

City of Albany
Citizens' Police Review Board
Albany Public Library
(Large Auditorium – formerly the HBH Room)
November 15, 2004
6:00 p.m. – 8:00 p.m.

Present: Jason Allen, Beresford Bailey, Ronald Flagg, Barbara Gaige, Judith Mazza, Herman Thomas, and Paul Weafer.

Absent: Marilyn Hammond, Michael Whiteman.

I. Call to Order and Roll Call

Acting Chairman Herman Thomas called the meeting to order at 6:00 p.m., and introduced the new members of the Board: Jason Allen, Ronald Flagg, and Reverend Beresford Bailey. Chairman Thomas noted that a quorum of the Board was present.

II. Approval of the Agenda

The agenda was reviewed. Barbara Gaige moved to accept the agenda. Ronald Flagg seconded the motion. The motion carried unanimously.

III. Approval of the October 2004 Meeting Minutes

The October 2004 meeting minutes were reviewed. Paul Weafer moved to approve the minutes. Ronald Flagg seconded the motion. The motion carried unanimously.

IV. Old Business

A. *Old Complaints*

1. Old complaint for review

CPRB No. 29-03/OPS No. C03-716 (Presented by Barbara Gaige)

Ms. Gaige summarized the complaint.

This matter was heard before the Board in March of 2004. The complainant alleged two officers of the Albany Police Department knocked on his door and when he opened the door, the two officers entered his apartment without his permission and proceeded to ask him for identification to prove that he lived in the apartment. The complainant further alleged that he was then questioned about a woman in his apartment. The complainant declined to cooperate in the questioning and requested the officers to leave his apartment unless they produced a warrant. The complainant felt as though the officers' actions were unprofessional.

At the time of the March meeting, Judith Mazza presented the matter to the Board. She summarized the interviews conducted with the officers, the complainant, and the building manager at the apartment building where the complainant resides. Ms. Gaige stated that she also reviewed the file at the Office of Professional Standards (OPS) and found the same information that was in Ms. Mazza's report of March 2004. The officers claimed that they were invited into the apartment and that there was another individual (a woman) present besides the complainant, whom the officers did not ask her for identification or question.

Ms. Gaige further stated that the OPS was very thorough in their investigation and they recommended that the investigation be closed as "*not sustained*," where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint.

At the March meeting Ms. Mazza made a motion that the OPS's preliminary finding of "*not sustained*" be adopted by the Board. There was some discussion following that motion, including discussion about whether or not the woman present in the apartment at the time of the incident should be found and interviewed, although the complainant was present at the March meeting and choose not to identify the woman in question.

In March, the Board determined that this matter would be appropriate for mediation. Ms. Gaige reported, however, that the mediation did not occur. Ms. Gaige then moved to close the complaint as "*not sustained*" because there was not sufficient information to prove or disprove the allegations.

Before the motion was seconded, Ms. Gaige acknowledged that the complainant was present and she opened the floor to him for comment.

The complainant was recognized, and stated that no one interviewed him during the year since the incident. The complainant commented by saying, "the officer said I called him to my apartment, why, for what? Don't you have a call number or something like that when someone calls a policeman?" Ms. Gaige informed the complainant that the building manager made the call. The complainant stated that "the building was closed it was the Thanksgiving Holiday... somebody is lying here." Ms. Gaige responded that there had been a call about illegal activity in the building. There was an officer who was stationed at the building who responded to the call. A second officer accompanied him to the complainant's apartment. Apparently, there was some type of investigation going on in the apartment building. The complainant inquired into why his rights were violated, and stated that he would volunteer for a polygraph test in order to find out who is lying about the circumstances surrounding the entry of his apartment. Ms. Gaige commented that she would ask the Corporation Counsel's Office if there was an avenue for redress. She stated, however, that as she understands it, the situation is one in which the police officers are saying one thing and the complainant is saying another. Ms. Gaige explained to the complainant that the only jurisdiction the Board has is to rule on whether or not it agrees with the findings made by the OPS, and that such findings were the result of a thorough and sufficient investigation. Consequently, she added, "if you want to carry it further you would have to seek other means of pursuit."

Mr. Weafer addressed the complainant and stated that when the complainant came to the Board back in March he had a very positive presentation. It was Mr. Weafer's understanding that the majority, if not all of, the Board members felt as though the officers were wrong to go into the complainant's apartment. Mr. Weafer added that the officers did not have a right to go into the complainant's apartment and the complainant did not have to divulge the name of the woman because she was a guest in the apartment. For these reasons, the Board felt that mediation would be appropriate. During public comment, Judith Mazza clarified that not all members of the Board were in agreement with the complainant and with sending the complaint to mediation. Moreover, the complainant was willing to go to mediation. Mr. Weafer reported, however, that the hands of the Board are unfortunately tied as to mediation because there is a contract between the City and the Police Department and, as of right now, the leadership of the Police Union does not want to subject officers to the mediation process in the present form; the form that the local law allows for. Mr. Weafer continued to explain to the complainant that without the possibility of mediation the Board is unable to offer any satisfaction for the complainant.

The complainant stated that all he wanted to do was come to the Board meeting to see what was going to happen, and commented that he knew nothing was going to happen. As far as the complainant is concerned, the complaint is over, and he is happy that everyone knows that when his rights are violated he is going to come forward.

On behalf of the Board, Mr. Weafer apologized for the difficulty faced by the complainant in pursuing redress.

Ms. Gaige renewed her motion that the Board adopt the finding of OPS as "*not sustained.*" Judith Mazza seconded the motion, and the motion carried unanimously.

V. New Business

A. *New Complaints*

1. New complaints received since the October 2004 Meeting

Acting Chairman Thomas reported that three (3) new complaints had been received by the Board since its October meeting. Judith Mazza read a summary of each complaint.

CPRB No. 26-04

According to the complainant, a young man residing at her residence was attempting to throw away his fish aquarium when he slipped. The tank broke next to a tree. The complainant claims that two girls from across the street started yelling that he had broken their car and apartment windows. Although the complainant, her daughter, and the young man tried to calm the girls down, they came down to where the complainant, her daughter, and the young man were and began kicking and spitting on them. The complainant alleges that within minutes, both girls began attacking her daughter, pulling her across the lawn, and wouldn't stop kicking and pulling her hair. The girls also kicked the young man in his private area. When the complainant tried to help her

daughter, the two girls began kicking the complainant in her legs. The complainant claims she and her daughter were both injured during the incident. The complainant alleges that the responding officer never took any of [their] statements; only the statements of the girls who assaulted her, her daughter, and the young man.

The complainant further alleges that she and her daughter went down to the Albany Police station to file charges, but were instructed to call the officer. After one unsuccessful attempt to speak with the officer, the complainant claims she got in touch with the officer and was told that there was nothing the officer could do. The complainant further claims she was instructed by the officer to call the District Attorney. According to the complainant, she has been getting the run around from the police department. She claims that the young man was wrongfully arrested based upon lies and prejudice, and she still wishes to press charges against the two girls for assault. *A monitor was appointed.*

CPRB No. 27-04

The complainant is the daughter of the above-mentioned complainant. She alleges that she was assaulted by two girls residing across the street from her. She claims that an Albany police officer did not take any statements from her, her mother, her brother, or the young man involved in the incident. She further claims that when she tried to press assault charges against the two girls, she was told that she had to speak to a particular officer. She alleges that she tried to call the officer, but got no answer. She further alleges that she called the officer again and spoke with the officer, but was told that there was nothing the officer could do; it was out of the officer's hands. She claims she was instructed by the officer to call the District Attorney. According to the complainant, she called the department several more times the following week and got the run around. *A monitor was appointed (same monitor as 26-04).*

CPRB No. 28-04

The complainant is the son of complainant 26-04, the brother of complainant 27-04, and an eyewitness to the assault of his mother, his sister, and the young man in the above complaints. According to the complainant, he saw his mother being kicked in the legs while trying to pull the two girls off of his sister. He claims that he also saw the two girls jumping on his sister, kicking her, spitting at her, and pulling her hair. He alleges that none of the cops asked [them] for any statements and wouldn't listen to them. He further alleges that every time his family has tried to press charges, they have gotten the run around. He claims that the Albany Police Department did not handle this matter properly and has violated his family's rights. *A monitor was appointed (same monitor as 26-04).*

2. New complaints for review

Acting Chairman Thomas reported that the Board was scheduled to hear three new complaints for review. He noted, however, that the review of two of the three complaints would be postponed until the December meeting.

CPRB No. 30-03/OPS No. C03-786 (Presented by Paul Weafer)

Mr. Weafer summarized the complaint.

This complaint revolves around the arrest of the complainant in September of 2003. He filed a complaint with the GLC on December 19, 2003. Sometime in between his arrest and his filing of the complaint, he was indicted for criminal possession of an unlawful weapon, which is a class D felony because he had previously been convicted of a crime.

The complainant, a native on Jamaica, New York, alleged that he came to the Capitol Region to visit a girlfriend who resided in the South End of Albany. However, there is no evidence that the woman is actually his girlfriend. Nonetheless, he came up to visit this particular girl and he was staying at her apartment. Another male, who may have been the woman's boyfriend, was also residing in the same apartment.

The complainant claimed that when he left the apartment at 11:20 a.m. on one particular morning to go to the gas station to purchase some goods, he left the apartment door slightly ajar. Shortly after leaving the apartment, the complainant ran into a gentleman who had later filed a criminal charge against him. The complainant told this gentleman that he looked tired and that he should go back to the apartment. The complainant mentioned to the gentleman that he had left the door open to the apartment, but would be back in a very short period of time. The gentleman who went back to the apartment later filed a criminal charge against the complainant alleging that the complainant menaced and threatened him with a handgun. When the complainant arrived back at the apartment he immediately noticed that a window fan was missing, and when he entered the apartment he also noticed that his laptop computer was also missing.

According to his complaint, he immediately went looking for the gentleman, thinking that that he had stolen the complainant's laptop computer. The complainant continued to look for him for an hour and a half, almost until 1:30 in the afternoon. Apparently, the complainant had been looking for this individual in a drug-infested neighborhood. Subsequently, he was stopped by police officers who requested the complainant to produce identification. At the time of the stop, the complainant told the officers that he had been looking for an individual who had stolen his laptop computer. The officers then notified the complainant that the individual he had been looking for was at the Morton Avenue Station filing a complaint against the complainant for threatening him with a handgun because the individual's girlfriend had not paid a one hundred and seventy-five dollar drug debt owed to the complainant. The complainant was not arrested at this time, and he subsequently presented himself at the Morton Avenue Station at 2:30 that afternoon, where he spoke to two detectives that informed him that an arrest warrant had been issued for him based on the earlier complaint. He was then handcuffed.

Two detectives then went to the apartment at which the complainant had been residing. The woman residing at the apartment signed a consent to search form and allowed the

officers to search the apartment. There was another man present, who lived with the woman; he also signed a statement saying that she had voluntarily signed the consent to search form.

When the two detectives entered the apartment, the woman pointed out the complainant's belongings, from which the officers seized twenty-three items. One of the items seized was a 38-caliber revolver loaded with six bullets. Also seized was a drug ledger form, fifteen hundred seventy-five dollars in cash, and other personal items. The complainant was then charged with unlawful possession of a weapon.

The substance of this complaint is that the Albany Police Department conspired with the informant, who the complainant alleges stole his laptop, to bring charges against the complainant in exchange for the informant's exoneration from a previous arrest for purchasing crack cocaine. Currently, the complainant is subject to an indictment. However, he is now residing in Queens, New York, and will not cooperate with the OPS in their investigation. He has refused to come back up to Albany to answer the OPS's questions pertaining to the matter. Moreover, the informant, the person who had the arrest warrant issued against the complainant, is nowhere to be found. In an effort to try and locate him, the OPS has spoken to his mother to no avail. Also, the woman whose apartment was searched is nowhere to be found. She also has outstanding warrants for her arrest, based on prior drug sales, in the State of Texas and locally.

The OPS recommended the arrest authority and the procedures allegation be closed as "*exonerated*," where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper

Mr. Weafer added that the person who lived in the apartment with the woman did state that the woman willingly signed the consent to search form. Furthermore, the woman also issued a second statement, found in the monitor's report, that she was not forced into signing the consent to search form. The person living with her also made a statement that he saw her sign the form without being forced to do so and she did not make any deals with the detectives to allow them to search her apartment.

Mr. Weafer recommended that the Board to accept the OPS's finding of "*exonerated*" as to the arrest authority and procedure allegation. As to the conduct of the officers, there was no substance that the monitor or Mr. Weafer could find, from looking at the investigative record, which would support the complainant's claim that a conspiracy existed between the informant and the investigating officers. There was no evidence in the record to show that the officers acted improperly.

Mr. Weafer recognized Richard Lenihan, the monitor appointed to the complaint, and asked if he wanted to add anything to the presentation of the complaint. Mr. Lenihan stated that he concurred with Mr. Weafer's findings. According to Mr. Lenihan, the OPS had made a concerted effort to obtain the cooperation of all parties involved, and had followed departmental procedure as well as all relevant sections of the criminal procedure law.

Mr. Weafer then moved to accept the OPS's findings of "*exonerated*" as to the arrest authority and procedure allegation, and "*unfounded*" as to the conduct allegation. Judith Mazza seconded the motion. The motion carried unanimously.

B. *Appointment of two new members to the Committee on Complaint Review for December 2004*

The following members were appointed to the Committee on Complaint Review for December 2004: Jason Allen, Ronald Flagg, Barbara Gaige, Judith Mazza, Marilyn Hammond, and Herman Thomas.

C. *Policy Review/Recommendations*

GLC Staff Attorney Justina Cintrón Perino reported that the Board had received a response from the Police Chief to its recommendation for additional training of the officer identified in CPRB No. 12-04/OPS No. C04-317.

D. *Fourth Quarterly Report for 2004*

The Fourth Quarterly Report for 2004 was forwarded to the Board for its review. It was noted that the report would be placed on the December monthly meeting agenda for approval.

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

Mrs. Cintrón Perino gave the report.

New Member Orientation

It was reported that the GLC had held two half-day orientation sessions, one on November 6th, 2004 and the other on November 13th 2004 for the three new members of the Board. The orientation program educated new members about the Board's organization and operation and including training concerning the goals, powers, and procedures of the CPRB as required by the enabling law before members can become voting members. Orientation Materials were prepared and distributed to each member.

The first three-hour orientation session covered the Board's legislation, by-laws and rules, operating procedures, the complaint review process, and the role of the GLC. The second three-hour session covered the Freedom of Information Law, the Open Meetings Law, and Section 50-A of the Civil Rights Law and the role of the OPS and the Board's monitors/investigators in the process of complaint review.

It was reported that all three new members, Jason Allen, Reverend Beresford Bailey, and Ronald Flagg, attended the first session of orientation. It was also reported that Board Members Allen and Flagg also completed the second session of orientation, and, thus, completed the orientation program. Both members are eligible to participate as voting members of the Board. It was reported that Reverend Bailey had not yet completed the

second session of orientation, but was scheduled to do so in advance of the Board's December meeting.

Status of Filed Complaints

As of the day of the meeting, it was reported that there were 20 active complaints before the Board for review. Five (5) complaints remain suspended and 146 complaints had been closed. A total of 171 complaints have been filed with the Board since it began hearing complaints in 2001.

Correspondence

It was reported that the GLC was in the process of drafting a letter to Assistant Chief Paula Breen regarding the redaction/exclusion of officer information from OPS reports as well as complaints received by the Board. It was reported that the Board had directed the GLC to draft this letter at its October meeting. Ms. Cintrón Perino requested clarification as to the type of information being redacted/excluded from the reports and complaints, and inquired as to whether the information included: name, race, ethnicity, and gender. The Board clarified that it was seeking information only with respect to race, ethnicity, and gender.

It was reported that Ms. Cintrón Perino had met with Acting Chairman Thomas and Ms. Gaige regarding outstanding files. It was noted that there were two outstanding complaints (CPRB No. 43-02 and CPRB No. 22-03) requiring input from the Corporation Counsel's Office. It was reported that the GLC was in the process of drafting a letter to Assistant Corporation Counsel Patrick Jordan regarding these two complaints.

Training

It was reported that the Board had expressed its interest in holding an organizational training session in December. The Board agreed to select a date for the training following the meeting.

Meetings

It was reported that the GLC was in the process of securing a date to meet with the Mayor, Common Council President, and President of the Union to discuss mediation. Board member Weafer asked the GLC to assemble materials from successful mediation programs for this meeting.

Union Leadership

It was reported that the Union leadership has changed. The new Council 82 President is Christian Mesley.

Standard Operating Procedures (SOP)

It was reported that the police department would be providing each member with updated copies of the SOP. Board members were asked to turn in their copies in order to obtain the updated version.

F. *Report from the Office of Professional Standards (OPS)*

Det. Sgt. Eric Kuck gave the report.

Sgt. Kuck was asked to respond to Chief Turley's letter regarding CPRB No. 12-04/OPS No. C04-317 as to whether or not the officer's conduct was appropriate. Ms. Mazza noted her concern regarding the officer's discretion not to ticket, when the circumstances of the complaint indicated that the driver was not being threatened by the complainant as he had told the officer, and had tried to talk the complainant out of calling the police.

Sgt. Kuck responded that there was no impropriety in not issuing a ticket at the time. According to Sgt. Kuck, in cases of personal injury or if a misdemeanor is committed, an officer must issue a ticket. In this case, it was within the officer's discretion to not issue a ticket to the driver who left the scene of the accident given the explanation that the officer received from the parties at the time of the incident. He noted that the officer did not have the benefit of the information that concerned Ms. Mazza at the scene. The OPS learned of that information in its investigation.

Sgt. Cook summarized the OPS's Third Quarter Report for 2004: Nine (9) incidents generated civilian complaints; there were a total of 36,982 calls for service; and the total number of arrests was 2,069, which does not include juvenile arrests. Based upon the number of police contacts and the number of complaints filed, a complaint was filed for .024% of the number of incident calls handled by the Albany Police Department.

VI. Public Comment

The floor was opened for public comment.

Dr. Alice Green was recognized. She stated that she was happy to hear that the Board was attempting to deal with the problems that have plagued the mediation program. She commented that after hearing the Board's dialogue with the gentleman whose complaint could not be mediated, it is likely he left the meeting with the feeling that the Board cannot do anything; it sounded hopeless. She added that it is important for the Board to let the community know what its function is.

Dr. Green commented that she is confused with respect to the Board's role in developing policy. She reported that the police department is in the process of developing policies with respect to the use of tasers and video cameras in patrol cars. She added that there was a meeting scheduled with the police department to discuss these policies.

Mr. Weafer responded that a number of Board members were planning to attend the meeting, however, they were told that the meeting was cancelled. Mr. Weafer added that the Board would like to be involved.

Dr. Green commented that she has yet to receive a copy of the police department survey that she has been requesting. Ms. Cintrón Perino responded that a copy of the report along with several other items requested in a Freedom of Information Law Request from her office was assembled and sent to the City for forwarding to her organization.

Dr. Green then asked each of the new members to introduce themselves. Each new member introduced themselves and made a few comments concerning their backgrounds.

Andrew Tarpinian, Recording Secretary to Council 82, was recognized. He offered several comments. Mr. Tarpinian noted that, during the discussion of an earlier complaint in which officers had entered the complainant's residence without permission, several members of the Board gestured by nodding as if they were in agreement with what was being said. Mr. Tarpinian commented that this may give an impression of impartiality. With respect to the same complaint, he added that the officers involved recognized their limits and left. Moreover, the officers did not force the issue of the woman's identity.

Mr. Tarpinian applauded the Board for its service, and commented that an entity is only credible so long as it is impartial. According to Mr. Tarpinian, the Board's request for race, ethnicity, and gender of officers who are the subject of a complaint creates an appearance of impartiality, and the Union is opposed to releasing this information.

Mr. Flagg responded that Mr. Tarpinian's comment regarding the officers who were the subject to the earlier complaint may have been more appropriately directed to the complainant. Mr. Flagg also commented that with respect to the officer information, there is data that other boards across the country have this information, and that it is necessary if part of the responsibility of the Board is to develop an early warning system. According to Mr. Flagg, if the Board is to try to develop a system without this information, then there needs to be more dialogue.

Ms. Mazza commented that the Board has received comments regarding members' body language. She added that the body language suggests that the member is listening, not that the member is in agreement with what is being said. She added that she believes the Board is and has been impartial. Mr. Tarpinian responded that his comment regarding body language suggested that the Board could be impartial, not that it actually is impartial. He added that officers want fairness; they would like to be treated in a way that others would want to be treated. Acting Chairman Thomas responded that the Board has treated officers with respect.

Ms. Gaige commented that she learned at the recent NACOLE conference that Albany is one of the only jurisdictions that is not privy to the names of the officers. Mr. Weafer commented that under the current system, the Board must take on faith that the department is dealing with problem officers.

Mr. Tarpinian inquired as to whether or not a complainant could be prosecuted for filing a false complaint. After discussion, it was determined that he or she could be prosecuted although there is not a statement to that effect included on the complaint form.

Melanie Trimble, Executive Director to the Capital District Chapter of the New York Civil Liberties Union, was recognized and welcomed the new Board members. She commented that

she feels as though the Board bends over backwards to be fair to complainants and officers. She commented that she is supportive of the Board's openness. She added that OPS should take a second look at some of its reports to learn from them, in light of the explanation offered by Sgt. Kuck regarding CPRB No. 12-04/OPS No. C04-317.

VII. Adjournment

Acting Chairman Herman Thomas adjourned the meeting at 7:30 p.m.

Respectfully Submitted,

Michael Whiteman