monitor associated with the case receive a written notification. More often than not, if letters are returned, the Center makes an effort to locate the last know address. This process may include contacting the police department and going through the telephone book. The Board takes several steps to make sure the parties involved in the complaint are present at the meeting. She reported that this particular complainant did receive written notification and they have throughout the process.

Mr. Jabonaski was recognized and offered the following final comments: The last police chase that ended near St. Gregory’s School for Boys – the fellow, Mr. Sims, was in the hospital for almost two weeks, he had to go back again the following week, they’re not sure they can save his leg. The impact was so severe that the clutch went right up through his leg and foot. These chases end badly. They always end badly. In that particular case, there was not even a reason for an arrest. She just happened to be in the wrong place at the wrong time, and my understanding is that she may have been a mental patient or some other thing and she flew the coop. This is what I would envision - if they followed her, chased her for three blocks through the city of Albany, and said this is crazy, we have her license plate number, we’ll just stop right here and just go over to her house in a couple of hours and pick her up. It wouldn’t have been a problem because they had all that information.

**VI. Adjournment**

A motion was made to adjourn the meeting by Paul Weafer. It was seconded by Marilyn Hammond. All approved. The meeting was adjourned at 7:25 p.m.

Respectfully Submitted,

Ronald Flagg  
Secretary