

**City of Albany**  
**Citizens' Police Review Board**  
**Albany Public Library**  
**161 Washington Avenue – Large Auditorium**  
**April 10, 2006**  
**6:00 p.m. – 8:00 p.m.**

**Present:** Jason Allen, Barbara Gaige, Marilyn Hammond, Judith Mazza, Fowler Riddick, and Michael Whiteman.

**Absent:** Beresford Bailey, Ronald Flagg, and Paul Weafer.

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

Chairperson Barbara Gaige called the meeting to order at 6:07 p.m. She noted that a quorum of the Board was present.

**II. Approval of the Agenda**

The agenda was reviewed. Jason Allen moved to approve the agenda. Fowler Riddick seconded the motion. The motion carried unanimously.

**III. Approval of the March 2006 Meeting Minutes**

The March 2006 meeting minutes were reviewed. Judith Mazza moved to approve the minutes. Jason Allen seconded the motion. The motion carried unanimously.

**IV. Old Business**

Judith Mazza reported that there were three (3) complaints on the agenda under “Old Business” for review and findings. She presented each of the three (3) complaints.

**CPRB No. 1-06/OPS No. C06-31**

This is a follow-up from last month’s new complaints. Assistant Chief Anthony Bruno met several times with the family. He agreed to collaborate on training. The complainant and family were invited to and are attending the Albany Citizen’s Police Academy to establish a new relationship with the police. The complainant thanked Assistant Chief Bruno. Judith Mazza thanked the complainant and her family. The Board tabled rendering its finding on this complaint until its May meeting, pending any final communications to take place between the family and Assistant Chief Bruno.

**CPRB No. 4-06 & 5-06**

Ms. Mazza explained that the Board had received a letter from Chief James Tuffey, which was read at the March meeting. At that time the Department had notified the Board that it would not be investigating these two (2) complaints because they were from

witnesses. The Board recently received a letter from Chief Tuffey, indicating that both complaints will be investigated. Ms. Mazza read the letter verbatim. Ms. Mazza inquired as to whether the complainants had been notified. The Office of Professional Standards responded that calls were placed to both to set up interviews. The Board asked that letters be drafted and sent to both complainants notifying them of the investigation and asking that they make themselves available to the OPS.

**V. New Business**

A. *New Complaints*

1. New complaints received since the March 2006 Meeting

Judith Mazza reported that three (3) new complaints had been received by the Board since its March 13, 2006 meeting. Ms. Mazza read a summary of each new complaint.

**CPRB No. 12-06**

The complainant alleges two members of the Albany Police Department illegally entered a residence on Morton Avenue, physically threw him to the ground, illegally arrested him, and falsely charged him with the sale of a controlled substance.

*A monitor was appointed to this complaint.*

**CPRB No. 13-06**

The complainant alleges that six (6) officers of the Albany Police Department apprehended him in a public bar, brought him outside, and placed him under arrest, telling him that he had been under investigation for seven (7) months and that he “had a sale.” While being processed at the South Station, the complainant claims he asked to see the warrant and was told by an officer that there wasn’t a warrant; it was a sealed indictment. The complainant further claims he was told by the officer that “drugs were found and [he] was being charged with it.” The complainant alleges the officers apprehended and falsely arrested him with an “illegal search warrant[,] which was obtained by false reports and evidence [and] can be proved.” According to the complainant, he was never informed that there was a search warrant issued until after he was indicted some two (2) months later, and that the warrant was issued for an address that he has never had any illegal contact with.

*A monitor was appointed to this complaint.*

**CPRB No. 14-06**

During an incident in which he was ticketed for an unattended vehicle, the complainant alleges an Albany Police Officer told him to place his hands above his head and subjected

him to an unnecessary pat search even though the complainant had told the officer who he was and why his car was running. The complainant claims that he was polite and respectful to the officer, and complied with the officer's directives, but the officer failed to listen to him, failed to allow him to show identification, and detained him unnecessarily. The complainant further claims that when he tried to obtain a citizen complaint form at the North Station, he was told by an officer that the station did not have any complaint forms. It was not until the complainant pointed to the cabinet where the forms were held that the officer provided him with a copy of the form. The complainant alleges the officer at North Station failed to provide him with the name and badge number of a second officer present during the time he was inquiring about a complaint form.

*A monitor was **not** appointed to this complaint.*

## 2. *New For Review*

### New complaints received since the March 2006 Meeting

Judith Mazza reported that seven (7) new complaints had been received by the Board since its March 13, 2006 meeting for review.

#### **CPRB No. 10-06/C05-563** (Presented by Jason Allen)

Jason Allen summarized the complaint. This complaint came to the Board during the March meeting. At that time, the Board had not been afforded the opportunity to select a monitor. Since then the monitor has come up with a report.

The complainant alleged that on August 3, 2005, an Albany police officer illegally searched his vehicle, cursed at him, and used a racial epithet. The complainant said that about 8:10 p.m. he was driving slowly along Elk Street near North Lake Avenue looking for an address, when an unmarked vehicle approached him from the rear and sounded its horn. Not knowing that it was a police vehicle the complainant did not pull over. The driver of the other vehicle then pulled up beside him and cursed and the complainant acknowledged in kind.

Both men then got out of their vehicles. The other driver displayed a badge and told the complainant to get the f\*#k back in his car. The complainant complied and pulled his car to the side of the street. Other plain clothes officers then arrived and the complainant was told to get out of his car. He asked why, but complied. His person and car was searched and nothing was found but he was given two tickets. The complainant said write three and referred to the target officer as brother. The target officer threw the tickets at him and said "I ain't your brother n\*\*\*er." The complainant identified a witness, but did not have any contact information for her.

According to the testimony of the target officer, the target and his partner were working an undercover investigation in the area when they encountered a car blocking Elk Street near North Lake Avenue as they were traveling west. The driver was talking on his cell phone and speaking to someone on the porch of the building on the street. The partner who was driving sounded his horn, but the driver did not respond. The officers who were in plain clothes and in an unmarked car pulled up next to the other car.

The target officer showed his badge and asked the driver to pull over, but he refused. Eventually he did move the car, but was “verbally combative.” The target officer asked for the complainant’s driver’s license and registration. He asked why he had to produce it and started to roll up the window. The target officer told him that he couldn’t talk on his cell phone and block the street. According to the target officer, the complainant was “acting weird.” He was keeping his hand down and the target officer felt that he might have a gun. The target officer asked him several times to get out of the car before he complied.

The search produced no evidence of a gun or a crime. The complainant was given two tickets. The target officer denied using a racial epithet or being rude in any manner. He did not curse nor did any other officer in his presence. The other officers’ statements all corroborate this story as well. The complaint was reviewed and the four officers identified as being at the scene were questioned. One of them, the target, was examined under oath. The only other potential witnesses were the person on the porch, which the complainant named and the woman he was talking to on his cell phone. The former could not be identified by the complainant and could not be located in a neighborhood canvas. The latter’s contact information was not revealed by the complainant and could not be found by Detective Romano. In any event it is not clear how much of the incident would have been overheard by the person on the cell phone.

The complainant’s accusation that the target officer used a racial slur and cursed at him was denied by both the target officer and the only other witness present throughout the incident, the target’s partner. In addition, the two supervisors who witnessed later events during this exchange insisted that they saw no unprofessional language or inappropriate conduct on the part of the target officer. This leaves this claim unsubstantiated.

Concerning the allegation that the complainant was improperly searched, the target officer had articulated a reason for the search. The complainant’s “weird behavior and placement of his hands made officers suspect that he might have a weapon and fear for his safety.” This certainly seems strange that a person blocking a street with his vehicle would not yield to a passing vehicle even after he learned that the passengers were police officers. Whether the complainant was holding his hands in a suspicious manner could not be substantiated by any witness and would be better left for the courts to determine. These are the facts of the case as summarized by the monitor. Both the complainant and monitor were present.

The monitor, Albert Lawrence, was recognized. He said that there were no witnesses to substantiate or refute what the complainant or target officer said or did.

Vice-Chairman Allen reported that the Office of Professional Standards (OPS) did their investigation and the monitor reviewed that investigation even though it had already been closed. Vice-Chairman Allen reviewed the statements before the last meeting and didn't see any conflict in the data. He understands that without a witness on the scene it is hard to corroborate the facts. Vice-Chairman Allen recommended that the Board adopt OPS's finding of *not sustained* as to the first allegation of unprofessional conduct – use of foul and racially derogatory language. He also recommended that the Board adopt OPS's finding of *exonerated* as to the second conduct allegation where the complainant alleged his car was searched for no reason. He concurred with both of these findings, and moved to accept them. Judith Mazza seconded the motion. The motion carried unanimously.

**CPRB No. 11-06/OPS No. C06-162** (Presented by Barbara Gaige)

Chairperson Gaige summarized the complaint. The complainant alleges that the Albany and Colonie police officers were keeping her under surveillance. Wherever she went, she alleges they followed her tightly on slippery roads, to the bank, and to the service station.

Chairperson Gaige reviewed the file at the OPS and reported that the complainant was interviewed. Subsequent to her interview, she had provided the name of a witness, a priest at her church. The priest was contacted and he responded that he could not support the complaint and that he was going to check on her welfare and recommend that she seek medical attention. The OPS recommended that she receive adult assistance and follow up. The findings of the OPS were that the complaint was *unfounded* in that the event or events either did not occur or was misconstrued. Chairperson Gaige moved to accept the findings of the OPS. Judith Mazza seconded the motion. The motion carried unanimously.

**CPRB No. 27-05/OPS No. C05-482** (Presented by Judith Mazza)

Judith Mazza summarized the complaint. The complainant alleges that he was arrested for several vehicle and traffic violations. The officer conducted illegal searches of his person and did not read his rights. He alleges that while he was speaking to his mother on the phone about bail money the officer was rude and harassing him about the money, telling him that if his mother didn't get him the money within twenty minutes he was going to end up in lockup. He also complained that when he went to locate his vehicle and get his personal belongings from it no one would tell him where it was towed. He called traffic safety, then he went back to the South Station, and officers at the South Station wouldn't tell him who the arresting officer was, and he couldn't get in touch with anyone in order to get his things out of the vehicle. There was no monitor on this case.

Ms. Mazza went to the OPS and reviewed the file on this complaint. The complainant was stopped during a buckle up traffic stop. He drove up to the stop and had an expired

inspection sticker. The police officer ran the complainant's license and found that he had been suspended three times in other areas of the state and there was no registration or insurance on the vehicle. The complainant was then arrested and taken to the South Station. He was allowed four phone calls in order to secure a \$150 bail fee. He spoke to his mother and ended up getting money from his grandfather. The police officer gave him a receipt, walked him out to the lobby, and told him to report the next day for arraignment. None of the tapes of the phone conversations out of the South Station that night indicate any rude behavior on the part of the officers. In fact, in interviewing his mother, she said she wasn't there she only had his word. On the call, her son was upset because they wouldn't let him use the bathroom and they had not read him his rights. While on the phone, the mother didn't hear anyone yelling. She stated that they let him use the phone at least three times, let him talk and no one seemed to be rude and rushing him off the phone at the time.

The following day, the complainant tried to get his car back. First, he called Traffic Safety, but there was no record of the tow and he was told to call the South Station. The mother also called and the tapes indicate that she was told that the vehicle could not be released until it was inspected and the insurance paid. The complainant called the South Station and they told him he had to call back Traffic Safety. He then called Traffic Safety again. They told him that they had found that the paperwork had not been completed, but did find record that the vehicle was there. However, he couldn't get his car until these other things were done. The complainant appeared at Traffic Safety and wanted to make a complaint. On the ticket for the tow there is a complaint form attached. At this time the complainant has no outstanding warrants and has taken care of his these issues.

As to the arrest authority and procedures allegation, the OPS made a finding of *exonerated* where the acts which provide the basis for the complained of occurred, but the review shows that such acts were proper. His arrest was based on the officer's observations of the DMV records where he had no registration, no insurance, and his license had been suspended.

As to the first unprofessional conduct allegation, the OPS made a finding of *unfounded* where the review shows that the act or acts complained of did not occur or were misconstrued. In none of the phone recordings over the hour in which he talked to his family were there any rude comments made that could be heard in the background or of the officer asking if the complainant's mother had the bail money.

As to the second unprofessional conduct allegation, the OPS made a finding of *unfounded* where the review shows that the act or acts complained of did not occur or were misconstrued. The car had been towed. The complainant called the South Station and was transferred to Traffic Safety. He then found the car, but couldn't have access to it until the other things were taken care of.

Judith Mazza moved to accept OPS's findings of: *exonerated* as to the arrest authority and procedures allegation and *unfounded* as to both unprofessional conduct allegations. Marilyn Hammond seconded the motion. The motion carried unanimously.

**CPRB No. 7-05/OPS No. C05-92** (Presented by Michael Whiteman)

Michael Whiteman summarized the complaint. This incident occurred on New Year's Eve near St. Mary's Church. The two allegations are use of excessive force, and inappropriate arrest authority and procedures.

The complainant and three friends were out and came upon a loud noise. There was a scuffle between a small man and a large man, who happened to be an off-duty police officer. The smaller man who appeared to be intoxicated was screaming that he was being hurt. The complainant called out to let the small man go. Another person jumped atop of the small man as well. The complainant repeatedly asked the two men to stop hurting the smaller man. At some point during the course of the event, a woman bystander, who was the wife of the larger man, flashed a badge at the complainant.

There is a dispute as to whether the off-duty police officer identified himself as a police officer or whether his wife identified him or herself as a police officer. There is a dispute about how close the complainant came to the two people on the ground. There is a dispute as to whether he stepped away. The complainant says that he stepped away a couple of times when backup officers came and it was apparent to him that police officers were on the scene handling it. The small man was then arrested because of a claim by the off-duty police officer that he was urinating on the church. There is a complaint that the smaller man was made to hop to the police car because another police officer held one ankle up off the ground and prevented him from walking. At the end of the arrest of the smaller man, the complainant was arrested on a charge of disorderly conduct. This was tentatively disposed of on an ACOD (acquittal in contemplation of dismissal).

The complainant alleges that during the course of the arrest, the off-duty police officer was verbally abusive. The police officer was poking the complainant in the neck in an effort to provoke him into attacking, which he did not do, and the officer concedes that throughout the arrest the complainant was passive. The complainant also alleges that he was punched in his kidney.

As to the use of force allegation, there are no witnesses, including the complainant's three friends. The findings of unfounded are a question of judgment, whether you want to say unfounded or non-sustained. We have the complainant alleging that it happened and we have the officer denying that it happened. We also have other police officers denying that it happened, but then it turns out that they couldn't possibly be witnesses.

Officer "A" says he witnessed the complainant verbally interfering with the arrest of the small man on the ground, but he was one of the back-up officers and there was nothing happening by the time he got there. So it is hard to understand how he could have been a

witness on this other than a hearsay witness. There was a second officer, who the OPS report calls officer "B," who was interviewed. However, it is not clear why officer "B" was questioned because he was not there and he has no information about it. It is his understanding that there were three officers who arrived as back-up, but he is unsure who the second officer was. The third officer, officer "C", testifies that the complainant refused to cooperate with orders to go away, but he was also a back-up officer and it is not clear how this officer could be anything other than a hearsay witness. He also states that the complainant was in a state of "extreme agitation" possibly intoxicated, but even the arresting officer says that the complainant was completely cooperative during the arrest, was not at all agitated, and he harbored no suspicions that the complainant was intoxicated.

We still have the question of force and the absence of testimony from the complainant's friends that any force was used. What we are left with is the claim of the complainant that he was physically and verbally abused and the arresting officer's denial of that. It seems to me that this is unfounded and didn't happen or it was misunderstood on the basis that the witness whom you could expect to testify favorably to the complainant didn't. Or you could say not sustained and have no particular way to resolve it. Mr. Whiteman is inclined to say that the Board finds this complaint *unfounded* as the OPS did.

The second complaint was inadequate arrest authority and improper arrest procedure in that the arresting officer was verbally abusive. The complaint as to authority to arrest has been dealt with in court, where there was also a dispute about how far the complainant was from the pair on the ground. The complainant says that he never got closer than five or six feet and he walked away a few times. The police officer says that he was two feet away, which seems unlikely. It seemed to Mr. Whiteman that if he were two feet away and there were two people thrashing around on the ground then he would have gotten hit and there is no suggestion that this happened. Be that as it may, the case was resolved in court in regards to arrest authority, but as to improper arrest procedure we have the police officer claiming that he never used profanity and that he never called the complainant "the mouth."

In this instance, Mr. Whiteman was not sure given the factual dispute that this is what the police officer said that he would conclude that the complaint was *sustained*. On the other hand, Mr. Whiteman had difficulty with the OPS finding of *exonerated* as set forth by the factual dispute in the file. Unfortunately the Board does not have effective mediation in place when this all transpired because this case would have been better suited for mediation.

It is acknowledged by all parties that there was no physical interference or disruption. Here, there is a complainant who says that a police officer was verbally abusive to him and a police officer who says that before anything happened the complainant was verbally disruptive. Mr. Whiteman moved to accept OPS recommendation of *unfounded*

on the use of force. He was not sure how to deal with the arrest authority issue because it is not an issue for the Board to deal with.

With regards to the remaining charge that the small man, who was arrested for urinating in public, was made to hop to the vehicle that was to take him off to arraignment again there is a contradiction in the testimony. But the punitive victim doesn't want anything to do with this complaint. This is an incidental recitation of what was going on or rather added to lend credibility or context to what was going on and the Board can pass this allegation by.

Chairperson Gaige pointed out that there were two different OPS reports: one says *unfounded* and the other *not sustained*. Mr. Whiteman says he is happy with the *not sustained* because it fits better the facts that are on the record.

The complaint's monitor, Joel Pierre-Louis was recognized. This report was prepared back in October and the OPS had prepared another report that he was not privy to. Essentially he looked at this complaint as having three issues. One was the issue of use of force and, from that initial report from the OPS, that issue was *unfounded*. As he indicated in the report that he submitted, while he did agree with the detective he alleges that there were additional witnesses who should have been interviewed. Also, the off-duty police officer's wife, who was a critical witness or any of the complainant's friends, should have been interviewed to help prepare a more detailed report. Nonetheless, while he did agree with the OPS's initial findings, Mr. Pierre-Louis thought it was incomplete.

With respect to the second issue of the confidential report, he thought that there were a couple of incomplete and important questions that remained unresolved as Mr. Whiteman indicated. First, the report failed to establish the distance between the complainant and the police officer during the incident. He thought that was crucial with respect to the officer's statement that the complainant interfered with the arrest of the other man. Second, the report failed to establish how the complainant disrupted the police officer during the event. On the basis of Mr. Pierre-Louis' analysis, he felt that the OPS needed to go back and conduct a more thorough investigation. He assumed that this has in fact been done and he was not privy to the results and cannot provide comment.

Mr. Whiteman replied that there were efforts to communicate further with witnesses who were not interviewed. One of the witnesses communicated by email with Detective Hendricks because the witness was not in the country while this second investigation was taking place. This still leaves the issue of distance examined, but unresolved. Mr. Whiteman doesn't think that the nature of the disruption that took place is specified to any greater degree than it was before. The disruption must be in the eyes of the beholder. Was there actually a disruption in the extreme example? Did the person who was being arrested get away? No. Did the officer find that somehow the danger to him was increased? Was it objectively increased? Mr. Whiteman doesn't know and the record doesn't establish it.

Chairperson Gaige asked Mr. Whiteman if he had a motion. Mr. Whiteman replied that he did, he moved to accept OPS findings of *not sustained* for the use of force, and the arrest authority and procedures should be split. The verbal and physical abuse during the course of the arrest authority is *not sustained* and the authority to arrest be characterized as something else. The third charge of arrest authority and procedures with respect to the third party is *not sustained*. Upon reviewing the seven possible disposition it seems that the one that comes closest is *not sustained* for the second charge with respect to every aspect of the complaint. Judith Mazza seconded the motion. The motion carried unanimously.

The complainant's lawyer Mark Mishler was recognized. Mr. Mishler was quite disturbed by this whole process and offered the following comments. First, the OPS initially deemed it appropriate to submit a finding to the Board without even speaking to his client or any of his client's witnesses. He is grateful that the Board at that time rejected that submission and sent it back for further investigation, but this is a telling sign of where the department and the OPS was at in regards to this complaint.

He is very disturbed that based on what has been reviewed by Mr. Whiteman and the monitor that we have a situation where we have a non-police officer alleged to have displayed a badge and gave some direction to a civilian to do something based on that authority. It turns out that the non-police officer is the wife of an off-duty police officer, which is an issue that needs to be looked at closely. Why did the police officer somehow delegate authority and his badge to his wife? Frankly, her conduct is a crime and if the police officer permitted this to happen then that is a matter that ought to have been examined carefully by the OPS and the Board. Apparently this hasn't been.

Also, Mr. Mishler appreciated Mr. Whiteman's description of the police officers who could not have been accurate. He is disturbed that apparently that was not viewed as significant by the OPS or the Board. When a police officer gives false testimony to the OPS, which is then used as a basis for saying well we can't sustained this, this is one of the very core issues that this Board ought to be concerned with. Are police officers giving false information and testimony to their own OPS in regards to a complaint? He asked that the Board take this into consideration.

Also, there are in fact more than one witness in this case who can attest to the verbal abuse of the arresting officer to his client and these are credible witnesses who can help his client. Each was questioned extensively during the second investigation by the OPS, and he doesn't accept that this issue is not sustained. On the use of excessive force, there has to be some ability to sift through, weigh, examine, and consider the information that is given. All information that is given does not deserve the same weight. There are very credible witnesses and there are at least two police officers who apparently were not credible and gave incorrect information. The Board should be very concerned about this and urges them not to accept a not sustained finding regarding the use of force. His client says he was punched in the kidney by the officer and he finds this very credible. The lack of credibility of the officer makes his client's statement even more credible.

Finally, in regards to the arrest itself, why does the OPS and the Board not want to inquire into the authority for an arrest and rather put them off on the court system? This is an officer who claimed that his client, with the intent to cause public inconvenience for recklessly creating a risk thereof, congregated with other persons in a public place and refused to comply with a lawful order of the police to disburse. This is false; it doesn't even match what Mr. Whiteman reviewed the officer said in his testimony. It doesn't even come close to matching what the officer said to the OPS. It is a false charge, false at the time his client was arrested and it is still false. He thinks that the officer ought to be held accountable for that. He doesn't know why the Board is not capable of holding an officer accountable for falsely charging someone with an offense. He urges the Board to reject the proposed findings of OPS even as modified by Mr. Whiteman and this manner needs to be investigated further or at least the excessive force, improper verbal conduct of the officer during the arrest and the unlawful arrest should be sustained.

Michael Whiteman addressed the badge issue. The allegation is that the officer's wife was holding the badge and gave directions to leave. The police officer's testimony, which his wife supports, is that he handed, during the course of events, the badge to his wife and that he himself gave the direction to the complainant to withdraw. He claims that he said this three times. Mr. Whiteman discarded the officers whose testimony was not credible. He didn't weigh that against the complaint. Perhaps the officers should be separately questioned about false testimony, but the Board doesn't have the capacity to initiate a complaint on its own motion. This was not part of the complaint, except for now by implication.

As to the verbal abuse, Mr. Whiteman doesn't know how the Board resolves factual disputes. Mr. Mishler's point is interesting that there is a police officer who gives testimony, which could be self serving. There are two other police officers who were previously given hearsay testimony as if it was direct witness testimony and they support the arresting officer. He thought that there was sufficient confusion that it would be difficult to resolve. On the physical abuse, the only person who says that there was physical abuse was the complainant. His friends did not corroborate that. The basis for arrest has been questioned and there are other means for dealing with a false arrest. Mr. Whiteman still makes the recommendation that he did.

Chairperson Gaige moved to sustain Mr. Whiteman's motion. Judith Mazza seconded the motion. The motion carried unanimously.

**CPRB 32-05/OPS C05-574** (Presented by Michael Whiteman)

Chairperson Gaige moved to table review of this complaint until the May meeting because Assistant Chief Bruno left the meeting to attend to a family emergency and wanted to be present for the review.

Michael Whiteman recommended deferring review of the complaint because it is another instance of inconsistent statements. According to Mr. Whiteman, time needs to be spent on this case because the facts, in the sense of what people claim, do not fit together.

The fundamental allegation is that the complainant was stopped for driving while black. The response is that there was a reasonable basis for stopping him, but when you examine the basis that is alleged it doesn't stand up. The claim is that the police officer and accompanying state trooper stated that they got a call of a domestic complaint over the radio. The man who was the subject of that complaint had a gun, then gave the gun to the complainant and the complainant drove a particular car that happened to be the car in which he was stopped.

This initial domestic complaint occurred six (6) weeks prior to the traffic stop. Moreover, while the initial complainant in the domestic relations dispute says that she mentioned a gun, which may have been given by the person abusing her to the complainant, this claim does not appear in the department's domestic relations complaint.

The complainant alleges he was stopped because as the police officer told him there were outstanding warrants for his arrest. The complainant responded that he doesn't have any outstanding warrants for his arrest and he just doesn't believe that is true. He had just come from a meeting of a committee that was formed by the District Attorney's office, on which he serves, and no one mentioned this to him. Moreover, he recently ran for public office and no one mentioned warrants for his arrest.

Further confusion about this complaint arises from the fact that the trooper alleges that there was an altogether different reason for stopping the complainant. The trooper says that the Albany police officer told him that a subject with the same last name was wanted in a drug-related charge and usually carried a gun under the seat of his car. The trooper goes on to say that when they ran the plate of the car, there was no match for the person who was involved in the domestic relations complaint, but they got an associated hit that was not defined. Curiously, if the stop was because they thought that the driver was wanted for a drug-related charge and that he usually carried a gun under the seat, they never searched the car or even asked to search the car.

The last piece to this story was that the woman who was the complainant in the domestic relations dispute admits that everything she said about a gun was wrong. Did the police officer have information upon which he thought he could rely on? But, this still doesn't explain why the complainant, who was driving a nice car, was stopped. During the stop they ran the plates, the registration, and drivers' license and determined that this wasn't the person they were looking for and let the complainant go.

Chairperson Gaige questioned whether the Board wanted to finish review of the complaint at the meeting and whether the interested parties are going to be back in a month.

Mr. Whiteman commented that it is unusual for OPS to take an issue with the monitor's report and want to defer the issue until the head of the unit can be in attendance. The complaint was filed in November and is still pending.

Mr. Mishler was recognized. He spoke on the issue of procedure, and commented that he understands that the Assistant Chief was unable to attend. He insisted, however, that the Board take action instead of holding this up for another month. He asked for a meeting outside the regularly scheduled meeting so that they could continue the discussion. He noted that he would like a chance to respond to or comment on the information related to this complaint, and that he doesn't want to wait until July.

Chairperson Gaige moved to schedule an extra meeting in April to only address this complaint and the standing issue. Vice-Chairman Allen seconded the motion. The motioned carried. April 24<sup>th</sup> was chosen as the meeting date as long as a quorum of the Board was available to attend.

The complainant was recognized. He questioned the overall process, and asked when a person is credible enough for the Board to believe without a witness present.

B. *Appointment of Two New Members to the Committee on Complaint Review for May 2006*

The following Board members were appointed to the Committee on Complaint Review for May 2006: Beresford Bailey, Ronald Flagg, Marilyn Hammond, Judith Mazza, and Fowler Riddick.

C. *Committee/Task Force Reports*

By-Laws Committee

Committee Chairman Michael Whiteman noted that the committee had not met and that it had nothing new to report.

Community Outreach

Committee Chairperson Judith Mazza noted that the committee had nothing new to report.

Mediation

Committee Chairperson Barbara Gaige gave the report. She reported that a second meeting occurred with Assistant Chief Bruno and a union representative, and added that she and Michael Whiteman were present. They drew up a flow chart for review and will continue with the mediation meetings to flesh out the protocol.

## Policy Review/Recommendations

Committee Chairman Jason Allen gave the report. Chairman Allen reported that he met with Chief Tuffey to go over old issues. In December, Chief Turley released data concerning the make-up of stops, background, neighborhoods, etc. The police department has submitted that data to Dr. Rob Worden at SUNY Albany for interpretation. The Chief reported that he plans to have further discussions with Dr. Worden scheduled for the end of the month.

Chairman Allen reported that there was discussion about the special standing task force to define standing, who can be a complainant, and who can be a witness. The task force has developed a proposal and presented it to the Chief for his feedback.

Chairman Allen reported that there was concern from the community that there has not been a public statement on racial profiling. The Chief is trying to work the issue with the data in parallel, with the understanding that the interpretation of the data may take longer. He will have an answer by the May meeting in terms of who will make a public statement and what form that will be in.

Chairman Allen reported that the Chief committed to having the redacted version of the pursuit policy available to the public through the Government Law Center at Albany Law School. He added that the Chief is looking at a redacted version of the use of force policy. The Chief is not sure if the policy is all tactical or whether a partially redacted version will be made available at the Government Law Center.

Chairman Allen reported that at the last meeting, one member of the community expressed concern about the ethnic make-up of the Albany Police Department. Are there any initiatives to increase diversity in the APD? The Chief's position on this is that the police department is having problems right now finding anyone to sign up for the exam and he is working off the preferred list.

Chairperson Gaige noted that the difficulty of finding people to take the exam is not unique to the city of Albany. New York City Police Department has sent representatives to the state university to recruit people and take their exams. This is a national problem.

## Public Official Liaison

In the absence of Committee Chairman Ronald Flagg, it was noted that the committee had nothing new to report.

### *D. Report of the Government Law Center (GLC)*

Senior Staff Attorney Justina Cintrón Perino gave the report.

## Complaint Summary

As of the date of the meeting, it was reported that there were 31 active complaints before the Board for review, four (4) of which were in the process of being closed. Ten (10) complaints are suspended from review, and a total of 222 complaints have been filed with the Board to date.

### Research Tasks

*Number of Complaints filed by Witnesses* – it was reported that the Center is still in the process of gathering the numbers, but is near completion.

### Outreach

It was reported that a redraft of the complaint form was expected to be forwarded for the Board's review in May. Board members were asked to revisit the Issues of Concern Form and provide comments.

### Training

It was reported that Board member Fowler Riddick had completed the Center's Orientation Program, including participating in a ride-along with the APD.

Several members were reminded that they had not completed the first quarter ride-along training, and were asked to provide available dates to schedule this training.

Next training of the Board will be on Ethics in Citizen Oversight. Board members were asked to save the date – May 22<sup>nd</sup> from 6-8 p.m. at the Law School.

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

Sergeant Eric Kuck gave the report. Sgt. Kuck reported that the OPS is clearing its cases and is taking care of hiring for police, fire, telecommunications, and public service officers. They are preparing a quarterly report for the next meeting.

#### F. *Report from the Chair*

A Chair's Report was not given.

## **VI. Public Comment**

The floor was opened for public comment.

A community member was recognized and offered the following comments. When he was first told of this meeting he was ready, but as time went on it was kind of like buying a new car. When he first bought his Dodge he was in it and realized how many other Dodges were out

there. His first experience with the Albany Police Department was really bad, but it wasn't until this morning when he jumped on the computer and started reading. He was driving through Albany, and witnessed an Albany police officer, accompanied by a state trooper, picking up this young black girl and body checking her. This outraged him because there was nothing he could do about it. He knows that if he tried to get involved, he knows what would have happened.

He cited an article in the newspaper. "We remember your smile, your joy; you brought us so much in your life. Your 27<sup>th</sup> Birthday. David Scaringe." Excessive force. He stated that panel is just sitting here. Three of you say yea and the rest just sit there and say nothing. This is not a vote. You're not voting, some of you are saying something, but the rest of you are silent. What are you waiting for - to get out of here? For 8 o'clock to come around?

Jose Lopez was recognized and offered the following comments. He stated that the Board does not have the power to do anything. He made a complaint on December 28<sup>th</sup> and is just now getting a letter. The person in charge of his case is not even in attendance. His complaint started with a complaint he made three years ago to the Health Department against a doctor from Albany Medical Center. Then he made a complaint to the police department because someone from the Health Department was following him around. At court, the judge gave him a hard time and never signed his letter because they didn't take him seriously. Later on he got another letter signed. The case was closed because they were unable to assist him any more. On May 4<sup>th</sup>, he sent the papers again to the Health Department. The Health Department and Albany Police Department are trying to keep his complaint quiet and not investigate the matter. Everyone he talks to about this knows what is going on, but they are keeping quiet.

A staff member from Alice Green's office was recognized. He questioned whether the mediation was going to be kept internally or will it be opened to the public. Chairperson Gaige replied that there were representatives from each union, administration from the police department, and representatives from the Board present. They are now putting together the mediation protocols. This gentleman made it known that he wished that the community would be involved in the mediation process.

In terms of standing, there was a shift when Tuffey changed direction with respect to two cases. Chairperson Gaige reported that the shift in the direction on standing occurred because Chief Tuffey changed his mind and two cases from last month are going to be looked at again. These two cases have been sent to the OPS for investigation. It was the opinion of the task force that this looked like a possibility of having some sort of agreement. Paul Weafer, the Chair of the task force, put together what the task force had agreed upon and presented this to the Chief for review. By the 24<sup>th</sup> when the Board meets, there will be something for the Board to vote on. From there, it will go to the Common Council and the Mayor.

The community member also asked whether Chief Tuffey would put together a public statement concerning the disconnect between the data on racial profiling and the department's hiring practices. Jason Allen replied that the data had been given to an expert for analysis. The Board hopes to get an answer in the form of a public statement before the next meeting.

Mark Mishler was recognized. Mr. Mishler questioned whether the Board met secretly before the CPRB meeting. Barbara Gaige replied that the policy committee meeting with the Chief is a standing monthly committee meeting at five o'clock before the regular Board meeting. She added that a quorum is not present and the committee members do not discuss cases. It is a place to resolve and talk about policy.

Mr. Mishler commented that he arrived early and there was some kind of meeting going on and the public wasn't involved. Judith Mazza replied that the meeting was a committee meeting with the Chief to discuss specific policy issues with the subcommittee. She added that it is most convenient to have the subcommittee meeting before the regular meeting, and noted that the meeting is not an open forum meeting. She commented whatever is discussed at the meeting is shared with the rest of the Board and the public during an open meeting. She concluded by saying that no voting takes place and the subjects are Board issues and Board concerns.

Mr. Mishler commented that he is concerned since there was a quorum of members present and, therefore, the meeting should have been an open forum. Chairperson Gaige clarified by stating that a quorum of the Board was not present at the meeting and that he may have seen members of the Department or the Government Law Center present.

Mr. Mishler stated that the public has an interest in whatever policy and dialogue that takes place and asked why the public is not a part of this process? Chairperson Gaige replied that there are other committee meetings that take place outside of the public meetings. Jason Allen interjected that the meeting is held prior to the CPRB meeting because it is more convenient and the outcome of that meeting is briefed during the CPRB meeting. It is a conversation and no votes are taken and no decisions are made. Mr. Mishler commented that he wasn't satisfied with this and wants to hear what the Chief has to say about the policy.

Barbara Gaige thanked the public for being present and encouraged them to come back.

## **VII. Adjournment**

Fowler Riddick moved to adjourn the meeting. The motion was seconded by Jason Allen. The meeting was adjourned at 8:05 p.m.

Respectfully Submitted,

Ronald Flagg  
Secretary