

**City of Albany**  
**Citizens' Police Review Board**  
**Albany Law School**  
**80 New Scotland Avenue - Dean Alexander Moot Courtroom (Room 421)**  
**November 14, 2005**  
**6:00 p.m. – 8:00 p.m.**

**Present:** Jason Allen, Beresford Bailey, Ronald Flagg, Barbara Gaige, Judith Mazza, Paul Weafer, and Michael Whiteman.

**Absent:** Marilyn Hammond

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

Chairperson Barbara Gaige called the meeting to order at 6:11 p.m. A quorum of the Board was present.

**II. Approval of the Agenda**

The agenda was reviewed. Beresford Bailey moved to accept the agenda. Paul Weafer seconded the motion. The motion carried unanimously.

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

The October 2005 meeting minutes were reviewed. Paul Weafer moved to approve the minutes. Ronald Flagg seconded the motion. The motion carried unanimously.

**IV. New Business**

A. *New Complaints*

1. New complaints received since the October 2005 Meeting

Chairperson Gaige reported that two (2) new complaints had been received by the Board since its October 10, 2005 meeting. Judith Mazza read a summary of each complaint.

**CPRB No. 29-05**

The complainant alleges that while she was sitting on her front porch, a police vehicle pulled up, two uniformed officers exited the vehicle, and proceeded into her residence. The complainant alleges the officers entered her home without a warrant or her consent. Upon asking the officers what they were doing in her home, they responded “get her out of here and cuff her.” The complainant alleges that she informed the officers that her dog was loose in the house and that her infant grandson was asleep. The complainant claims the officers refused to allow her to put the dog away, and when the dog came down the stairs, the officer “without any reason, shot and killed the dog.” The complainant alleges

that the officer fired two shots while her infant grandson was asleep in the next room. The complainant reiterates that she informed the officer that an infant was sleeping in the next room. The complainant feels her constitutional rights were violated by the officers' illegal entry in her home without a warrant, and alleges that the officers should not have fired a weapon in a small space knowing an infant was in close proximity.

*A monitor was appointed to this complaint.*

**CPRB No. 31-05**

The complainant received a phone call instructing her to go to her mother's residence because her mother and brother had been arrested and no one was home to watch the children. Upon arrival, the complainant saw her nephew's mother, who claimed that an Albany police officer had fired his gun at her mother's dog while her seven-month-old nephew was asleep in the next room. The complainant alleges that while she was discussing the events with her nephew's mother, an Albany police officer approached her and stated that he was arresting her for disorderly conduct. The complaint claims the officer then "cuffed her and dragged her down the street." She alleges that she requested that the officer slow down and handcuff her in the front because she had a bad ankle and shoulder. According to the complainant, the officer refused to comply with her requests. As the officer was putting her into the patrol car, the complainant claims s/he kicked her ankle repeatedly and began to laugh as the complainant cried from the pain. The complaint alleges that the trauma and injury that the officer caused resulted in her going to the Emergency Room. The complainant states that she went to the Public Safety Building to file a complaint and that a Professional Standards officer took her complaint, but did not provide her with a Citizens' Police Review Board complaint form or inform her of the existence of the Board.

*A monitor was appointed to this complaint.*

Ms. Mazza noted that a monitor had been appointed to CPRB No. 28-05, but a monitor had not been appointed to CPRB No. 27-05. Both complaint summaries were read at the October meeting.

2. New complaints for review

Chairperson Gaige reported that four (4) new complaints were on the agenda for review.

**CPRB No. 10-05/OPS No. C05-172** (Presented by Michael Whiteman)

Michael Whiteman summarized the complaint.

The complaint was filed by a mother on behalf of her son. The complainant's sons were part of a crowd in a location where a fight had broken out. Police responded to the incident. The responding officers attempted to question those individuals present. The

complainant's son was one of the individuals detained for questioning. A witness to the incident contacted the complainant and advised her to go to the scene.

The complainant alleges that she was the subject of both physical and verbal abuse. She alleges physical abuse because she was pushed and shoved by officers at the scene, and verbal abuse because the police officers were shouting at her and using vulgar and obscene language.

Mr. Whiteman reported that a consistent story given by the police officers at the scene was dramatically different than the story given by the complainant. According to the officers, the complainant was agitated and shouting at them, and used the language that she claims was used by the officers against whom the complaint was made.

The Office of Professional Standards believes that it is possible that the complainant was being verbally abusive. According to the story of the police officer with whom the complainant had the most contact, the complainant was not shoved. Rather, the officer did walk her, by her bicep, away from the area.

The complaint included the events that later took place at the South Station. The complainant claimed the police officers continued to be verbally abusive. According to the complainant, she asked the officer to give her his/her name and badge number. However, the officer refused to give this information despite a number of requests. Mr. Whiteman reported that the complainant appears to be confused as to whether the desk sergeant was the arresting officer or the sergeant at the scene.

Mr. Whiteman explained that the stories of a witness and the complainant appear to conflict. The witness stated that the officer – the desk sergeant – did provide a name and badge number. The complainant claimed that when she was out in the lobby, the arresting officer came out, identified him/herself as “sergeant,” and gave a name and badge number.

According to Mr. Whiteman, it appears that the complainant was having difficulty identifying the police officers with whom she had contact at the scene and later at the South Station. Mr. Whiteman added that it is not clear from the complaint, the investigative notes, or the statements whether the complainant was aware that she was talking to the same police officer or different police officers.

Mr. Whiteman reported that the OPS found the initial abusive conduct to be *unfounded* – in that the events either did not occur or were misconstrued. It doesn't appear, from the record, that the claim of verbal abuse could be sustained.

He also reported that the OPS found the claim of force to be *exonerated*. Mr. Whiteman noted that the OPS could have made a finding of *unfounded* based upon the fact that the complainant was agitated, and it is quite possible that the police officer who encountered her had to use some force to remove her from the immediate vicinity.

He further reported that the OPS made a finding of *not sustained* with regard to the police officer's failure to promptly and adequately identify him/herself. There seems to be a factual dispute between the police officer and the complainant. The police officer did identify him/herself even if it was not done promptly.

Mr. Whiteman concluded that he did not find anything in the report to disagree with the OPS or to send the complaint back for further investigation. According to Mr. Whiteman, OPS's inquiry and investigation was adequate for the purpose. He then moved to sustain OPS's conclusions. Paul Weafer seconded the motion. The motion carried unanimously.

**CPRB No. 11-05/OPS No. C05-173** (Presented by Jason Allen)

Jason Allen summarized the complaint.

The complaint was filed on March 29<sup>th</sup> of this year. On March 5<sup>th</sup> the complainant was leaving a house party with two other women. She alleges a police officer responding to a call about the party exited his vehicle aggressively. She claims that after the officer searched the trunk of a gentleman, the officer turned his/her attention to the crowd on the street. According to the complainant, the officer approached her friend and violently pushed her with his/her baton. The officer then approached the complainant.

The complainant alleges that the police officers were not there to protect, but rather to intimidate the members of the community. The complainant states that she wants the officer to be disciplined and trained.

Mr. Allen reported that he looked at the call records and the records maintained by the OPS. He explained that dispatch received a call that there were 500 kids on the street, and there was a report of a gang fight. When the officers arrived, they estimated that there were 100-125 people on the street and around the house.

As to the claim that an officer searched the trunk of a gentleman, the officer stated that the search was based on his/her observation of suspicious activity on the part of the gentleman. The officer had observed the young man open and close his trunk, and he/she suspected that there might be weapons in the car. Therefore, a search was conducted.

The police officers felt that given the crowd, an overwhelming situation could have gotten out of control. One officer admitted to using a baton against the complainant and her friend.

According to Mr. Allen, the only dispute involved the comment that the complainant alleges the officer made in referring to her as "Mrs. New York City." Mr. Allen added, however, that the comment could not be tied. He reported that the OPS investigation consisted of three statements from police officers. OPS had tried on three occasions to

contact the complainant's friends. The neighborhood was canvassed. Besides a vacant apartment, most residents said that they did not witness the incident. One witness who did speak with the OPS stated that the street looked like Times Square.

Mr. Allen reported that the OPS found the allegation of rudeness/unprofessional conduct to be *unfounded*<sup>1</sup> and the allegation regarding the use of the baton to be *exonerated*.

Mr. Allen noted that a monitor had been appointed to this complaint, Albert Lawrence, who concurred with the findings of the OPS. Mr. Lawrence was recognized. He commented that it would be fair to say that there is no dispute concerning the facts. The only dispute was, from the complainant's perspective, the police officer's feeling that he/she could push the complainant and her friend across the street.

Mr. Allen commented that the use of the baton was not excessive given that no one was hurt, no one claims to have been injured, that there was a crowd of more than 100 people, and that the officer's perception of the incident was that the violence could have escalated.

Based upon this, Mr. Allen moved to concur with the findings of the OPS.

Ronald Flagg noted concern with a common theme that he has seen. According to Mr. Flagg it seems as though when a citizen asks a police officer for his/her name and badge number, the common response and attitude from the officer is that he/she resents being asked for this information. Mr. Flagg stated that this theme exists in many reports regardless of where the contact occurred.

Chairperson Gaige reported that she recalls a policy from the department that requires police officer identification when requested.

Chief James Turley was recognized. The Chief reported that the policy had been changed to require officers to verbally identify themselves upon request.

Mr. Flagg commented that this issue seems to still be a sensitive issue, and he is not certain why.

Judith Mazza commented that it may be a threat to the officers. She added that there should be an ongoing reminder to police officers that they must do this. It is a respect issue.

Mr. Allen reported that in this case, it was not an issue. The complainant said she knew the officer's badge number.

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<sup>1</sup> This allegation was reported in error. The OPS found the allegation of rudeness/unprofessional conduct to be *not sustained*.

Paul Weafer then moved to second Jason Allen's motion. The motion carried unanimously.

**CPRB No. 16-05/OPS No. C05-205** (Presented by Judith Mazza)

Judith Mazza summarized the complaint.

The complainant had gone down to South Station very upset. She wanted to file a complaint of harassment against her ex-husband. During the course of a discussion with the police officer on duty, the complainant ended up in an argument with the police officer. The complainant alleges that she was assaulted by the officer, had blacked out during the assault, and was falsely arrested.

Upon an interview of the complainant, she stated that she had gone to South Station to ask about reporting harassment and obtaining an order of protection. She had an ongoing dispute with her ex-husband and was trying to obtain custody of her children. One police officer at the desk gave her a Domestic Violence Report, a pen, and told her to write her complaint on the bottom of the report. She and the officer continued a discussion about her complaint, but the officer told her that there was nothing that he/she could do then – that it would have to be handled in family court.

The complainant became agitated. The officer came out from behind the counter and tried get her to leave the station. In the process, the complainant had a pen and is alleged to have been making stabbing gestures. The officer tried to escort her out of the station, and indicate that she did fall against the wall because she was agitated. The officer was trying to get the pen away from her. There is no indication that she was injured; there were no scrapes or bruises. There is no indication that she blacked out and there is no one that could substantiate this claim. During the arresting process, the complainant did fall against the wall.

The OPS found the allegation regarding use of force to be *unfounded* – where the act or acts complained of did not occur or were misconstrued. There was some force used by the officers because she was being belligerent.

As to arrest authority and procedures, the OPS found *exonerated* because the complainant was threatening the police officer with a pen and she would not leave the station.

According to the appointed monitor, Albert Lawrence, the desk sergeant came into the lobby after the arrest took place. There was a woman sitting in the lobby when the complainant arrived, but she left during the incident. No one knows who she is; she couldn't be identified.

Ms. Mazza noted concern that at least one of the officers has had contact in the past with a person seeking help – someone who is emotional, agitated and clearly a problem. This

incident escalated to the point of an arrest. She added that the rules were probably followed, but this incident shouldn't have happened. This woman was there not because she did anything criminal; she was there for help.

She commented that there should be training, and would like to move to accept the findings of the OPS with a statement about further training in situations where the officer is dealing with a person who is emotionally disturbed.

Paul Weafer moved to accept the findings of the OPS with a recommendation that training be afforded to officers as to how to better handle these types of situations.

Michael Whiteman commented that with training, the officers might be better equipped to deal with diversionary tactics – techniques for turning and better handling these types of situations. Mr. Whiteman added that he wouldn't be surprised if there are police officers who would like to know ways to better handle these situations. He concluded that he would like to see a renewed expression of constant training and involvement in how to turn around situations like this one so that they do not take a bad course.

Ms. Mazza acknowledged that the police officers in this situation could not do what the complainant asked. Her concern is how to get a complainant like this from A to C without escalating the situation. She added that this can be done with training as an ongoing process.

Jason Allen commented that there could be follow-up by the policy review committee on training. He added that there should be an emphasis on the quality of training.

Chief Turley commented that this type of training is given in tactical training school. He added that he would check, prior to the next meeting, to see if the officers involved in this complaint attended the training.

Paul Weafer's motion was then seconded by Ronald Flagg. The motion carried unanimously.

**CPRB No. 19-05/OPS No. C05-124** (Presented by Paul Weafer)

Paul Weafer summarized the complaint.

This complaint originates out of a situation in Pine Hills across from the Madison Avenue police station. The owner of a bed and breakfast called police because she believed that her premises were being burglarized by three males. She gave descriptions of the males.

Three males fitting her description were located across the street at a bar. One of the males allegedly spit at the police officers. He claims, however, that he spit around the officer because he had a cold. The officer alleges that he heard the young man clear his throat as if to spit at him again.

The complainant alleges a police officer slapped him on the side of the head and stated “don’t ever spit at me again.” It is alleged that a woman leaving a beauty parlor stated to the officer “was that necessary to do that” to which the officer responded “mind your own f\*ing business.” When all was said and done, the officers found box cutters and masking tape in at least one of the young man’s pockets.

The owner of the bed and breakfast did not want to press charges and identify the males out of concern for her safety. Her bed and breakfast had been broken into five days earlier and she was concerned that she would be placed in an unsafe situation

According to the appointed monitor, Richard Lenihan, one witness outside of the bar observed the conduct of the police officer and didn’t see the officers do anything inappropriate. One male and his mother did not show up for their interview at the OPS. A second male with his mother present acknowledged that they had attempted to enter the bed and breakfast, that they had been there at an earlier time, and stated that he thought the police officer slapped the one male twice. According to the witness, he did not see the police officer slap the young male.

The last element of the complaint was that the police officer, when he/she let the males go, told them that he/she would beat their a\*s if he/she saw them again. Based upon the Mr. Lenihan’s report, the witness did not hear the officer make the comment, and it is unclear whether the witness heard the officer make a comment to the woman leaving the beauty parlor. Mr. Lenihan commented that the witness came outside of the bar to smoke a cigarette, was there 30-40 minutes, and didn’t see anything. He noted that there was no woman fitting the description leaving the beauty parlor that day.

The owner of the bed and breakfast could see the incident from her porch, and stated that she saw one of the males either throw his hands in the air or make threatening gestures.

The appointed monitor, Richard Lenihan, noted that the OPS detectives went to the bed and breakfast and looked out the window. It was concluded that the observation was lengthy, but could have been made from there.

Mr. Weafer noted that the monitor found the complainant’s claim of spitting because he had a cold to be disingenuous. The monitor found that the male had spit more than once. According to the monitor, the OPS did due diligence in interviewing a number of witnesses and canvassing the area. The description given of the males fit these three males, who were across the street.

Mr. Weafer then moved to uphold the finding of the OPS of *unfounded*. Jason Allen seconded the motion. The motion carried unanimously.

B. *Meeting Schedule*

It was decided that the Board's December meeting would be moved from the second Monday, December 12<sup>th</sup> to the first Monday, December 5<sup>th</sup>.

C. *Appointment of two new members to the Committee on Complaint Review for December 2005*

The following Board members were appointed to the Committee on Complaint Review for December 2005: Jason Allen, Barbara Gaige, Marilyn Hammond, Judith Mazza, and Paul Weafer.

D. *Policy Review/Recommendations*

Committee Chairman, Jason Allen, gave the report. He reported that he, Chairperson Gaige, and committee member Judith Mazza met with the Chief prior to the meeting. He noted that the committee had received several inputs from the Chief, but need time to digest them to give a proper response to the coalition complaint. He added that the process continues to move forward.

He commented on the pursuit that had taken place in Loudonville, and raised the comment made by Dr. Alice Green at a previous meeting. He reported that Chief stated the incident is still being investigated by the OPS, and that the Board would keep the community informed of any developments.

Chairman Allen commented on a second issue raised by Dr. Green – the department's racial profiling policy. He inquired as to whether the issue for Dr. Green was the existence of a policy. Dr. Green was recognized, and noted the issue was that the police department has never made a statement against racial profiling. She added that at the time the department was working on the policy, it agreed to make a public statement about the policy. She added that the reason she is concerned about the policy is the fact that the department has said in the past that it is collecting data, but to date has not released the data. She added that the department claims to have the data, but doesn't know how to release it and in what format it should be released.

Judith Mazza commented that the data should be presented to the Board at a meeting so that it could be discussed in a public forum, and suggested writing a letter to the Chief requesting the data. The Chief commented that he would like to explain the data when it is released. The data includes racial demographics relating to arrests, encounters, field interviews, traffic tickets, etc.

Jason Allen asked whether the Chief could commit to reporting the data monthly or quarterly.

Paul Weafer commented that this data raises FOIL questions – whether this is a public record, how much will it cost, and will the appropriate officials at City Hall be aware of this information, which is something that the Corporation Counsel’s Office should look into. The Chief commented that the important question is the format because the department is not required to create a record that it doesn’t normally keep. The Chief added that he would like to discuss with Dr. Green what the department has and what records it prepares, and present to the Board what the department has and what it prepares. Knowing what the statistics are and how they are presented is the discussion he would like to have with Dr. Green.

Chief Turley would like to show the Board what data is maintained, and added that the Department would not be required to produce a record that it does not regularly keep. He agreed to make a report to the Board about the data at the next Board meeting.

E. *Discussion of “Standing”*

Barbara Gaige led a discussion of who has standing to file a complaint. Judith Mazza began by explaining that this issue has come up with respect to a couple of complaints over the last year. The complaints were not reviewed by the OPS, and did not come back to the Board. The response was that the complainants did not have standing. According to Ms. Mazza, a statement was made, that she doesn’t recall being made by the Board, that unless a person was directly involved with a particular situation at a particular time with particular officers, then the person could not make a complaint that would come back to the Board. One complaint was made by the Coalition for Accountable Police (CAPG) and Government and the other complaint was made by Dr. Green.

She added that she would like the Board to make a decision as to whether or not people, who are citizens and taxpayers, have a right to complain about police process and procedure in situations that happen, which impact the public in a way that is bigger than a particular incident with a particular person. She referenced the complaint filed by the CAPG, and stated that the Board should look at whether or not this is a legitimate format for a complaint to come to the Board and what the Board should do. She commented that the Board should make a decision as to what it is going to do. She noted that she had never made a decision concerning standing. She feels that a legitimate complaint about police department policies and procedures should go to the Board.

Jason Allen commented that the Board should look at these issues on a case-by-case basis. He noted that it is hard to write a firm rule on standing.

Ronald Flagg inquired as to who decided that there was no standing. Ms. Mazza responded that the Board’s counsel sent the Board a letter, advising that it could not look at the complaint because the complainants did not have standing, and, therefore, did not have a legitimate complaint.

Corporation Counsel John Reilly and Assistant Corporation Counsel Patrick Jordan were recognized. Mr. Jordan commented that this was his office's recommendation. He added that the office does not make the Board's policy, but rather provides the Board with an interpretation of the policy and what the outcomes should be.

Michael Whiteman made a few observations. He commented that it is useful to distinguish standing and what constitutes a complaint about police misconduct. He noted that he finds no textual support in the statute for the proposition that standing should be read narrowly. He added the drafter adopted a passive voice in writing the statute. He found that Section 42-332 supports a broad definition of standing and who may bring a complaint. He noted that the statute does not talk of someone who has been injured getting some kind of redress. Rather it talks about a mechanism to fairly review the conduct of law enforcement officials. It says that the conduct of law enforcement officials is subject to public, departmental, and executive scrutiny and accountability. It speaks about improving the relationship between the community and the police department, not necessarily between someone who individually feels that he/she has been aggrieved by a police officer. He noted that Section 42-342, the section that deals with filing a complaint, is where there is the passive voice. He read the following text of the statute, "[c]omplaints concerning police misconduct shall be filed with the police department or submitted to the CPRB for filing with the police department as a provided for in this section." He commented that there is nothing in Section 42-342 that suggests that the person who files the complaint has to have some individual grievance, which makes that person stand out from the community-at-large.

He commented that some complaints are likely to be amorphous. According to Mr. Whiteman, some complaints may be about policies or general practices of the police department. The way he reads the statute, those are not complaints about the conduct of officers of the police department. It seems to him that there has to be some specific conduct by identifiable people, not a policy, and not a statement in the manual. A way of dealing with this rather than doing this on a case-by-case basis is to differentiate among complaints, but not among complainants.

Mr. Whiteman cited the Scaringe matter. He noted that it did not have to be a person involved in the incident or a family member if the issue is about a policy regarding hot pursuit. It is not a complaint about officer conduct, but one about policy. When brought down to a specific case, he noted that he sees no reason why Dr. Green couldn't file a complaint. He added that this conduct does affect her and affects everyone who lives and works in the community. He stated that he agrees with Judith in that standing, as a concept, shouldn't be limited. If the Board does limit it, it should be on the basis of whether a complaint fairly states something about an officer or a group of officers and particular conduct.

Paul Weafer reported that he had a print out of the legal concept of standing as it is recognized in the United States (*see attached*). The print out was distributed to the Board members present. He cited page 1, an item called "legal standing" and the bullet items

under “case and controversy requirement,” and page 2, “the potential limitations to the standing” and the bullet items. He commented that those pages show that the recognized law of the United States and the State of New York is that there must be some kind of direct causal relation. He added that in Mr. Whiteman’s scenario, where a person sitting at home who happens to see this incident on the news may be totally distressed about seeing an innocent bystander being shot, has the potential for 65,000 people to file a complaint about the same incident. He added that anyone who was present and observed the incident could have filed a complaint. He commented that, in his mind, there has to be some causal relationship. According to Mr. Weafer, to open it up to anyone who feels violated would be chaos and would violate the rules and principals of standing.

Mr. Whiteman commented that the principal of standing has no application in this case. He explained that those rules arose from the Federal Constitution and were devised by the courts to resolve a case or controversy. He noted that rules of standing have never been applied strictly or exported from the judicial context into an administrative context wholesale and strictly. He added that there is no reason why those rules of standing should apply to the situation.

There was discussion between Mr. Whiteman and Mr. Weafer about the applicability of standing in an administrative context, and the interpretation of standing within the context of the statute. There was also discussion of the legislative history of the statute.

Ms. Mazza commented that in a situation where police conduct impacts the community, because an individual affected doesn’t file a complaint, it doesn’t mean that there is not an impact on the community. She stated that to review and look at complaints about police conduct and a violation of conduct is legitimate.

Mr. Weafer inquired as to whether there should be a line drawn regarding direct impact. Ms. Mazza commented that it shouldn’t. She added that the Board should have a broader base to look at situations.

Chairperson Gaige noted concern with the individual person. She offered the following example: if someone has a run-in with a police officer and a witness decides that the officer was abusive and files a complaint, it could invade the privacy of that individual. Maybe that individual doesn’t want public record or public discussion of the incident. Chairperson Gaige feels as though the witness is violating the privacy of that person. Ms. Mazza disagreed in that the individual may not have the wherewithal to file a complaint or is intimidated and may not file a complaint.

Ronald Flagg commented that it seems the Board is suggesting that the only way to make or express a concern would be to be in the proximity of what occurred. He added that anything that is policy or procedure impacts upon anyone in the City of Albany.

Paul Weafer commented that anyone with a policy concern has a right to bring it to the Board, but not as a complaint. He noted his concern with where to draw the line and how

many times a person can bring the complaint. He inquired as to how the OPS is going to examine the complaints. Mr. Flagg commented that there is no way to know, it is conjecture.

Michael Whiteman commented he might be willing to take a narrower view if the statute said that the Board had the capacity, as a Board, to initiate a complaint on its own motion. According to Mr. Whiteman, this would be the safety valve. At that point, if someone is really remote from a situation, the Board wouldn't have to look broadly at who could bring the complaint. If there is really something terrible that is alleged, even if the person who alleged it didn't have any connection with it, the Board could initiate the complaint. Mr. Whiteman said that this is not provided for in the current statute. He added that in looking at the legislative history of the statute, the statute was a product of a desire to improve the accountability and the relationship between the community and the police department to everyone's benefit. In the absence of specific language to cause the Board to look at the standing issue narrowly, the Board would be well-served to say people have a right to make a complaint and that the Board would not import the rules of standing from the courts, which are not mandatory. It would serve the community interest to make a complaint, especially if the complaint has any colorability at all.

Jason Allen commented that a safety valve with a right of refusal would be an effective tool for the Board.

Paul Weafer suggested that the Office of the Mayor, the Office of the Corporation Counsel, and the Common Council should look at the legislative intent, the need to clarify it, whether a standing standard should be put into the statute or not, and whether complainant ought to be defined.

Ronald Flagg commented that the Board members were appointed to hear complaints. He added that he was not sure what standard to use to determine whether a complaint could be heard or not. Michael Whiteman responded that the only basis for the OPS not to investigate a complaint and refuse to hear it is if it is stale.

Paul Weafer reiterated opposition to broadening the definition, stating it would be a disservice.

Judith Mazza noted concern with the two complaints submitted, neither of which have been looked at, investigated, or discussed by the OPS – they have gone no where. As a Board, there is a responsibility to address complaints that come to it and do not go anywhere. She noted that she is not sure how the OPS decides whether or not to look at a complaint. The Board does not know how many complaints have been filed about police misconduct that it has not seen. She added that if the Board accepts the Corporation Counsel's interpretation, then it is not serving the City.

There was brief discussion of those complaints that are made verbally.

Jason Allen concluded that the Board has an imperfect statute subject to interpretation. He agreed with Mr. Flagg that when a complaint comes to the Board it should be heard, but there may come a time when the complaint should not be heard and the Board should have an opportunity to make this decision.

Mr. Allen proposed the creation of a task force to look at this issue. Paul Weafer, Michael Whiteman, Ronald Flagg, and Barbara Gaige agreed to serve on the task force. Paul Weafer was appointed to chair the task force.

Michael Whiteman noted that the Board must decide if the CAPG's complaints need a substantive response or if the Board is going to say they are not complaints within the meaning of the statute, and the Board is, therefore, not going to address them. Judith Mazza commented that the Board is going to come up with some response to part of it, not the whole, and the response needs to be circulated to the Board before it is made public.

Dr. Green reminded the Board that the cover sheet to the complaint form says that the CPRB encourages any person who believes that they have a legitimate complaint to file a complaint.

#### F. *Report of the Government Law Center*

Government Law Center Senior Staff Attorney Justina Perino gave the report. She introduced, Kristin Boyer, who was recently hired by the Center to assist in providing administrative support services to the Board. She noted that Ms. Boyer is currently pursuing her Masters Degree in Political Science from SUNY Albany - Rockefeller College of Public Affairs & Policy.

#### Status of Complaints

As of the date of the meeting, it was reported that there were 19 active complaints before the Board for review. Seven (7) complaints have been suspended, and 177 have been closed. A total of 203 complaints have been filed with the Board since it began reviewing complaints in 2001.

#### Training

It was reported that the NACOLE Conference, scheduled to take place at the end of October, was cancelled due to Hurricane Wilma. The conference has been rescheduled for December 11 -14, 2005. Room reservations were changed, and new flight reservations will be made.

## Mediation

It was reported that the GLC had received Lauri Stewart's report. The report was forwarded to the Board as part of its meeting materials. It was reported that a letter had been drafted to the participants of the meetings with Ms. Stewart. Upon approval of the Board, the letter will be forwarded to the participants along with a copy of Ms. Stewart's report.

## Appointments-Reappointments

It was reported that the Center had received a communication from the Corporation Counsel's Office that Chairperson Gaige was expected to be reappointed to the Board for a second term. The communication also indicated that Jason Allen's term was expected to be adjusted to reflect the accurate term appointment.

It was reported that the Center had received correspondence from Vice-Chairman Herman Thomas, announcing his resignation from the Board.

## Outreach

It was reported that the Center has initiated updating the Board's outreach materials and expanding the Board's education and outreach program. It was reported that the Center is updating the Board's brochure and complaint form, and that Kristin Boyer has been contacting organizations on the brochure and the form to update their contact information and to confirm that they are still willing to assist in filling out and filing complaints. The Center is assisting the Board in making the brochure more user-friendly.

Board members were asked to assist in increasing locations of where complaint forms are available to the public by bringing forms to those locations that they frequent, which are willing to make the forms available.

### G. *Report from the Office of Professional Standards*

Assistant Chief Steven Krokoff was recognized. He reported that he will be overseeing the operations of the OPS as its supervisor, and commented that he is looking forward to working with the Board once again.

Chief Krokoff distributed a copy of the OPS's 2005 Third Quarter Report to the Board.

### H. *Report from the Chair*

Chairperson Gaige stated that with the resignation of Vice-Chairman Thomas, there is an immediate need to address the vacancy issue. She noted that, pursuant to the Board's By-Laws, nominations for Board officer positions must be made in December and voting will

take place in January. Michael Whiteman added that the vote taking place in January would be for all elected officer positions, which are held for one-year terms.

Judith Mazza inquired as to whether the City could rush the process of appointing a member to fill Vice-Chairman Thomas' seat on the Board. Patrick Jordan responded that he has encouraged the Mayor's office to do so. He added that the Common Council's vote to reappoint Chairperson Gaige and adjust the term of Mr. Allen would be taking place on November 11, 2005.

Chairperson Gaige initiated an agenda change. She requested the inclusion of committee reports as a regular agenda item, and asked that each committee be ready to provide a report at the Board's December meeting.

Chairperson Gaige referenced the draft of a recent report prepared by the New York Civil Liberties Union – Albany Chapter. She noted that the report addressed police encounters with persons with mental illness in the Capital District. She added that she would like an opportunity to review and comment on the report. She explained that there is a portion of the report dealing with access to the Board's complaint process/procedures and ways to provide this access.

## **V. Public Comment**

The floor was opened for public comment.

Dan Jabonaski was recognized. He commented that he appreciates the Board taking time to look at the complaint filed by the CAPG. He noted the Board's issue with standing, and stated that it shows the Board is looking for the truth. He added that he believes the Board will seek the truth. Judith Mazza commented that there may be pieces of the complaint that the Board can respond to, and there may be pieces that it cannot respond to, and that there are pieces that it is not sure of because of limitations beyond the standing issue. However, the Board will continue to look at the issues.

Melanie Trimble was recognized. She thanked the Board for reviewing the draft of the recent report prepared by the NYCLU. She noted that the report was sent to a number of agencies for review and comment. She explained that she was hoping to get an initial response from the Board. Chairperson Gaige added that the individual who prepared the report had spoken with her and the Center to access information for the report, and that both she and the Center could provide comments. Ms. Trimble commented that one of the considerations in the report involves the issue of standing for people who are emotionally disturbed. She stated that these individuals may need someone to stand in for them and assist them in filing a complaint. The report recommends that advocates and good government groups be allowed to fill out and file complaints on behalf of these individuals. She concluded that the process should include the community that would be disenfranchised. She thanked the Board for its review of the report.

Another member of the Coalition for Accountable Police and Government – Betsey Mercogliano was recognized. Ms. Mercogliano stated that she appreciated the Board’s sensitivity to the complainant who had the incident at the South Station. She noted that in that particular situation, the woman may not have felt comfortable talking to a man about another man. It may have been helpful in that situation to request that a female officer speak with the complainant.

Ms. Mercogliano commented that as a member of the CAPG, she was told that a response would be made to the complaint and that CAPG complainants would be notified. She confirmed with the Board that it would provide her with notice of the time and date when a response would be made. The Board acknowledged and confirmed that she would receive notice.

Ms. Mercogliano commented that she appreciates the Board’s discussion around the issue of standing, and added that she hopes the Board will make the choice to interpret the statute broadly. She noted concern with the letter received from the Corporation Counsel’s Office, and asked whether the Board had asked for an opinion on the issue or whether the Counsel’s Office has issued an opinion on its own. Chairperson Gaige responded that the Board had requested an opinion.

Dr. Alice Green commented on the issue of police officers being asked to identify themselves. She noted that some police officers carry business cards, and asked whether or not this is something that the Department would consider. Chief Turley responded that supervisors and detectives carry business cards, but patrol officers do not.

## **VI. Adjournment**

Judith Mazza moved to adjourn the meeting. Chairperson Gaige seconded the motion. The motion carried unanimously. The meeting was adjourned at 8:13 p.m.

Respectfully Submitted,

Ronald Flagg  
Secretary