

**City of Albany
Citizens' Police Review Board
Albany Public Library
161 Washington Avenue - Large Auditorium
February 14, 2005
6:00 p.m.–8:00 p.m.**

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

Absent: Marilyn Hammond, Herman Thomas, and Michael Whiteman.

I. Call to Order and Roll Call

Chair Barbara Gaige called the meeting to order at 6:05 p.m. Chair Gaige noted that a quorum of the Board was present, and reported that Michael Whiteman was expected to attend.

II. Approval of the Agenda

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

III. Approval of the January 2005 Meeting Minutes

The January meeting minutes were reviewed. Ronald Flagg moved to approve the minutes. Judith Mazza seconded the motion. The motion carried unanimously.

IV. New Business

A. *New Complaints*

1. New complaints received since the January 2005 Meeting

Judith Mazza reported that two (2) new complaints had been received since the Board's January meeting. Ms. Mazza read a summary of each complaint.

CPRB No. 2-05 During a physical altercation with a Stewart's Shop store clerk that allegedly caused the complainant to sustain a collapsed lung, the complainant claims the responding officer would not let him stay where he was until the paramedics arrived; told him "your not going in an ambulance, your a*s is going in the paddy wagon", and then cuffed him and yanked him to his feet. The complainant alleges that while he was at the police station, he had made his injuries known but was ignored. According to the complainant, his injuries were x-rayed at the county jail; he was told that his right lung was 80% collapsed; and was subsequently sent to the Albany

Medical Center where he spent six days in the trauma unit. *A monitor was assigned to this complaint.*

CPRB No. 3-05 Following his arrest on a parole warrant, the complainant alleges police officers unlawfully searched an apartment and seized the complainant's personal property, including his cell phone, pay receipt, state and personal identification, and \$500 without giving the complainant an itemized receipt of the property. The complainant claims that a gold chain and a 3-karat diamond ring, which he had for more than twenty (20) years, were missing. The complaint claims that an officer told him all of his personal property was itemized at the police department. However, according to the complainant, there is no such record of his property on file. The complainant further alleges that an officer made threats to his attorney at his parole hearing. *A monitor was assigned to this complaint.*

2. New complaints for review

Chair Gaige reported that the Board was scheduled to review three new complaints.

CPRB No. 21-04/OPS No. C04-438 (Presented by Jason Allen)

Mr. Allen summarized the complaint.

The complainant agreed to be a police informant in exchange for the deletion of an open bench warrant from his record. As standard operating procedure, an informant must return to the stationhouse following the purchase of contraband, where the recording device is removed from the informant and a strip search is conducted. Following the complainant's seventh purchase, he returned to the police department as usual; however, the strip search unveiled a quantity of crack cocaine located in one of the complainant's shoes. Approximately 1.3 grams of cocaine was discovered.

The complainant alleges that he was arrested for possessing the drugs in his shoe. He further alleges that he was brought to a public lockup and the police told the person who he had purchased the drugs from, who was also in the same lockup, that he was a police informant. As a result of the officers' actions, the complainant claims he had to leave town because he feared for his safety.

A trial has not yet taken place for the possession offense charge. Therefore, the Board is not permitted to see the transcripts or the actual wire tapes from the purchase, or the disclaimer that the complainant signed before becoming an informant.

The complainant alleges that he was improperly arrested because he was an informant, and that his identity was disclosed to the narcotics seller, which he claims is a violation of his contract with the Albany Police Department.

It was noted that the monitor, Albert Lawrence, was present.

Paul Weafer commented that when the Board is handling a complaint by anyone who is going to be testifying against another, in any criminal proceeding, the Board should only refer to the individual as complainant rather than referring to any identifying name or characteristic.

Jason Allen referred to several sections of the contract that the complainant signed with the Albany Police Department.

Paragraph six of the contract clearly eliminates any expectation that the Albany Police Department would guarantee the secrecy of an informant's identity. Paragraph's three and four, relating to the behavior of an informant and the consequences of a breach of the contract were relevant in the monitor's conclusion and the Office of Professional Standards' (OPS) conclusion that the officer should be *exonerated* of all conduct alleged within the complaint.

Mr. Allen recommended a finding of *unfounded* rather than *exonerated* for two reasons. The first reason being that the complainant violated two terms of the informant contract, which placed him in a position of losing the protections afforded to him as an informant. The second reason being that some of the evidence related to this investigation is not available for the Board to look at because it is in the criminal court for adjudication. Furthermore, the monitor was unable to contact the complainant.

Paul Weafer asked the monitor why he felt as though a finding of *exonerated* was more appropriate than a finding of *unfounded*.

Al Lawrence replied that he did not indicate that one finding was more appropriate than another. Mr. Lawrence commented that he paid closer attention to the thoroughness of the investigation and really could not state the difference between the two findings.

Judith Mazza resolved the confusion by stating that a finding of *unfounded* is a conclusion that the acts did not occur or were misconstrued, whereas the definition of the *exonerated* is that the acts occurred, but were proper. Therefore, if the finding is *exonerated* then the admission is, yes, the things that the complainant said did happen but were proper, whereas if the finding is *unfounded*, then the acts did not occur or the complainant misunderstood the acts as they happened.

Jason Allen recapped the complaint. The first allegation, that the complainant was arrested while he was an informant of the Albany Police Department, could be *exonerated*. As to the second allegation, that the officers divulged his identity to the narcotics dealer, the Board could make a finding of *unfounded* because there is no evidence that the officers disclosed this information.

Paul Weafer asked OPS Detective Sergeant Eric Kuck if there was any indication that an officer divulged the identity of the informant to the seller, or did the seller and the informant just end up in the same lockup together.

Sergeant Kuck responded that the two just happened to wind up in the same lockup together. Chair Gaige added that the narcotics seller just happened to recognize the complainant at that time.

Paul Weafer then asked whether the complainant was surmising that he was identified by the mere fact that he was in the lockup at the same time as the seller. Sergeant Kuck responded that he had.

Judith Mazza inquired as to whether such information came to the attention of the narcotics seller at the time of arraignment. Sergeant Kuck responded that he did not know if the informant's identity came out during the booking process or at the arraignment; however, both individuals would have been in the lockup at the same time. Paul Weafer commented that they would have been arraigned at the same time as well.

Sergeant Kuck stated that there was no indication that the arresting officer went to the seller and disclosed to him the identity of the person who gave them information resulting in the seller's arrest.

Paul Weafer asked whether there was any attempt at all to be punitive in that the complainant attempted to keep some narcotics for himself and the officers would teach him a lesson by putting him in close proximity with the seller and disclose his identity. Sergeant Kuck said no, and stated that the only indication that such allegation took place is the complainant's uncorroborated word.

Judith Mazza questioned police procedure and asked: if an informant is arrested at the same time that a dealer is, would the officers arrange the arrest in such a way that the two offenders would not end up observing each other's arraignment and there would be no chance for disclosure of the informant's identity. Sergeant Kuck responded that once the informant violates any term of his contract with the Department, all bets are off. The Department would not fully and intentionally put him in a compromising situation because it would undue all of the hard work the officers have put into the investigation. Here, the informant, himself, violated the contract.

Paul Weafer explained the arraignment proceedings and stated all that is said at the arraignment is that one person was arrested for selling drugs at a particular location and another person was arrested for having drugs at that particular location. It does not necessarily tie them together or disclose that one is a witness against another. Judith Mazza commented that the seller would still know that the guy being arraigned next to him was the buyer. Paul Weafer responded that the seller would not know that the buyer was an informant.

The arresting officer was recognized. Paul Weafer congratulated the officer, and noted that this was the first time, in four years, that an officer who has been the target of a complaint has shown up at a Board meeting.

The arresting officer stated that he takes his job and his reputation very seriously. He further stated that he continually treated the complainant very well and felt as though his trust in him had been violated when the complainant violated the terms of their

agreement. The officer explained that great steps are taken to prevent an informant's identity from being disclosed, but sometimes he or she must testify at trial when the defendant is present. This is why the line in the informant contract is worded in such a way that the officers cannot guarantee that an informant's identity is never known. Usually, the buy and the bust are separated by days and sometimes even weeks so that it is a lot harder for a suspect to figure out who may have been an informant. However, a defendant is entitled to receive information as to an alleged date and time that the incident occurred.

The officer further explained that this case raised other issues. In particular, the complainant's actions of attempting to steal a portion of the evidence made the case almost impossible to prosecute. After informing his Sergeant, the arresting officer determined that if the officers made a simultaneous buy-bust arrest, it would repair any holes that had been placed in their case by the complainant's actions. Therefore, they arrested the complainant and then subsequently went to the residence of the narcotics dealer and, also, placed him under arrest. Unfortunately, the two arrests brought the complainant and the dealer into the same building at the same time. However, this was directly a result of the complainant's actions.

The officer stated that at no time did he ever tell the seller what occurred. The seller may have surmised what occurred. At the arraignment, defendants are only read what they are charged with; no one says "he did it against him or anything like that."

Jason Allen restated his recommendation and moved to accept the OPS's finding of *exonerated* as to the allegation of improper arrest, and to make a finding of *unfounded* as to the allegation that the officer told the seller that the buyer was a confidential informant. Judith Mazza seconded the motion. The motion carried 5-1. Jason Allen, Reverend Beresford Bailey, Ronald Flagg, Barbara Gaige, and Judith Mazza were in favor. Paul Weafer opposed the motion.

In opposing the motion, Paul Weafer stated that from what he could see, although the motion has already carried, there was no intent on the part of the officer to tip off the seller that the buyer was in fact an informant of the Albany Police Department. Barbara Gaige responded that it was for this reason that the Board voted for a finding of *unfounded* as to the second allegation that the allegation did not occur.

Paul Weafer stated that he believes that the appropriate finding would be a finding of *exonerated* based upon what this police officer had just said. Jason Allen responded that a finding of *exonerated* would support that he did tell the seller this information, but it was proper. Paul Weafer then commented that a finding of *exonerated* is a greater statement of relief for the police officer than one of *unfounded*.

Barbara Gaige clarified that it was not. Chair Gaige explained that what the Board is saying by its finding is that the allegations did not take place or were misconstrued as taking place by the complainant. She added that the Board split the complaint into two allegations.

Jason Allen restated the two allegations: one, that the arrest was improper, which is *exonerated* and two, that the officer disclosed the informant's identity to the narcotics seller, which was concluded with a finding of *unfounded*. In light of this discussion, Paul Weafer agreed with the findings.

CPRB No. 25-04/OPS No. C04-511 (Presented by Ronald Flagg)

Mr. Flagg summarized the complaint.

This is a use of force complaint received on October 7th of 2004. The date of the incident is September 14, 2004 and a monitor, Albert Lawrence, was assigned to the complaint. The complainant alleges that he was riding his motorcycle in the listed location (Central Avenue and North Main) when he stopped for a traffic light. An officer pulled up and ordered him and the other riders to pull over. One of the riders fled the scene, and when that happened, the officer allegedly pulled his weapon and pointed it at the complainant's head while standing a foot away from the complainant.

Mr. Flagg then summarized the findings of the OPS. The officer stopped the four motorcycles for violating the posted speed. Just prior to making the stop, the motorcycles had stopped at a traffic light. The officer affected the stop by placing his marked vehicle diagonally in the intersection, blocking the west bound lane of traffic. When the officer exited his vehicle, one motorcycle drove off, refusing to pull over. The officer then drew his weapon and pointed it at the three remaining motorcyclists and told them not to move. The complainant alleged the officer pointed his weapon at the complainant's head. A witness stated that the officer did not point the weapon at the complainant's head.

According to the OPS, an officer may pull his weapon as his assessment of the situation arises to a level when the necessary tactical adjustment must be made. In the present case, the officer did not initially draw his weapon to effectuate the stop. He drew his weapon only after one motorcycle drove off around him, and as the other motorcycles began to drive toward him. Under those conditions, it is reasonable for an officer to assume that there may be something more serious at stake than just a violation of the vehicle and traffic law.

Ronald Flagg added that the officer told the OPS that he was under the belief that the motorcycles were going to flee and that they were going to do so by causing him physical injury.

Furthermore, the monitor found no deficiencies in the number of witnesses questioned, in the number of questions asked of them, or in the documents of evidence obtained. Moreover, the monitor found that the investigation was conducted thoroughly, competently, and professionally.

Mr. Flagg then made a motion to accept the OPS's finding of *exonerated*. Paul Weafer seconded the motion. The motion carried unanimously.

CPRB No. 29-04/OPS No. C04-575 (Presented by Judith Mazza)

Ms. Mazza summarized the complaint.

The complainant appeared at the Mobil station on the corner of Madison Avenue and Lark Street. Apparently, he had five dollars in rolled pennies that he wanted to use to purchase gas. However, the store clerk would not accept the rolled coins. The complainant ended up in a verbal altercation with the clerk and the business owner, who was also present. As a result, the clerk phoned the Police Department. The arriving officers told the complainant that the clerk did not have to accept the rolled coins as tender. According to the report, the complainant was still angry and hostile. Moreover, the complainant admits being angry and yelling at the clerk. He also told the police officer that “he did not work for the U.S. Treasury Department.”

At that time, the officers asked the owner if he would like to press charges if the complainant would not leave. The owner responded that he would. The complainant stated that he called the owner a name and turned around to walk out. He claims that, as he was walking out, an officer pushed him. When he told the officer not to push him, the officer allegedly responded by pushing him again.

Ms. Mazza noted that the cashier and the owner’s brother witnessed the incident. She added that the officer agrees with everything stated by the complainant, except for the complainant’s allegation that the officer pushed him twice.

The cashier said that the complainant was argumentative, hostile, and verbally abusive, and also claimed that he was not going to leave until she took his money. That is why the police were summoned. Upon arrival, they told the complainant that the clerk did not have to take his rolled coins. Although, the complainant admits he was argumentative towards the cashier, police officers, and called the cashier names, he felt that the officer had no reason to push him around.

The officer does state that as the complainant was leaving the store, he was behind the complainant and had the complainant’s hands behind his back and escorted him out because the complainant was not willing to leave. However, at no time was he pushing the complainant, and when the complainant first said “you do not have to push me” the officer removed his hand and continued to walk out behind the complainant. The officer remained outside until the complainant left in his car. Furthermore, the complainant was not arrested or issued a ticket.

The witnesses said that they did not see the officer touch the complainant at all, but the officer admits that he did have his hand on his back as they were going out. The complainant then left the scene.

There was no monitor assigned to this case.

The OPS’s finding was that the investigation be closed as *unfounded*. Ms. Mazza agreed with the finding of the OPS. It was noted that the complainant was not present to be heard.

Ronald Flagg commented that he was concerned with what the standard operating procedures are for such a situation. He stated that in all of his experiences in juvenile justice and in his understanding of law enforcement procedures, staff are taught not to put their hands on anyone unless they were intending to do something more because failure to respond in a certain way could exacerbate the situation rather than diffuse it. He added that he was not certain of what the Albany Police Department's procedures were with regard to the use of physical force.

Assistant Chief Paula Breen responded by stating that the Department uses a "use of force continuum." She added that physical touching does not necessarily cause a situation to escalate and is proper under certain circumstances.

Judith Mazza noted that in this case, when the clerk would not accept the complainant's rolled pennies, he was escorted out of the store and left the scene, which was the end of it.

She then made a motion to accept the OPS's finding of *unfounded*. Jason Allen seconded the motion. The motion carried unanimously.

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

The following members were appointed to the Committee on Complaint Review for March 2005: Reverend Beresford Bailey, Marilyn Hammond, Judith Mazza, Paul Weafer, and Michael Whiteman.

C. *Policy Review/Recommendations*

Jason Allen stated that the committee has initiated dialogue with the Chief, and have been developing a good rapport with him. He added that the committee is looking forward to continuing the dialogue.

Paul Weafer questioned whether the committee was going to have a regular monthly meeting one-hour prior to the start of the regular Board meeting. Jason Allen responded that it was. Paul Weafer noted that if more than four members attend these meeting, the Open Meetings Law will apply and the Board will be required to open the committee meeting to the public.

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

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

New Member Training

It was reported that the date for the final session of the new member citizen police academy had been set, and that a revised training schedule had been forwarded to each member of the Board.

Ms. Perino agreed to forward the schedule of the regular citizen police academy to the Board when it becomes available. Assistant Chief Breen added that she would forward an agenda to the Board, and any member wishing to attend a session was free to do so. Assistant Chief Breen further stated that the Department is still accepting applications for those persons who wish to attend the academy.

Ms. Perino noted that new members are required to participate in ride-alongs as part of their academy program, and agreed to coordinate the ride-alongs for the new members.

Status of Filed Complaints

As of the date of the meeting, it was reported that there were 14 active complaints before the Board for review. With respect to one complaint (CPRB No. 8-04), it was reported that the GLC was in the process of drafting and finalizing, on the Board's behalf, a further investigation request to be forwarded to the OPS. Five (5) complaints remain suspended, and 156 complaints have been closed. A total of 175 complaints have been filed with the Board since it began reviewing complaints in 2001.

It was reported that Ms. Perino met with Patrick Jordan, Assistant Corporation Counsel, to discuss outstanding cases (those that are active, in mediation, or were suspended) requiring the input of the Corporation Counsel's Office. A follow-up letter with a list of the outstanding items was forwarded to Mr. Jordan.

Correspondence

It was reported that the Board's approval of the further investigation request was needed before the letter could be forwarded to the OPS. Ronald Flagg commented that the request should include further investigation regarding the number of years the officer has been on the force and how the complainant came to know this information. Ms. Perino agreed to make the revisions. Judith Mazza suggested circulating the letter via email so that comments could be received, revisions could be made, and the letter could be forwarded as soon as possible.

It was reported that the GLC had responded to two inquiries for legal assistance, and had drafted a letter to a gentleman complaining about an incident of misconduct in Watervliet, explaining that the complaint was not within the Board's jurisdiction. Ms. Perino noted that the Chair's review and approval of the letter was needed before the letter could be sent out.

SOP

It was reported that revised copies of the SOP were given to the GLC for forwarding to members of the Board. Revised SOPs will be given to Board members as their old copies are turned in.

Other

It was reported that the Board's website had been updated to include the recent amendment to the Board legislation, the new board members and officers, and the most recent meeting schedule and minutes.

It was reported that a contact schedule for monitor assignments had been put together in accordance with the Board's By-laws, and forwarded to the Board.

E. *Report from the OPS*

Detective Sergeant Eric Kuck gave the report. Sergeant Kuck stated that the OPS's report needed to be signed off on and that the Board should be receiving the report by the end of the week.

V. Public Comment

The floor was opened for public comment.

Dr. Alice Green was recognized. Dr. Green stated that she was confused about what happened when the Board was discussing the first complaint with the arresting officer present. Dr. Green questioned whether officers named in a complaint are invited to the Board's meetings, and if they are, whether it is appropriate for them to address the material that the members are discussing, and what influence would that have on the Board's final determination.

Barbara Gaige replied by stating that the Board notifies the officers of the date and time when their matter is being reviewed, and just as the complainant may speak, the officer may also speak. Paul Weafer commented that the local law authorizes the officer to be present just as it affords the complainant such right, and the officer who came this evening was the first officer to avail himself of that opportunity since the Board's inception four and one-half years ago.

Dr. Green expressed her concern that a police officer's presence may alter the findings of the Board. Barbara Gaige responded that she hoped the officer's presence would not have any more impact than the complainant's presence and what the complainant may have to say. Chair Gaige noted that all of the information within the officer's statement had already been supplied to the Board through the investigation of the OPS.

Dr. Green stated that she was just a little confused as to what happened in terms of the Board's discussion of the case because it was her understanding that the Board was simply following the information provided by the OPS.

Judith Mazza attempted to clarify by stating that "when a complainant comes and we want to hear what he or she has to say, we do take that into consideration because it is the only time we get to hear from the people involved." Ms. Mazza continued by stating that hearing what a complainant has to say about a particular situation gives a fuller picture of what the Board members read in their written complaint or in the investigation and what the monitor says. She added that it is about taking into consideration and looking at the whole picture, and asking whether there is anything else that the participants could possibly say or do which may have an

impact on the outcome. She commented that the same things would be taken into consideration, whether they are offered from a complainant or from an officer. The officer has as much right to say what he or she needs to say as the complainant does. As Barbara Gaige earlier stated, the statements would be given the same consideration. If an officer comes to a meeting and says what he or she has to say, it does give a fuller picture than what the Board members read on paper. Ms. Mazza noted that all the members ever have are pieces of paper and it is more important to have real people present. The Board would like to have more officers and complainants present so the Board may have a fuller picture of what actually took place.

Dr. Green responded by asking whether participants included any witnesses that may have information about a complaint. Jason Allen responded by stating that he cannot think of anyone who is not allowed to speak, and added that the meetings are open to the public.

Dr. Green asked if that means anyone can come and speak about a particular case. She stated that she has always been under the impression that she was not allowed to speak during the Board's meetings. She stated that she gets complaints in her office that she might know information about, but it was her impression that this was not the place for her to discuss that information.

Barbara Gaige responded that she could foresee where a problem could arise when someone comes in with five witnesses and an officer is present; the climate could deteriorate rapidly. Therefore, this may be an inquiry the Board should take a deeper look at in order to develop a policy that addresses how to respond if that sort of situation ever arises.

Judith Mazza responded that the Board is open to hearing from the complainant or the officer, but has had situations where a family member of the complainant has come because he or she was at the scene. She added that it would seem appropriate to hear from someone with first-hand knowledge, not second-hand or third-hand knowledge, but a person involved. This would be true of a complainant or a police officer. They should have first-hand knowledge.

Dr. Green stated that she just wanted to clarify and she thought that the Board could see where a problem may arise. Dr. Green also stated that a tendency to defer to the police officer's statement might arise when a police officer is present and the complainant is not. She stated that she is not saying that the Board would do that sort of thing, but that the potential to do so does exist. Judith Mazza responded that the complainant usually comes to the meetings and the police officer never attends, so the Board always hears from one side and not the other.

Paul Weafer responded to Dr. Green's comment by stating that in the present case the Board already made its finding prior to the officer's statement. Jason Allen added that the Board was not aware of the officer's presence until after its review and findings were made.

Dr. Green replied that she understood, but what was unclear as to how the Board would prevent itself from deferring to the officer's statement. Paul Weafer attempted to clarify Dr. Green's inquiry by asking her whether she was suggesting that if a complainant does not show up and an officer does show up, the Board should suspend the meeting until the complainant has had another opportunity to arrive?

Dr. Green stated that she was not saying that at all, but was merely stating that a problem may exist because one person is present and the other is not.

Paul Weafer stated that the only concern he has is if you are a witness to an event and you want to bring those witnesses to this meeting rather than bring those witnesses to the OPS. When the OPS is doing its investigation, it seems that those witnesses ought to be brought to the attention of the OPS so they may perform a thorough investigation into the accusations made. And if you think that the OPS does not do a good job investigating those witnesses or listening to what they have to say, then you should bring those witnesses to this meeting and make that point at that time. Paul Weafer stated that it would be unfair to bring a witness here for the first time without giving the OPS and a monitor the benefit of including in their investigation what that witness may have to say.

Dr. Green stated that she was only looking for clarification.

A member of the community, Andre Goodbee, was recognized. He inquired about the process of complaint review and asked, "Where do the complaints go from here?" Barbara Gaige responded that the complaint comes to the Board following an investigation conducted by the Office of Professional Standards. She explained that the Board reviews all of the information collected during the investigation, a monitor, if one is assigned, also reviews the information, and then the Board renders its decision either accepting the finding of the OPS or making its own finding. The complaint is then given to the Chief for a final determination. If any discipline is to be imposed, it is decided upon by the Chief.

VI. Adjournment

Chair Barbara Gaige moved to adjourn the meeting at 7:03 p.m. Ronald Flagg seconded the motion. The motion carried unanimously.

Respectfully Submitted,

Ronald Flagg
Secretary