

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

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

**Absent:** Paul Weafer

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

Chair Barbara Gaige called the meeting to order at 5:59 p.m.

**II. Approval of the Agenda**

The agenda was reviewed. Herman Thomas moved to accept the agenda. Jason Allen seconded the motion. The motion carried unanimously.

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

The February meeting minutes were reviewed. Ronald Flagg moved to approve the minutes. Herman Thomas seconded the motion. The motion carried unanimously.

**IV. New Business**

A. *New Complaints*

1. New complaints received since the February 2005 Meeting

Barbara Gaige reported that five (5) new complaints had been received since the Board's February meeting. Judith Mazza read a summary of each complaint.

**CPRB No. 04-05** The complainant alleges, while on her way to meet her significant other, she noticed a police car driving along the side of her, which then drove up the street and turned around. As she and her significant other were walking back to her house, "police jumped out of their cars and stated freeze hands out your pockets put them up in the air." The complainant asked what the problem was, but no one answered. At this point, the officers separated her and her significant other. Her significant other was placed at the police car, where he was questioned and searched. The complainant claims that when a black officer attempted to question her a Caucasian officer intervened and started to ask her "who was he to [her], ... where did [they] meet, how long [has she] know[n] him." The complainant alleges she told the officer that he was her significant other. She then claims that the Caucasian officer chuckled and asked again

“significant other and wanted to know, how?” the complainant alleges she voluntarily offered her information to the officer and explained how she met her significant other. Following the stop, and questionnaire, the complainant claims she looked at the Caucasian officer and stated “it is my right that [you] tell us what was the probable cause for stopping us.” According to the complainant, the officer stated “let’s just say you live in a prostitution area.”

*A monitor was not assigned to this complaint.*

**CPRB No. 5-05**

As the complainant’s son was walking home from school, a fight broke out. While police officers were trying to stop the fight, other students launched snow balls at the fight spot. An officer was struck in the head with a snowball and the complainant’s son began to laugh. The complainant alleges the officer responded by pepper spraying his son’s face. The students who were throwing snowballs continued until they were chased away by other officers. The complainant further alleges that one black kid, however, did not run because he did not throw any snowballs. The complainant claims officers rushed the kid to take off his white bandana and began to “start a Rodney King beaten on him, which even continued in the police station with cursing and persist[ent] physical punishment.” The complainant claims that his son and a girl witnessed this beating, and as he walked by, he was attacked by pepper spray, which landed on his new North Face jacket. According to the complainant, his son “told the officer what are you doing[,] you messed up my coat[,] it cost a lot of money.” “With no time wasted” the complainant’s son was hit in the head, knees, neck, back, and smacked in the face with a baton; and beaten on the floor where his back was bent far enough to break. He was then handcuffed, searched, arrested, and charged.

*A monitor was assigned to this complaint.*

**CPRB No. 6-05**

The complainant alleges that, while walking from a friend’s house, he was stopped by an Albany Police officer and told “to come here.” The complainant claims the officer searched the complainant “around [his] whole body, including his genitals. The officer had him remove a sneaker to compare it with something else. The complainant further alleges that another officer arrived on the scene and “began to criticize [his] jacket when [he] told her [he] was cold and had school in the morning.” The complainant claims the officer then told him to stop complaining and stated his father should buy him a bigger jacket. The complainant states that he became uncomfortable. He then asked for the officer’s badge number multiple times, but each time he requested it, the officer denied giving it to him. The complainant attempted to get the badge number on his own “by fixing [his] neck so that her badge was in [his] line of view.” The officer then “threw” her hand around the complainant’s throat, and pushed him down while her hand was still around his neck. The complainant “then cooperated with being humiliated in front of all traffic

in the spotlight of the vehicle.” The complainant states he later retrieved the badge number on his own.

*A monitor was not assigned to this complaint.*

**CPRB No. 7-05**

The complainant alleges that, on New Years Eve, while walking East on Pine, heading towards the Corning Preserve, he heard a male voice yelling for help. He then saw a small crowd of people standing near a large man and a small man, both on the ground, and it appeared that the larger man had the smaller man in some sort of leg-hold. The complainant said “break it up” and then told the larger man “you’re hurting him, let go.” Someone said “get the police.” A nearby woman in plain clothes said that the larger man was a police officer, she displayed what appeared to be a police badge, and said “get out of here.” A third man who appeared to be drunk, came up and jumped on the back of the smaller man. The complainant told the larger man and the third man, “you guys are hurting this kid.” The complainant claims the larger man said to “get the f\*\*\* out of here unless you want to be arrested.” The complainant then asked the smaller man for his name and stated that he would be a witness for him, “this is excessive force.” According to the complainant, three marked police cars arrived at the scene; uniformed officers got out of each and took the smaller man into custody. The complainant approached the police cars and began talking to the uniformed officers. The third man pointed the complainant out to the larger man and said “there is the mouth.” He then told the complainant to “stay here, he’s going to want a piece of you.” The larger man, now known to be a police officer, said, “alright where’s the mouth?” The larger man came over to the complainant, yelling in his face and poking his finger into the complainant’s neck, and stated “you mother f\*\*\*\*\* c\*\*\* sucker, the only thing you are going to get is arrested.” He then pushed the complainant against one of the police cars and handcuffed him. The complainant alleges the larger man punched him in the right side area of his kidney. The complainant further alleges he was taken to the police station, where he was falsely arrested for disorderly conduct.

*A monitor was assigned to this complaint.*

**CPRB No. 8-05**

The complainant alleges that an officer barged into his apartment without a warrant. The complainant claims he was arrested for a piece of radio antenna, which the officer said was drug paraphernalia. The complainant further alleges that he was kicked into the police van twice despite asking for help because he is disabled and has broken vertebrae in his back. The complainant claims that while at the police station, he was required to sit on a stool, handcuffed, for five hours. According to the complainant, he was denied his medication, water, or use of the restroom. The complainant further alleges that he was released close to midnight wearing only a t-shirt and slippers, and he had to walk over a mile to get home in the freezing rain.

*A monitor was assigned to this complaint.*

2. New complaints for review

Chair Gaige reported that the Board was scheduled to review one (1) new complaint.

**CPRB No. 24-04/OPS No. C04-502** (Presented by Judith Mazza)

Ms. Mazza summarized the complaint.

This is a complaint of alleged excessive use of force. One night, the complainant was with friends walking down First Street in Albany when they noticed a couple of cars nearby, which were following them down the street. The complainant and his friends became suspicious and started to walk away, when the car stopped and police officers got out. They ran. The complainant would not stop for the officers; however, he was eventually caught. An officer had to tackle the complainant to bring him down. Once brought down, the complainant spit out crack cocaine and marijuana was found in his possession. The complainant was then placed in an unmarked police car and brought back to Clinton Avenue where the other two people he was with were apprehended. One of the other individuals apprehended was a person police were looking for in relation to other charges.

The complainant alleges that while he was in the back seat of the police car, an officer, who was also in the back seat with him, started beating on him by hitting his head. When they arrived at Clinton Avenue, the complainant alleges that he was dragged out of the police car, placed on the ground, and assaulted by the officer. He claims the arresting officer kept putting his knee into the back of his neck causing his face to hit the pavement, which left multiple wounds on the side of his face.

Judith Mazza stated that she reviewed the Office of Professional Standards' (OPS) file. She reported that the monitor assigned to this complaint, Richard Lenihan, was present at the meeting. She noted that from the reports, it appears that while the officers were attempting to arrest the complainant he took off running. As a result, an officer tackled him to the ground where he could have hit his face causing injury.

No police officer acknowledges hitting the complainant. It wasn't until the complainant started banging his head on the side window of the police car, while kicking the back window, and yelling and screaming at the officers that they removed him from the car for safety reasons. The officers did acknowledge that they removed him from the back seat of the police car, one officer holding the complainant's legs and another officer holding him at the arms, and that they restrained him on the ground because he was out of control in the back of the car and it appeared he was going to break the window with his head. A large crowd gathered around the scene. Therefore, the officers radioed for a paddy wagon and more officers. During this, the complainant continued scuffling and fighting.

At the station, the complainant refused medical treatment. However, he was treated at the jail for a scrape on his face, which appeared to be a brush burn, and looked like it had been rubbed across the pavement.

Ms. Mazza, then, asked the monitor if he had anything to add. Richard Lenihan was recognized. Mr. Lenihan reported that, in his estimation, the OPS conducted due diligence in attempting to obtain witnesses who could verify the complaint. The photo of the complainant's injuries doesn't substantiate what the complainant claims. Moreover, the injury suffered by the complainant is not more than the size of a golf ball. In this case, the complainant was not willing to be taken into custody at the time of his arrest.

Judith Mazza commented that the OPS had canvassed for witnesses and had spoken with many people. She noted the complainant had included only the first name of one of the witnesses, but he could not be found. She added that the complainant's other witness, who was arrested at the same time as the complainant, gave the same account of the incident as the complainant.

The complainant's mother was recognized. She asked whether the Board was trying to say that the complainant's interpretation of what happened is not accurate. She continued by asking the Board, "if anyone was arrested, why would they want to harm or injure themselves?" She stated that her son made a statement that caused the officers to beat on him, and that she has not heard anything regarding that in the Board's discussion of the complaint. The mother further asked why the Board thinks that her son was tackled and his face hit the ground when no knots or other bruises are present. She stated the first thing that happens when a person hits the ground is that he will receive a bump and not scrapes. Someone can only receive scrapes by being dragged across the ground.

Judith Mazza commented that as far as he was aware, the complainant was running and tackled at the time of arrest, and that may be the cause of his injury. When he was placed in the back seat of the police car, he was kicking and screaming, and continuously hitting his head against the window of the car.

According to the complainant's mother, the Board is saying that what the police officers said is what happened. She added that she could not understand this because officers will always have an excuse for what they did. She further claimed that her son was merely acting out of context, and stated that every time this takes place "do we have to contain them, [and] drag them out of a car." She then asked if the complainant was running and tackled, then why did he not have bruises any where other than his face or a bigger bruise.

Judith Mazza responded that it was not clear whether he hit his face on the ground at the time he was tackled. The complainant was also taken out of the car and placed on the ground.

The complainant's mother continued and stated "dragged like you said, dragged out of the car, face mashed [sic] into the ground because of the statement that he made."

Ms. Mazza responded that there is no mention by the complainant of a statement. The complainant's mother then asked whether the complainant's failure to include the statement in the complaint justifies the officers' actions.

According to Ms. Mazza when the complainant was interviewed about the incident, he never made a statement saying that he said something that angered the officers. She noted that his interview consisted of a four to five page transcript. The complainant's mother requested a copy of the statement. Ms. Mazza stated that she does not have a copy of the interview transcript. The transcript is part of the OPS's investigation file. She explained that she did review the transcript and the transcript of the interview of his co-defendant personally, and found nothing in either transcript relating to a statement that was made to incite the officers. She did, however, discover information stating that the complainant's behavior was chaotic, and that he was continuously yelling and screaming. Ms. Mazza noted that the complainant has not given to the OPS or the Board anything to indicate that he made a statement, which caused the officers to react the way that they did.

Detective Sergeant Eric Kuck reported that the OPS canvassed the entire area and found no witnesses to corroborate the complainant's allegations. The complainant's mother commented that when an officer arrives to investigate everyone becomes "hush hush." She then asked, "why can't two detainees' stories count, for anything?" Det. Sgt. Kuck responded that they did interview people in the area, and those persons interviewed said they didn't see anything.

The complainant's mother asked Det. Sgt. Kuck whether anyone said anything about the complainant hitting his head against the police car's windows. Det. Sgt. Kuck responded that the witnesses were not present at that time.

Trudy Magee, who identified herself as a committee member under Councilwoman Carolyn McLaughlin, was recognized on behalf of the complainant. She noted that she represents and assists young persons in her community in legal proceedings, and was the person who got the complaint form, brought it to the complainant to fill out, and filed it with the Board and the OPS. She stated that it was noticeable that the complainant suffered a physical scar on the right side of his face, starting at his hair line and protruding down to the cheek area. She also stated that Judge William Carter noticed the scar at the time the complainant was arraigned. She explained that the complainant suffers from seizures, and the statement the complainant was alleged to have made to the officers was "I will Finn you up," which was assumed to be a reference to the late Lieutenant John Finn. She stated that she was aware of this because the Assistant District Attorney prosecuting his case used the statement against the complainant. She stated that the complainant is not a healthy individual. He has epilepsy and could have had a seizure. He does have a permanent scar, resulting from the squashing of his face into the pavement. She reported that two witnesses came to court the day of the complainant's arraignment, but were told to keep quiet. She added that both persons saw the incident from beginning to end. She offered to provide their contact information to the Board.

Judith Mazza asked why the complainant would refuse medical attention. Ms. Magee responded that young people do not pursue issues because they feel as though no recourse is available for them.

Herman Thomas asked how old the complainant's son is. The complainant's mother responded that he was nineteen-years-old at the time of arrest. She added that he refused treatment because he does not like doctors or police officers.

Jason Allen reported that one of the charges the complainant was arrested for was possession of crack cocaine. He then inquired as to whether there was any indication that the complainant was under the influence of drugs at the time of arrest. Richard Lenihan responded that the investigation did not indicate whether or not the complainant was under the influence or drugs.

Michael Whiteman asked Det. Sgt. Kuck if the complainant was handcuffed while in the back seat of the patrol car. Det. Sgt. Kuck responded that he was.

Michael Whiteman further inquired as to what the normal policy and procedures are following an arrest and when an individual is placed in the patrol car awaiting the paddy wagon. Is it the normal procedure to have an officer in the back seat of the police vehicle with the individual, or does the individual wait in the vehicle by himself or herself?

Det. Sgt. Kuck responded that typically the defendant is left in the back seat by himself. If the area is getting "too hot" (i.e., a crowd has formed) the individual will be transported to a second location. During this transport an officer will ride in the back seat with the individual.

Judith Mazza stated that, in this case, the complainant fled the scene when the officers arrived and was chased down, placed in the police car and brought back to the scene where the initial encounter took place.

The complainant's mother asked whether or not the complainant was in the car by himself when he was caught on Clinton Avenue. She also asked when the officer got into the back seat of the car with him, "after the chase or after they brought him back?" Det. Sgt. Kuck responded that the officer rode with the complainant in the back seat after the complainant was caught and while being transported to the second location for pickup.

Trudy Magee commented that when she spoke to the complainant's criminal attorney, he stated to her that one of the other boys arrested did not run far, but the complainant did and that is why he had to be taken back to the scene in a police car.

Ronald Flagg commented to Ms. Magee that she earlier stated she knew of two witnesses. He then asked whether the witnesses have personal knowledge of the incident. Ms. Magee said that they do. Herman Thomas asked Ms. Magee why they were not interviewed when the officers were looking for witnesses. Ms. Magee responded that the officers did not look to question anyone because at the time of arrest they had to quiet down the crowd. Judith Mazza reported that when the complainant filed his complaint, he failed to put their names on his complainant.

Ms. Magee commented, “you have to help the young people. That is why you represent their legal affairs. You have to untwine, unravel like we are doing now. We know we need witnesses; no one was notified in the mail. You should go back to see [the complainant], get the names of the witnesses, and then continue this. I think you will have a better hearing.”

Barbara Gaige noted that the OPS had canvassed eighteen people. Ms. Magee responded that she does have two witnesses for the Board. Ms. Gaige explained that the Board cannot see the witnesses; they have to talk to the OPS. Judith Mazza added that if Ms. Magee would provide the names and contact information of the witnesses to the OPS, the Board will pursue those witnesses and further inquire.

Judith Mazza then moved to return the complaint back to the OPS for further investigation. Ronald Flagg seconded the motion. The motion carried unanimously.

Herman Thomas wanted to know whether the complainant received medical treatment after the arrest took place.

Ms. Magee responded that she had received a medical release form from the complainant. She offered to pull the files and forward them to the Board, so that it could see exactly what took place when the complainant was incarcerated.

Judith Mazza noted that, according to the report, the complainant did get medical treatment at the Albany County Correctional Facility.

Herman Thomas then asked whether the complainant regularly has seizures. Ms. Magee responded that he does.

Judith Mazza instructed Ms. Magee to provide the new information along with the complainant’s medical records to the OPS.

Jason Allen asked the complainant’s mother where the injuries, on the complainant’s face, were sustained. The complainant’s mother responded that his injuries were on the right side of his face, starting at his hair line and extending down the side of his cheek.

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: Beresford Bailey, Marilyn Hammond, Judith Mazza, Herman Thomas, and Paul Weafer.

C. *Policy Review/Recommendations*

Jason Allen reported that, prior to the Board’s meeting, the committee spoke with Chief James Turley. He added that the committee is currently reviewing the Police Department’s development of a policy for the use of video recording devices.

D. *Report from the GLC*

Government Law Center Staff Attorney Justina Perino gave the report.

New Member Citizen's Policy Academy

The Board was reminded that the third session of the new member citizen's police academy is scheduled to take place on April 4<sup>th</sup> from 5:30-8:30 p.m. at the public safety building, and the fourth and final session is scheduled for April 25<sup>th</sup> at the same time and place. It was reported that ride-alongs need to be scheduled for the three new members.

Jason Allen inquired as to when the law requires the ride-alongs to be completed by.

It was reported that the ride-alongs are to be completed as part of the citizen's police academy, and members are required to complete the academy within six months of their appointment to the Board. In this case the academy and ride-alongs should be completed by the end of April. It was noted that Corporation Counsel's Office could advise the new Board members as to whether they may have beyond that time to complete the ride-alongs.

Status of Complaints

As of the date of the meeting, it was reported that there were 16 active complaints before the Board for review. Five (5) complaints remain suspended, and 159 have been closed. A total of 180 complaints have been filed with the Board since it began reviewing complaints in 2001.

Correspondence

It was reported that Board members were forwarded a letter from a former complainant regarding a complaint he filed in relation to the Police Department's alleged failure to comply with his Freedom of Information Law request. Among the questions asked, the complainant inquired as to whether or not the Board had a procedure for re-opening complaints. It was noted that the complainant is seeking some sort of response from the Board. The GLC asked what, if any, action the Board wishes to take in relation to this matter.

Barbara Gaige stated that she does not see a reason to re-open the complaint, and asked if any other members had any comments. No comments were offered. Therefore, Chair Gaige recommended that a motion be made not to re-open the complaint, and send the complainant a letter to that effect. Marilyn Hammond made the motion. The motion was seconded by Judith Mazza. The motion carried unanimously.

The GLC agreed to draft the letter on the Board's behalf.

## Standard Operating Procedures

It was reported that Herman Thomas and Marilyn Hammond were given an updated version of the SOP. Those members who have not turned in their SOPs were reminded to turn in their copies to receive a revised manual.

## Reports

It was reported that the Board's Fourth Annual Report and its First Quarterly Report for 2005 were expected to be completed and forwarded to each member in advance of the April meeting.

### E. *Mediation*

Following the February meeting, members of the mediation committee, Barbara Gaige and Jason Allen, met briefly to discuss the issues surrounding mediation to start the process of redeveloping the Board's mediation program.

### F. *Training*

Barbara Gaige and Ronald Flagg attended a lecture on police searches, sponsored by the Hindelang Criminal Justice Research Center at SUNY Albany.

Mr. Flagg reported that he and Ms. Gaige attended the seminar given by a Professor from the University of Cincinnati. He explained that she developed a different model for collecting empirical data, in relation to racial profiling from the States of Pennsylvania and Arizona. According to Mr. Flagg, the Professor looked at the data provided after an individual was stopped, specifically, who gave consent to have their car searched and who didn't give consent to have their car searched; whose cars were searched with consent or without consent; and what was found therein. The empirical data from both states show that there is some disparity between what occurs in stops between Caucasians, Blacks, and Hispanics. In Arizona, the study also measured stops involving Native Americans.

Mr. Flagg added that he found the lecture interesting, and noted that he has attended other seminars in reference to racial profiling, and has also attended numerous State Police seminars on the issue. He noted, however, that this was a unique way of looking at the issue because the study utilized after the stop measurements.

Mr. Flagg noted that the Professor was not concerned with measuring who made the stop, it was after the stop occurred that she measured who gave consent and who did not give consent to search, whose cars were searched with consent and without consent, and based on the race of the individual, what illegal substances, if any, were found within the vehicle.

Barbara Gaige added that there were figures in the study that related to what was found within the vehicle if the driver did not give consent and what was found if the driver did grant consent to search. Surprisingly, the numbers were pretty comparable. The figures

showed that whether or not a driver granted consent to search, around 17% of the vehicles searched anyway were found to have some sort of contraband located therein.

Ronald Flagg stated that he obtained the Professor's e-mail address, and noted that the Board may be able to obtain a copy of the research.

Barbara Gaige commented that the Professor represented that she owns the information obtained from the State of Pennsylvania. Ronald Flagg explained, however, that the State of Arizona owns the data collected within their state. He further stated that every trooper in the State of Pennsylvania could be demoted or promoted based on this system and, thereby, must fill out a survey report for each stop made. According to Mr. Flagg, there appears to be a lot of accountability in the State of Pennsylvania, and commented that the Professor questioned the data from Arizona. However, even with doubts, the empirical data from Arizona supports the conclusion that the issue of racial profiling continues to exist.

Mr. Flagg reported that the Professor was in the process of negotiating with the State of Ohio so that she would have three states that she would be able to collect data from. Mr. Flagg commented that he did not think there was anyone in the country that has completed research quite like this Professor has.

According to Barbara Gaige, the Professor had agreed to e-mail copies of her power point presentation to Barbara. Ms. Gaige stated that she would forward that information to the OPS and the other Board members.

#### G. *Report from the OPS*

Detective Sergeant Eric Kuck gave the report.

Det. Sgt. Kuck stated that OPS's Annual Report for 2004, along with its First Quarter Report for 2005, have been prepared. A copy of each will be presented to the Board at its April meeting.

Chief James Turley announced that Officer Lisa Murray was recently promoted to the position of Detective and assigned to the OPS. Chief Turley commented that Officer Murray is a well-rounded officer and highly respected by her peers.

Detective Murray was recognized. She introduced herself to the Board and gave a brief description of her career, stating that she previously served eleven years as a patrol officer and is looking forward to being in the unit, working with the Board, and doing a good job.

#### V. **Public Comment**

The floor was opened for public comment.

Dr. Alice Green was recognized. Dr. Green requested, from the Board, an update of developments that are taking place, if any, in relation to the mediation process.

Barbara Gaige responded that at the last three NACOLE conferences she obtained information from successful mediation programs, and has forwarded the information to Assistant Chief Breen. Chair Gaige further stated that as far as she was aware, Assistant Chief Breen has presented this information to one of the unions and the hope is that some type of movement will soon take place.

Dr. Green stated that it was her understanding that the Board was going to meet with the Mayor on this issue. Barbara Gaige responded that she was unaware of such a meeting.

Dr. Green further inquired as to whether the Board members had a meeting with the Common Council to review the Council's proposed amendments to the local law governing the CPRB.

Judith Mazza responded that the Board's meeting with the Common Council took place a few months ago, and she is not currently aware of the legislation's status. Mr. Mazza added, however, that Councilwoman Carolyn McLaughlin is expected to bring the legislation out of committee soon.

Dr. Green asked the Board for a list of the proposed amendments. Judith Mazza reported that she does not have the list of proposed amendments, but would inquire as to where a copy of the proposed amendments could be obtained by Dr. Green.

## **VI. Adjournment**

Barbara Gaige moved to adjourn the meeting at 6:54 p.m. Ronald Flagg seconded the motion. The motion for adjournment carried unanimously.

Respectfully Submitted,

Ronald Flagg  
Secretary