

**City of Albany**  
**Citizen's Police Review Board**  
**Albany Law School**  
**Dean Alexander Moot Courtroom [Room 421]**  
**December 13, 2004**  
**6:00 pm - 8:00 pm**

**Present:** Jason Allen, Reverend Beresford Bailey, Ronald Flagg, Barbara Gaige, Marilyn Hammond, Judith Mazza, Herman Thomas, and Michael Whiteman.

**Absent:** Paul Weafer

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

The meeting was called to order at 6:10 p.m. by Acting Chairman Herman Thomas, who noted that a quorum of the Board was present.

**II. Approval of the Agenda**

The agenda was reviewed. Barbara Gaige moved to approve the agenda. Judith Mazza seconded the motion. The motion carried unanimously.

**III. Approval of the November 2004 Meeting Minutes**

The November meeting minutes were reviewed. Judith Mazza moved to table the approval of the minutes until the next meeting to give the Board an opportunity to review and amend the minutes. The motion was seconded by Marilyn Hammond. The motion carried unanimously.

**I. New Business**

A. *New Complaints*

1. New complaints received since the November 2004 Meeting

Barbara Gaige reported that one new complaint had been received by the Board since its November meeting. Ms. Gaige read a summary of the complaint.

**CPRB No. 29-04**     The complainant alleges he attempted to pay for gas at a Mobil Station with five dollars (\$5) in rolled pennies, but the proprietor refused to take the pennies as payment. An argument ensued, and an officer arrived. The complainant alleges he told the officer what had happened, and the officer told him that the owner did not have to take the pennies. The complainant claims he told the

officer that he did not work for the US Treasury Department. According to the complainant, the officer then asked the owner if he wanted to press charges and the owner said yes. The complainant claims he called the owner an expletive, and as he was walking out of the station, the officer pushed him. When the complainant told the officer not to push him, he alleges the officer pushed him again. A monitor was *not* assigned to this complaint.

2. New complaints for review

**CPRB No. 29-02** (Presented by Barbara Gaige)

Ms. Gaige summarized the complaint. She noted that this complaint was one of two complaints filed with the Board that she had contacted the Office of Professional Standards (OPS) regarding its status. She reported that this complaint had a social security number down as the name of the individual, and added that the only thing on the back side was “May 3, 2002, 5:45 a.m. knife.” Assistant Chief Anthony Bruno, who at the time of the filing of this complaint was Commander of the OPS, was able to find out the name of the individual whose social security number was on the complaint. However, he was unable to find any additional information regarding the complaint, and the complainant failed to provide any further information to the OPS. Therefore, Chief James Turley suggested that the case be closed as “*no finding*.” Ms. Gaige then moved to accept this finding as the Board’s finding, due to a lack of information. The motion was seconded by Judith Mazza. The motion carried unanimously.

**CPRB No. 05-04** (Presented by Barbara Gaige)

Ms. Gaige summarized the complaint. She reported that this complaint was the second of the two complaints that she had inquired about with the OPS. This complaint was filed by the gentleman who had been involved in an incident at Price Chopper where the paramedics and the police were called because of his behavior. Subsequent to the incident, the complainant was taken to the VA Medical Center by ambulance against his will. After the Board’s last review of this complaint, Assistant Chief Bruno mediated the complaint with the gentleman on behalf of the police department. The mediation was held at the Government Law Center. With respect to this complaint, Chief Turley recommended that it be closed as “*mediated*.” The complaint received involved the same incident. The gentleman has had many communications both with the GLC and with the OPS regarding this incident. Ms. Gaige reported that the complaint has been fully evaluated by the Board, and mediated. She then moved to accept the Department’s finding that the case be closed as “*mediated*.” Judith Mazza seconded the motion. The motion carried unanimously.

The Government Law Center noted that the original complaint was closed as “*exonerated*,” and asked the Board to restate its motion for the record. Ms. Gaige responded that her recommendation was to close the complaint as “*mediated*” since it was already reviewed by

the Board and mediated by the Department.

**CPRB No. 8-04/OPS No. C04-203 (Presented by Herman Thomas)**

Herman Thomas summarized the complaint.

This is an allegation brought in by a complainant who alleges that he was operating his vehicle in the area of Washington Avenue by Albany High School when he was pulled over by an officer. The complainant alleges the officer approached in an aggressive and intimidating manner. The officer immediately accused the complainant of drinking alcohol and there was no apparent indicator that he had been drinking. The officer then removed the complainant from the car and had him submit to a sobriety test. The complainant alleges the officer took a long time to issue a summons and delayed him unnecessarily. The complainant felt that the officer conducted the stop in such a manner, primarily because the complainant is a minority and at the time was dressed in sweat pants and a hooded sweatshirt.

The complainant was recognized. He claims that he was stopped by an officer crossing Washington Avenue near SUNY Albany. He alleges that as soon as he saw the officer's lights, he pulled over immediately. The complainant described his actions during the stop, and explained that he complied with all of the officer's directives and provided the officer with any requested information. The complainant alleges that he was unsettled by the officer's demeanor and the fact that the officer acted in an aggressive manner. According to the complainant, the officer asked him more than once if he had been drinking, had leaned into the vehicle and pulled him out, and forced him to submit to a field sobriety test. He noted that back up units had arrived during this time and he didn't feel comfortable. The complainant claims that when he told the officer that he was unprofessional during the stop, the officer said "I love it when you people try to get me..."

The monitor assigned to the complaint, Joel Pierre-Louis, was recognized. Mr. Pierre-Louis reported that in preparing his report, he thoroughly reviewed the records presented to him, and attended a number of meetings with the Detective that prepared the OPS's preliminary confidential report. He noted that he understood the complainant's plight and concern because he too is a citizen of Albany and has been stopped by police officers. He added, however, that he has based his report on the evidence and records presented to him and has not let his own personal bias of the police or opinions in any way affect his job as a monitor.

According to Mr. Pierre-Louis, in addition to reviewing the findings of the OPS, he reviewed the incident report; listened to a number of radio transmissions and dispatches made regarding the incident; reviewed interdepartmental correspondence; had a number of telephone conversations with the complainant; reviewed the transcribed statements from three uniformed police officers involved in the stop; and reviewed witness statements from four of the complainant's students. He also reviewed the police dispatch call sheet and the uniform traffic tickets issued to the complainant.

Mr. Pierre- Louis reported that the OPS's preliminary confidential report recommended the case be closed and the actions be found "***not sustained.***" The OPS found that the officer in question acted properly and did not violate any departmental procedures. In addition, the report found that there was no independent witnesses to corroborate or substantiate the complainant's allegations in terms of exactly what took place that night. Based on his review of the record and all the information before him, Mr. Pierre-Louis agreed with the OPS's recommendation.

Mr. Pierre-Louis noted that he did review the witness statements provided by the complainant's students and those statements basically indicated that the complainant had been teaching a class at that particular time, but these witnesses were not there when the actual stop took place. There were no independent witnesses to support, substantiate, and/or corroborate the complainant's allegations that the police officer in question acted in an aggressive, condescending, threatening, and/or intimidating manner. In addition, there was no evidence to support the complainant's statement concerning the police officer's alleged derogatory comments. Moreover, based on the complaint that was presented to Mr. Pierre-Louis, the complaint in and of itself did not challenge the basis of the traffic stop, although the complainant has had numerous conversations with members of the Albany Police Department in regard to the tickets. The complaint did not mention that the complainant was challenging the actual stop itself, rather he was challenging the fact that he had been tailgating, weaving in and out of traffic, speeding, and passing through a red light, because that is what he was charged with. Further, the complainant does not challenge the two uniform traffic tickets issued for violations of New York State's Vehicle and Traffic Law. Therefore, based upon the record before him and the record of evidence, Mr. Pierre-Louis concurred with the findings of the OPS.

Acting Chairman Thomas reported that he also went to the OPS and reviewed the evidence at the Police Department. Directing his attention to the complainant, Acting Chairman Thomas asked whether or not he had spoken with a sergeant at the police station. The complainant responded that he had talked to several police officers prior to moving forward with his complaint regarding the tickets he received. He added that he is a very busy person during the day and did not wish to be inornatedly aggravated with the court process in dealing with the summonses he received. He commented that he is pursuing this complaint because of the officer's behavior and language toward him.

Acting Chairman Thomas asked the complainant if, at some point when he was talking to the officers, did any of them ask him if he was going to write a complaint against them. The complainant replied no, not to his knowledge. According to Acting Chairman Thomas, a sergeant claimed that the complainant was trying to get rid of the tickets, and when he couldn't do so, he filed the complaint. The complainant replied that he had spoken with several members of the Department and explained how unreasonable he was treated during the course of the stop, and that the summonses were ridiculous and should be ripped up, at a minimum, given how discourteously he was mistreated. According to the complainant, he was met with laughter as a response. He added that the response from the Department did not matter at that stage because

he was already committed to pursuing his complaint, and commented that he could understand the spin and angle the law enforcement officers' would want to give the situation.

The complainant then stated for the record that the road he was traveling on before the stop is a single lane road crossing Washington Avenue, so there isn't a lot of room to weave in and out of traffic. He added that if the light was yellow, it was yellow when he passed through it. The complainant noted for the record that he is challenging the summonses he received, and was scheduled to go to court the next day to deal with them.

The complainant commented that he found it highly amusing how easily allegations so specific and particular like his about an officer's conduct could be so easily and summarily tossed aside. He added that what is very very troublesome is when an officer pulls you over, sticks his head in your car, tells you he smells something, pulls you out of your car, and goes on a fishing expedition. He noted that the officer realized he went too far and didn't pursue anything further. According to the complainant, had there been someone else in the car, there might have been another shooting or another incident in the city; that is the substance of this type of stop, this type of behavior by law enforcement. The complainant commented that he deals with plenty of law enforcement, policemen, and knows how they act.

Barbara Gaige provided the complainant with the definition of a finding of "***not sustained***- where the review fails to disclose sufficient facts to prove or disprove the allegation[s] made in the complaint."

Michael Whiteman commented that he had a number of questions for the monitor. Mr. Whiteman directed the Board to the page 5 of the monitor's report, where it was reported that the police officer (Officer A) denied making the statement, " go ahead, make my night . . ." He added that Mr. Pierre-Louis' report did not indicate what the officer did in fact say and did not include any discussion, if any, regarding the officer's tenure on the force. Mr. Whiteman noted that this appeared to be a gap in the OPS investigation, and it would be helpful to know what went on during the conversation. Mr. Pierre-Louis responded that he had tried to focus on the allegations as stated in the complaint, and to his knowledge there didn't appear to be any further inquiry into what the officer said or didn't say beyond his denial of the complainant's allegation.

Mr. Whiteman noted that the OPS's report indicated that Officer B was not responsive. However, the report of the monitor appears to indicate that Officer B was not even on the scene. Mr. Whiteman then inquired as to whether or not there was anything in the record to indicate that Officer B was present at the scene, or whether or not there was anything to indicate that a third officer was present at the scene. Mr. Pierre-Louis responded that there were three police officers on the scene, but by the time the third officer arrived, the incident was concluded. Mr. Whiteman commented that it appears from the investigation that Officer B couldn't recall if he worked that evening, and inquired as to who was present at the scene if Officer B was not there. According to Mr. Whiteman, if the monitor's report is accurate, then the OPS's report is incomplete.

Further, Mr. Whiteman added that Officer C recalled certain events from the evening, but not others. He couldn't recall administering the field sobriety tests, but does recall that the complainant appeared to be hostile, belligerent, and slurring words. Mr. Whiteman noted that this was a case of he said, she said, and that one must look at who's story is more accurate and try to resolve the striking conflicts. Mr. Whiteman commented that he was included to ask that the case be returned to the OPS for further investigation.

Judith Mazza commented that part of the problem is that the other two officers (Officers B and C) came on the scene after the beginning of the process and left before the end of the process. She added that the complaint really revolves around the beginning and the end of the process. She noted that this case goes back to patterns that the Board has noted in other situations - how do you detect what actually took place or a tone of voice and a posture that may or may not be interpreted one way or another, and it comes down to interpretation and he said/she said, which is really difficult. She inquired as to what the tone was when the other two officers were present, can they or are they willing to really reflect on what the tone was in administering any sobriety tests. She added that if three people were present at that time, then there were certainly witnesses. She noted her agreement with Mr. Whiteman's comments. The Board can leave it as "***not sustained***" because the allegations cannot be proved one way or another, no one has a witness. She then commented that the Board does not have any way of picking up patterns over time with individuals in certain circumstances and situations, which is not new. She added that if the Board can find out more, then it is worth sending the complaint back to the OPS. According to Ms. Mazza, it is worth looking at the complaint and if there are any patterns involved in this situation.

Acting Chairman Thomas then moved to return the complaint to the OPS for further investigation. Marilyn Hammond seconded the motion. The motion carried unanimously.

**CPRB No.15-04 /OPS No. C04-390** (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint.

The complaint was received on July 31, 2004. The complaint alleges use of force. Date of the incident was July 1, 2004. The complainant stated he and his wife had an argument at the wife's residence. The complainant's son called 911 and the officers responded to the residence. The complainant alleges that when his wife told the police that she wanted him out of the house, the police knocked him to the ground, assaulted him, and then arrested him. It is further alleged that an officer kicked the complainant about his head and body, causing him to sustain a cut to his ear and mouth and pain to his back.

The officer stated the complainant was intoxicated and then became violent when told that he was being placed under arrest. The officer stated the complainant resisted his lawful arrest by punching the officer, which resulted in the officers having to forcibly take the complainant to the ground to restrain and handcuff him. Once on the ground, the complainant

did continue to fight with the officer and bit an officer in the leg. Another officer on the scene also sustained injuries to his hand while attempting to handcuff the complainant.

In his statement, the complainant made several statements and provided answers in response to questions, which made his credibility suspect. For example, the complainant continually denied being intoxicated, however interviews conducted as well as documentation showed he was intoxicated. The complainant denied assaulting any police officer or even fighting with them, yet an officer sustained a bite mark to his leg and another officer sustained injury to his hand. The complainant stated he was denied medical attention for a cut behind his ear, when in fact EMS was called and the complainant refused treatment. The complainant stated that he was having a calm, low key argument with his wife when she went outside and called the police because she wanted him to take a walk and calm down. The police responded due to a 911 call being made by a juvenile because his parents were having a violent argument.

Ms. Hammond reported that she reviewed the complaint investigation. A monitor was assigned to this complaint. Ms. Hammond reported that she had listened to the tape of the call that was placed by the complainant's son. The dispatcher asked if the young man if he thought the argument was violent, and the young boy said yes. Therefore, dispatch sent the police to the residence. The OPS detective assigned to the complaint had made several attempts to meet with the complainant. He went to the home several times and left messages. He also talked with the complainant and the complainant said he may have resisted when the police were wrestling with him, but he did not fight the police. The complainant has a history with the police officers. When the OPS detective met with the complainant's wife in August, she said she did not see the complainant assault the officers, but did see one of the officer's put his knee on the complainant's back. She said he was not intoxicated and had not been drinking. He had just gotten off work. The detective made several calls to talk with the complainant's two sons, but the mother said they were busy and had nothing more to contribute to the investigation. The medical records show that one of the officer's was bit on the hand and on the leg and the records also show that EMS arrived at South Station to treat the complainant for a laceration behind the right ear. However, the complainant was abusive to the EMS and would not allow a full examination. The complainant also refused any medical attention or transport. At one point, while he was handcuffed on the floor, he made a spontaneous admission, "yeah I tried to bite you MF."

The complainant was not present. The monitor, however, was recognized. Joel Pierre-Louis added that there was a lot of documentation with regard to this particular complaint. He noted that he had listed the documentation in Section 5 of his report as A through O. According to Mr. Pierre-Louis, there are a lot of inconsistencies in terms of this complaint and the actual evidence that was presented. For example, the complainant denied being intoxicated and resisting arrest. The complaint prepared and signed by his wife also denied that the complainant assaulted the police or resisted the police. However, NYS domestic incident report, signed by the complainant's wife the day of the incident; the interdepartmental correspondence from both police officers who initially responded to the call; the arrest report; the pre-hospital care report

prepared by Albany Fire Department EMS personnel; and the incident report prepared by the supervising police sergeant on duty at South Station/Central Booking, all state that the complainant was intoxicated, fought with the police, and resisted arrest. Therefore, while there are statements of denial on the one hand, there is also documentary evidence that indicate otherwise.

The complainant, by his own admission, indicates that he may have resisted arrest. The 911 police call, made by one of the sons, indicated to the 911 police dispatcher, that the mother and complainant were arguing, and when asked by the dispatcher whether or not they were violent, he emphatically responded yes. That's when the 911 operator dispatched a unit to the location. The police chief, who was in the vicinity of the residence, also responded to this particular incident. The FI forensic units prepared a report on the day of the incident and indicated, with photographs, that a police officer on the scene had to receive medical treatment because he had a bite mark above the right knee of his uniform. You could see the outline of the bite mark on the pants, which was noticeable.

A brief discussion ensued regarding the domestic incident report. Ms. Hammond noted that she was not aware of the report, and inquired as to whether or not there were documents or other evidence within the OPS investigation that the monitors were privy to but the Board was not. The OPS responded that Board members and monitors are privy to the same file information when reviewing complaint investigations.

Mr. Pierre-Louis concluded that he was in agreement with the recommendation of the OPS, that the officers be "*exonerated*." He commented that he based his conclusion on the record, including various witness statements prepared by members of the Albany Police Department, the Albany Fire Department EMS, and the complainant's wife. The complainant alleged that he suffered some sort of medical injury, but there was no evidence or record from a doctor or health professional regarding the back injury that he alleges he sustained in connection with the incident.

Ms. Hammond agreed with the monitor's finding, and moved to accept the finding of "*exonerated*." Ronald Flagg seconded the motion. The motion carried unanimously.

**CPRB No. 17-04/OPS No. C04-402 (Presented by Barbara Gaige)**

Barbara Gaige summarized the complaint. She noted that a monitor had been assigned to the complaint. She also noted that the complainant was not present at the meeting.

The complainant stated that he was brutally, physically assaulted, wrongfully and illegally arrested and forced back in jail because he didn't waive preliminary hearing. Ms. Gaige then read following portions of the complaint verbatim.

*To make a long story short, I was hiding from [redacted] who had not told me that I was*

*under arrest or to halt. [Redacted] saw me laying down and did not try to arrest me, but savagely beat me semi-unconscious. The injuries are numerous and more information can be obtained from Albany Medical Center, and the FBI can also be contacted. I was then not read my rights or offered counsel, but unlawfully detained.*

This whole incident took place in the general area of Hudson Avenue, Hamilton Street, Western Avenue, Ontario Street. The complainant stated he was hiding from the officer following a foot pursuit and when discovered curled up face down, he was beaten up semi-conscious with injury to his face. The incident happened on March 27, 2004. The investigation was started in early April with the first interview of the officer on April 14, 2004. The complaint was not received until July 27, 2004. The investigation was started because of the injury to the complainant. There were many reports, call sheets, arrest reports, two investigation reports, and a physical evidence investigation at 483 Hamilton.

The first information that the police officers had was that there was a burglary in process at 483 Hamilton. The first officer was dispatched and there were several cars that followed up after that. In the meantime, the complainant was with four people and claimed he heard a ruckus going on in the backyard along these apartment houses and that he heard glass break. The burglary report was called in. What appears to have happened was that there was an argument going on between people on the second floor and people on the ground. Someone on the second floor threw a bottle; someone on the ground picked up the bottle, threw a brick and broke a window and then someone attempted to break in the door. The investigation report did show some damage was done.

The young man said he heard someone yell 5-0, so because all college students run when they hear 5-0, he ran. He realized at some point on Western Avenue that he was being pursued. According to the reports, he was being pursued by one officer, but a second officer followed him down the driveway by the Gingerman, into the back yard. He claims he was hiding next to a deck, next to a fence, face down and was jumped on by the officer. However, the officer states that the young man was attempting to climb a high fence when the officer grabbed him in a bear hug, pulled him down to the ground, and fell on him. The officer is 6'4" and weighs about 250 with all his gear on. The young man's arms were pinned to his side, so when they went down, he went face down onto the ground. The student alleges that the officer beat him on the ground. However, the officer states it happened the other way. He did have injury to his face, a tooth was knocked out, and he sustained a laceration to the lip. He was seen and treated at the Albany Medical Center.

The OPS did a lot of leg work interviewing various people who were with the young man and/or who lived in the area. One witness claimed to have seen him being beaten. In visiting the apartment, the detectives noted that that person really did not have a good view of the area. Another witness stated that she looked out and saw him attempt to climb the fence and the officer grab him and put him on the ground. There were also some statements that the young man had made after he came out of jail that indicated he was climbing the fence and the officer had pulled

him to the ground. The monitor, George Kleinmeier, noted that as the officer was approaching the young man, the young man was on the ground, the young man kicked and hit the officer in the testicle. Then the young man got up and went to the fence. The officer stepped back a bit, but recovered, and pulled him off of the fence.

The young man eventually pled guilty to felony assault but for some reason he was convicted of attempted obstruction of governmental administration which is a Class B misdemeanor as opposed to a felony assault charge. The findings of OPS are that the officer should be “*exonerated*,” meaning that the acts which provide the basis of the complaint occurred, but the review shows the acts were proper.

Ms. Gaige then moved to accept the findings of the OPS as “*exonerated*” The motion was seconded by Marilyn Hammond. The motion carried unanimously.

**CPRB No. 18-04/OPS No. C04-450** (Presented by Ronald Flagg)

Ronald Flagg summarized the complaint. He noted that a monitor had not been appointed to this complaint, and the complainant was not present at the meeting.

The date of the incident was August 1, 2004. The complainant alleged while standing in front of 51 Lexington Avenue, an officer slowly drove pass in a patrol car. Allegedly, the officer steered the car towards the complainant. The complainant asked the officer if there was a problem. The officer stopped the car abruptly, approached the complainant, and told him to get against the wall. The officer allegedly grabbed the complainant’s hand and placed him against the building. The officer allegedly stated to the complainant that this would not be the end.

Mr. Flagg reported that he had reviewed the file. The OPS investigation came to the following conclusions. As to the loitering, which was initially what the officer charged, there was nothing to indicate that there were any factors to sustain a loitering charge. The officer stated that the complainant intentionally shouted an obscenity towards him. According to the OPS, shouting an obscenity, intentionally or recklessly, did not create a risk of a public inconvenience, nuisance or harm. If it had, the officer could have charged the complainant with disorderly conduct. The OPS also found that the officer did not indicate in the interview that he was placing the complainant under arrest for disorderly conduct. Additionally, the officer could not describe any reasonable belief that criminal activity was occurring at that time. The officer did not articulate that he reasonably believed the complainant was concealing a weapon. Therefore, the OPS came to the conclusion that the officer did not follow NYS criminal procedure law or the Department’s standard operating procedure, and it sustained the complaint.

Mr. Flagg then made a motion to accept the OPS’s finding of “*sustained*.” The motion was seconded by Michael Whiteman. The motion carried unanimously.

Michael Whiteman noted, for the record, that the complaint was dated August 1, 2004,

but was made using the old complaint form. It was reported that all of the old forms were replaced over the summer.

**CPRB No. 19-04/OPS No. C04-389** (Presented by Jason Allen)

Jason Allen summarized the complaint. He noted that a monitor was appointed.

The complainant filed a complaint on behalf of her son who was arrested by the Albany Police Department on July 29, 2004. Her complaint is summed up by three allegations: 1) the officer acted unprofessionally, which followed a pattern of consistent harassment toward her son and other African Americans in the community; 2) her son was improperly arrested for a suspended license; and 3) there was an improper handling of the situation where her son was arrested for a traffic violation, but another occupant of the vehicle was released despite the fact that there was an outstanding warrant for his arrest. Between gleaned statements from the mother, grandmother, and son; interviews with the officers; and the monitor's report, the following facts are consistent across the board. Two officers were on quality of life patrol when they observed the occupants of a parked car littering at the end of Lark Street near the Field of Dreams baseball park. Through the vetting process, one occupant was found to be in possession of crack cocaine - a minor; another was released, that was the one who had the warrant for his arrest; and the third, complainant's son, who was the driver, was arrested. When the officers ran his license through the computer, the computer indicated that the license was suspended. Because of that, he was taken in for littering, having no front license plate, and driving with a suspended license.

The son, in his sworn, statement stated that the officer did not use excessive force or verbal abuse. Albany Police Department policy is to search and inventory a vehicle prior to impounding. The computer did show that the young man had 3 suspensions, but the receipt the individual had on him that night only accounted for two of them.

Theresa Balfe, the monitor assigned to the complaint, was recognized. According to Ms. Balfe, the complaint stems from the mother. According to Ms. Balfe, the grandmother's letter in support of her grandson makes him out to be this unblemished great child. She raises that fact that scarves and gangs were mentioned, but the mother and her grandson never bring that up and this claim was never substantiated. The grandmother claims foul language was used; abusive language. The grandson said that was not the case. It appears as though the allegations stem more from the mother than the son.

According to Mr. Allen, the OPS made the following findings. As to the first allegation - unprofessional conduct as the result of consistent harassment, the OPS made a finding of "**unfounded.**" As to the arrest authority and procedures allegation, the OPS made a finding of "**exonerated.**" As to the allegation that the officer improperly handcuffed her son while letting the front seat passenger leave with an appearance ticket and searched the vehicle without a warrant, the OPS made a finding of "**exonerated.**"

He then moved to accept the OPS findings. The motion was seconded by Reverend Beresford Bailey. The motion carried unanimously.

**CPRB No. 23-04/OPS No. C-04-454 (Presented by Judith Mazza)**

Judith Mazza summarized the complaint. She noted that the complainant was present at the meeting.

The complainant made a complaint against the police department and former members of the OPS. Her complaint arises from an initial criminal complaint against her mother. The original incident happened two years ago, and basically involved identity theft. Her mother had used her social security number and opened various credit card and utility accounts throughout the whole Tri-City area. She had made complaints to the police department to look into this. At that time it was turned over to the detective - criminal investigation unit - where the detective actually has experience in looking at these fraudulent types of cases. At the time, the complainant was told that out of all the incidences of her mother having fraudulently used her social security number and name to open these account, there was only one that was within the jurisdiction of the Albany Police Department that they could actually investigate at all. At the time, the Department asked the complainant for various documents in order to follow up. However, time kept elapsing and the documents were never turned over or received to prove the allegations. At one point, the complainant was referred back to her mother's attorney who was trying to assist her in her legal affairs and ended up devising a payment plan to satisfy various debts that her mother had accrued relative to the complainant herself. Almost two years had elapsed before there was any more contact with the complaint or the complainant. Then, a complaint was filed on September 1.

The complaint is that the police department did not follow up in a timely fashion on the criminal complaint that she had lodged against her mother. Since the filing of the criminal complaint, one of the original detectives has since retired, but was interviewed over the phone about this particular situation. Another detective was interviewed about what had happened. It seems as though the Department was trying to follow up on the complaint around the opening of the one account because it was the only one they could investigate. However, the detective never received the information they needed from the complainant. The Department did, every few weeks or a month, follow-up by requesting the information, but never received the documentation they needed to complete their investigation. According to the monitor, as late as September 13, 2004, the sergeant at the OPS had asked for information from the complainant, and was told that the documentation would be submitted.

The complainant was recognized. She explained that while she was doing an internship at the Albany County Probation Department, she came across people who had or were doing time for identity theft/fraud/forgery. In speaking with these people, she realized that her mother may have been using her information to open accounts. When she began investigating her credit history, she found that there had been numerous accounts opened by her mother. She was put in

touch with a detective at the police department and learned that her mother had been an informant of the department. She was given the run around from the department and put in touch with her mother's attorney to work out a payment plan. She explained that Commander Krokoff had assisted in helping her get the criminal proceedings started, but a thorough investigation has never taken place. She stated that she had provided the Department with the requested documentation, but still nothing has been done.

Judith Mazza commented that there were two issues to consider with respect to this complaint: 1) jurisdiction to investigate some of the charges, and 2) timeliness of receiving the necessary documentation.

Detective Sergeant Eric Kuck of the OPS was recognized. Sergeant Kuck commented that there is no doubt that the complainant was victimized, but the Department's jurisdiction covered only one of the accounts opened by her mother. He added that with respect to the one account for which the Department had jurisdiction, there is a two-year statute of limitations for investigating this complaint. Since the account was opened in 1997, it is beyond the two-year statute and can no longer be investigated. Sergeant Kuck apologized, and explained that he was bound by law and procedure. He added that the laws regarding identity theft that are on the books now did not exist when she originally sought to pursue the action against her mother.

Michael Whiteman commented that since the Department cannot assist the complainant, then it would be good practice to put her in touch with the appropriate people that would be able to help her. Sergeant Kuck offered to assist her in reviewing documents and bringing them before the appropriate parties.

Judith Mazza inquired as to whether the situation was being handled by the courts. The complainant responded that the District Attorney's office has the information concerning this complaint. Ms. Mazza suggested that after the meeting, the complainant set up a time to meet with Sergeant Kuck so that he could assist her in moving her case along to the appropriate persons. She then made a motion to accept the OPS's findings of "**unfounded**" as to both call handling allegations. Barbara Gaige seconded the motion. The motion carried unanimously.

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

The following members were appointed to the Committee on Complaint Review for January 2005: Jason Allen, Reverend Beresford Bailey, Ronald Flagg, Barbara Gaige, and Michael Whiteman.

C. *Fourth Quarterly Report for 2004*

Judith Mazza moved to accept the Fourth Quarterly Report subject to the addition of information concerning certificates to be received by those members who attended the NACOLE

Conference. Barbara Gaige seconded the motion. The motion carried unanimously.

D. *Report from the Acting Chair*

Acting Chairman Herman Thomas reported that the Board had held an organizational training session on November 29, 2004, at which time the Board had established a new committee structure. Acting Chairman Thomas provided a report of the new committee structure, membership, and works in progress. The report was as follows:

*By-Laws and Rules*

Members: Paul Weafer (Co-Chair)  
Michael Whiteman (Co-Chair)

Works in Progress: Review of proposed amendments to the CPRB Local Law  
Draft procedures for Board monitors/investigators

*Community Outreach*

Members: Judith Mazza (Chair)  
Rev. Beresford Bailey  
Ronald Flagg  
Herman Thomas

Works in Progress: Update CPRB outreach materials  
Expand CPRB outreach program

*Complaint Review*

Members: Barbara Gaige (Chair)  
All CPRB Members

*Mediation*

Members: Barbara Gaige (Chair)  
Jason Allen  
Paul Weafer  
Michael Whiteman

Works in Progress: Review of “best practices in mediation” from successful  
mediation programs across the country  
Development of a procedure for mediating complaints in  
the City of Albany

*Police Department Policy Review/Recommendations*

Members: Jason Allen (Chair)  
Marilyn Hammond  
Judith Mazza

Works in Progress: Identify categories of statistics that the CPRB would like to receive from the Albany Police Department

*Public Official Liaison*

Members: Ronald Flagg (Chair)  
Barbara Gaige  
Marilyn Hammond

Judith Mazza noted that there were several items to be added to the list of works in progress for the Police Department Policy Review/Recommendations Committee, including the policies on the use of tasers, cameras in police vehicles, and vehicle pursuits.

The Government Law Center (GLC) noted that there had been a merger of the Police Department Liaison and Policy Review/Recommendations Committees, and confirmed that new committee would be referred to as the “Police Department Policy Review/Recommendations Committee.” The GLC also inquired as to whether or not the Board wished to keep the policy review/recommendations agenda item under the same name or under the new name, and whether it would be included in every agenda even if there was nothing new to report.

Judith Mazza commented that the name sounded fine. Jason Allen agreed, and added that he was under the impression that part of establishing the relationship with the Police Department, the Chief, and there on down was that the Board was going to further develop how policies and procedures would be reviewed and monitored by the Board. He added that there may come a time when the committee should split into two separate committees again, but now is not the time. Judith Mazza agreed.

E. *Nominations for Board Officers*

The GLC reviewed the Board’s nominations from the September Meeting Minutes. Judith Mazza nominated Michael Whiteman for the position of Chair. Mr. Whiteman wished to take time to consider whether he would accept the nomination. Marilyn Hammond nominated Barbara Gaige for the position of Chair. Ms. Gaige accepted the nomination. Vice-Chairman Herman Thomas was nominated for the Chair position, but declined to accept the nomination. Former Board Member Dr. Manuel Alguero nominated Judith Mazza for the Vice-Chair position, but she was undecided as to whether she wished to be considered for the position. Barbara Gaige nominated Herman Thomas for the position of Vice-Chair. Mr. Thomas accepted the

nomination. It was agreed that the nominations for the Secretary position would be made at a later date.

Ms. Mazza inquired as to whether it was the procedure to nominate Board Officers this month and then abstain from voting until next month. GLC Staff Attorney Justina Perino responded yes.

Acting Chairman Herman Thomas asked Mr. Whiteman whether he has thought about accepting the nomination for the position of Chair. Mr. Whiteman responded that he would be happy to defer to Barbara Gaige if she were willing to accept the Chair position of the Board. Barbara Gaige replied that she “would be honored to be Chair.”

Barbara Gaige nominated Michael Whiteman for Secretary of the Board, to which he declined. Ronald Flagg was subsequently nominated for Secretary of the Board and accepted the nomination

#### F. *Report from the GLC*

The report was given by GLC Staff Attorney Justina Cintrón Perino.

#### New Member Orientation/Training

It was reported that Reverend Beresford Bailey had completed the second session of the new member orientation, and therefore is officially a voting member of the Board.

It was reported that the Center had received telephone call from Assistant Chief Paula Breen. Assistant Chief Breen informed the Center that the Department is planning to conduct a special academy training class for the three new members of the Board, and asked that the GLC coordinate a training schedule. The schedule would entail four three-hour sessions to be completed by the end of April, which is within six months of appointment to the Board as required by the legislation creating the Board. Ms. Cintrón Perino reported that the sessions could be done either days or evenings, except for Tuesdays and Thursdays, or on weekends. It was reported that the full academy is scheduled to begin in February. All new members are encouraged to attend the full session of the police academy.

Assistant Corporation Counsel, Patrick Jordan, was recognized. Mr. Jordan reported that he had been asked by the Mayor to attend the academy training sessions with the Board’s new members. He noted that, at some point in the future, there will need to be an amendment to by-laws or the legislation to accommodate this training requirement because the academy schedule changes, which makes it impossible for a new member to complete the training within six months of his or her appointment to the Board.

### Status of Filed Complaints

As of the day of the meeting, it was reported that there were 19 active complaints before the Board for review. Two (2) complaints were in the process of being closed. Five (5) complaints remain suspended and 146 complaints had been closed. A total of 172 complaints have been filed with the Board since it began hearing complaints in 2001.

### Correspondence

It was reported that the Center had drafted correspondence to Assistant Chief Breen and Assistant Corporation Counsel Jordan with a copy to Chief Turley regarding the redaction/exclusion of officer race/ethnicity and gender from complaint forms and complaint related documents. The correspondence was drafted for the Board's review. However, in light of the committee reorganization, it was reported that the Board may wish to reserve sending this correspondence pending committee and Board input.

### SOPs

Board members were reminded to turn in their copies of the Department's SOP for an updated version. It was reported that the GLC has not yet been able to secure copies from two of the former members and asked for the Board's assistance. The Board agreed to assist in securing these copies and suggested that the Department also provide assistance. The Board also requested that updated versions of the SOP be provided as current copies are turned in.

#### E. *Report from the OPS*

Detective Sergeant Kuck commented that the OPS had nothing new to report.

### **VI. Public Comment**

Dr. Alice Green was recognized. She commented that she was confused regarding the discussion of the policy review/recommendations agenda item. She noted that this item is important to include as a regular agenda item even if there is nothing new to report. She also commented that she has yet to receive the items she requested under the Freedom of Information Law. Ms. Cintrón Perino commented that she had personally prepared and forwarded the requested items to the Corporation Counsel's Office for its review. Mr. Jordan reported that he had not yet had an opportunity to review the items, but would do so as soon as possible and forward the documents to Dr. Green.

Theresa Balfe was recognized. She commented on a statement made by Marilyn Hammond regarding access to complaint documents, and added that she believed the Board and the monitors had access to the same information. Detective Sergeant Kuck responded that access is the same for both the Board and the monitors, and that it may have been inadvertently

overlooked during review of the complaint.

Ms. Balfe commented that in preparing her reports, she doesn't include "fluff," but rather sticks to the facts in the complaint and the actions taken. She inquired as to whether or not she was meeting the Board's requirements in preparing her reports and asked whether or not she is missing anything. Barbara Gaige responded that under the new committee structure, there will be members of the Board working on developing procedures for the Board's monitors. Judith Mazza commented that every monitor has a different reporting style, and the Board is going to be looking at consistency in the reports.

Ms. Balfe then inquired as to how monitors are assigned complaints. Ms. Cintrón Perino responded that the GLC assigns complaints to monitors on a rotating basis, taking into account who is available and how many cases have been assigned to the particular monitor that are open and outstanding.

## **VII. Adjournment**

Barbara Gaige moved to adjourn the meeting at 8:30 p.m. Judith Mazza seconded the motion. The motion carried unanimously.

Respectfully Submitted,

Michael Whiteman  
Secretary