

**City of Albany
Citizens' Police Review Board
161 Washington Ave. - Albany Public Library
Large Auditorium
April 11, 2005
6:00 p.m.–8:00 p.m.**

Present: Beresford Bailey, Ronald Flagg, Barbara Gaige, Marilyn Hammond, Judith Mazza, and Paul Weafer.

Absent: Jason Allen, Herman Thomas, and Michael Whiteman.

I. Call to Order and Roll Call

Chairperson Barbara Gaige called the meeting to order at 6:00 p.m. Chairperson Gaige noted that a quorum of the Board was present.

II. Approval of the Agenda

The agenda was reviewed. Chairperson Gaige added an item to the agenda; a follow-up report from a complaint reviewed at the March meeting. She noted that Judith Mazza would provide the follow-up report on CPRB No. 24-04/OPS No. C04-502. Ms. Mazza moved to accept the agenda. Paul Weafer seconded the motion. The motion carried unanimously.

III. Approval of the March 2005 Meeting Minutes

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

IV. Old Business

CPRB No. 24-04/OPS No. C04-502 (Follow-up Report given by Judith Mazza)

At the Board's March meeting, the complainant's mother and advocate were instructed to meet with Detective Sergeant Eric Kuck of the Office of Professional Standards' (OPS) to provide additional information in support of the complaint. Ms. Mazza reported that this meeting did not take place, and the additional information in support of the complaint had not been forwarded to the OPS.

Ms. Mazza moved to recommend that the OPS interview the complainant and obtain the necessary medical releases and documentation to determine: 1) whether or not a statement alleged to have been made by him during the incident escalated the events, 2) whether or not a pre-existing medical condition was responsible for some of the complainant's alleged behavior, and 3) who were the two people who witnessed the incident. She requested the OPS to conduct the interview, review the necessary documentation, and report back to the Board regarding its findings at the Board's May meeting. Paul Weafer seconded the motion. The motion carried

unanimously. The OPS asked that the request be submitted in writing. The Government Law Center agreed to draft and forward the Board's request to the OPS.

V. New Business

A. *New Complaints*

1. New complaints received since the March 2005 Meeting

Chairperson Gaige reported that two (2) new complaints had been received by the Board since its February 14, 2005 meeting. Judith Mazza read a summary of each complaint.

CPRB No. 09-05

The complainant alleges that he was unlawfully arrested in June of 2004 for possession of stolen property - stolen credit cards. The complainant claims, however, that a person he was with at the time of his arrest had the credit cards in his possession. *A monitor was assigned to this complaint.*

CPRB No. 10-05

After being called to Sky Line on Lark Street where officers had one of her sons in handcuffs and the other against the car with his hands up, being patted down, the complainant alleges that she went over to find out what was going on. She told one of the police officers her name and stated that she was the parent of the two young men. She alleges that the officers yelled at her, pushed her, and told her to "shut the f*ck up and to get the f*ck from over here." The complainant claims she told the officer that she was concerned about her two sons, to which the officer responded by pushing her again and threatening her with arrest if she did not leave. The complainant's son, who was handcuffed and sitting on the sidewalk, told her to go to the other side of the street. The complainant alleges the officer told her son to "shut the f*ck up" and then took her by the arm and tried to handcuff her. When asked why, the officer told her "to shut the f*ck up and go across the street before he arrest[s] [her] on trespassing." The complainant told her friend to have her mother call the complainant's cousin who is an Albany police officer. The officer responded, "f*ck [your cousin] what the f*ck is he going to do and if you keep talking we're going to arrest you." The complainant alleges that the officer then kicked her oldest son in the right leg.

The complainant's cousin advised her to make a complaint. The complainant claims that when she tried to obtain a complaint form and the name of the officer against whom she was filing the complaint, an officer at the station would not give her the correct name, but rather gave her another name and took a half-hour to get her the form. She further claims that the officer told her he didn't think that what he gave her was the form, however, he would not give her any further information. After multiple requests for the officer's name and badge number, the officer gave the complainant his name and badge number, and identified his station assignment. *As of date of the meeting, a decision to assign a monitor to this complaint had not yet been made.*

2. New complaints for review

Chairperson Gaige reported that five (5) new complaints were on the agenda for review.

CPRB No. 26-04, 27-04, 28-04/OPS No. C04-573 (Presented by Paul Weafer)

Mr. Weafer summarized the complaint.

This complaint deals with three complaints, one made by the mother of the person arrested, and the other two were filed by her daughter and son, who also witnessed the events as they unfolded. Therefore, all three complaints were consolidated into one.

All three complaints involve allegations characterized as call handling. However, the mother's complaint gives a more detailed description of what allegedly took place. The 911 tape revealed that this incident took place between 2:00 and 2:28 a.m. The officers who arrived at the scene were responding to an altercation where an alleged assault with a possible knife, "box cutter," took place. The mother alleges that a third party, a young man, was taking an aquarium fish tank out to the curb, when two female neighbors began to yell and scream racial slurs at him, and accuse him of hitting their car. The mother further claims that the two girls began to attack this young man, and then began to hit and pull the hair of her daughter. She further alleges that the two girls also hit the young man in the "private parts."

The officers who arrived on the scene recognized the young man as someone who was involved in a "box cutter" incident that took place in April of 2004. The young man claimed that he had been attacked by two women from across the street. When asked if he had a weapon, he told the officers he had a box cutter. The young man alleged that one of the women had been cut by the box cutter when she slapped him. The young man was subsequently arrested. The investigation revealed that one of the women had a laceration from the box cutter and the other had bite marks in her abdomen from the altercation.

The monitor assigned to this complainant, Joel Pierre-Louis was recognized. He stated that he reviewed the three complaints filed, numerous documents including, the sworn written statements of the two women involved in the incident, intra-departmental correspondence, statements from the young man, the Albany Police Department's (APD) incident report, the APD property report, the APD investigating report, a supplemental report, NYS arrest and incident report, AMC after care instructions, the 911 call log, the arrest report of the defendant, and the confidential incident report.

Mr. Weafer commented that the mother was transported to St. Peters for back problems following this incident. Mr. Pierre-Louis reported that she had trouble breathing, so the Albany Fire Department responded and transported her to the hospital.

Mr. Weafer added that the mother claimed her daughter was taken to the hospital days later, and was suffering from a possible borderline rupture of the spleen. He noted however, that based on the monitor's report, the daughter never sought out medical treatment at the scene. Mr. Pierre-Louis reported that there were no medical records

pertaining to the daughter's condition within the OPS' file to support her claim of injuries.

Paul Weafer stated that the complaints made by the daughter and son focused on their frustration with not being interviewed by police officers on the scene so that they could give their version of what happened.

After the young man was taken into custody, the mother claims that she attempted to contact the detective in charge of his case several times. She claimed the detective returned her call four days later, and told her that if she had concerns for the young man, her inquiries should be directed to the prosecutor handling the case.

The monitor clarified that the officers were responding to an assault call where a weapon was used, and when they arrived they discovered the young man. They asked him if he had a weapon, to which he responded yes and told the officers that he had a box cutter. The officers removed the box cutter. The young man explained the altercation with the two women, who had accused him of breaking into their vehicle. He also alleged that when the melee ensued with the women, he had the box cutter out, and believed one of the women was cut while she was flailing her arms around. The two women alleged the young man pulled the box cutter out, and when one tried to intervene, she was cut. The other was bit during the altercation.

According to Mr. Pierre-Louis, the officers spoke to the mother, as well as, the daughter and son, but all three were upset because the officers did not arrest the two women, but did arrest the young man. When asked by Mr. Weafer if he agreed with the OPS's preliminary findings of *exonerated* as to the allegations in this complaint, Mr. Pierre-Louis responded that he did agree with the findings.

The police officers took photos of the women. The mother's concern is that the young man is being held at the Albany County Jail without bail or with bail that he cannot afford, and has some sort of tumor. Mr. Weafer noted that if the complainant is alleging some sort of self-defense in this case, he must do so with the Court and not the Board.

Judith Mazza asked why, if more than one person was involved in this altercation, the other persons involved were not arrested. She recognized that the two women were injured and noted that she was not questioning the arrest of the young man. She added that the young man did not go to them, they came out of the house.

Assistant Chief Paula Breen responded that in a case of use of force, Article 35 of the New York State Penal Law imposes a duty on a person to retreat. While a person has a legal right to defend himself or herself, that person also has a duty to retreat. Assistant Chief Breen added that where there is probable cause to arrest, police officers will make an arrest. In this case, the two women sustained physical injuries as a result of their confrontation with the young man. This gave the officers probable cause to arrest him, and may not have had probable cause to arrest the two women.

Paul Weafer moved to accept the preliminary findings of the OPS - that the officers should be *exonerated* for the allegations made within the three adjoining complaints. Marilyn Hammond seconded the motion. The motion carried unanimously.

CPRB No. 03-05/OPS No. C05-57 (Presented by Barbara Gaige)

Ms. Gaige summarized the complaint. The complainant was arrested at 10 Judson Street and transported to a residence on 5 McPherson Terrace. The complainant alleged that he should have been taken to jail following his arrest, but was instead taken to the residence on McPherson, where officers entered, searched, and seized property. The complainant alleged the officers should have itemized the items taken on a property report. He further alleged that following the seizure of his property, items were missing, including: \$500 in cash, a gold chain, and a gold diamond ring.

In his complaint, received by the OPS on February 10th of this year, the complainant alleged that a police officer threatened his attorney, which forced the attorney to go on the record for fear of reprisals from her. The OPS contacted the complainant's attorney, who told the OPS that the officer requested the attorney's business card and they joked around about parking tickets.

The complainant claims that police officers entered the building he was living in without a search warrant, and failed to catalog items that were removed from his apartment. The complainant could not state when he last saw his property and he could not, without certainty, say whether his girlfriend or others took the property that was allegedly stolen.

A warrant was issued for the complainant's arrest. The OPS's report stated the parole officers notified the APD that the complainant was a parole absconder from New York City and they had information that he was staying at an apartment at 5 McPherson Terrace. The parole officers also had information leading them to believe that the complainant was in possession of a hand gun, and was forcing the woman he lived with into prostitution.

According to the investigation, NYS parole officers observed the complainant attempting to escape by climbing out a window at 5 McPherson Terrace. It was these officers that apprehended and arrested the complainant, and brought him back to 5 McPherson. The parole officers then gained access to the apartment through a rear window and, with the assistance of a building resident, unlocked the common front door. Keys confiscated from the complainant were used to get into the apartment. The apartment was searched by the parole officers and items were seized that were related to the case, including pay stubs, a billie club, and an ice pick. The parole officers did not go to booking with the complainant.

In her interview with the OPS, the Albany police officer stated that, on the day of the incident, she was assigned to a unit to assist the parole officers. She further stated that when she was at the hearing she felt as though she had been interrogated for an hour-and-a-half; the public defender asked irrelevant questions and made her feel as though she stole the money. Therefore, the officer asked for the attorney's business card.

The monitor assigned to the complaint, George Kleinmeier, was recognized and asked if he had anything further to add. Mr. Kleinmeier commented that he did not.

Ms. Gaige reported that the OPS had made a finding of *unfounded* as to the complainant's allegations regarding his arrest. Ms. Gaige noted that parole officers had an arrest warrant for the complainant, who was believed to have forcibly taken over an apartment. It was the parole officers who apprehended him, placed him in custody, and transported him to 5 McPherson Terrace. Under the authority of parole, the officers entered the building and searched the apartment.

Ms. Gaige also reported that the OPS made a finding of *exonerated* as to the call handling allegation – the officers did not itemize the property seized and *unfounded* as to the conduct allegation – items seized were missing. The investigation showed that several property reports were completed on the day of the incident, detailing all items seized and removed from the apartment. In addition, the complainant never observed the officer remove any money or jewelry from the apartment, and the officer did not see these items removed.

Ms. Gaige moved to accept the OPS's preliminary findings as to each of these allegations. The motion was seconded by Marilyn Hammond. The motion carried unanimously.

CPRB No. 06-05/OPS No. C05-77 (Presented by Reverend Beresford Bailey)

Reverend Bailey summarized the complaint.

The complainant alleged that, on February 10th of this year at or around 11:15 p.m., he was walking home from a friend's house when stopped by police officers. The officers searched his entire body area, including his genitals, and took his shoe to compare it with something else. The complainant claimed one of the officers criticized his coat.

The complainant stated that he made several inquiries into finding out the officers' badge numbers. After he could not see the badge of one officer, he adjusted his head, aligning his eyes with her badge, when she allegedly grabbed him by the neck and forced him to the ground. The complainant stated that he was cold from standing outside for such a length of time and felt very humiliated because of the way he was treated by the officers.

The investigation revealed that officers were responding to A burglary in progress call on Second Street. A woman phoned police after she heard noise while in the shower. When she glanced in an adjacent room, she saw someone fleeing from her apartment. Nothing was taken from her home.

Police records show that there was 1/2 inch of snow on the ground that evening. Therefore, the person who left the woman's home on Second Street left foot prints in the snow. The police used a dog and the prints to track the person to a Stewart's Shop, where the officers stopped the complainant. The complainant fit the description provided by the woman of the suspected burglar. When police officers approached the complainant, he was breathing heavy and perspiring.

Based upon the fact that the complainant fit the description, was in the general area of the woman's home, and was tracked by the dog, the officers had probable cause to stop and question him. The officers conducted a pat-down search for weapons and for safety purposes, and requested one of his shoes to compare it to the shoe prints left in the snow leading from the woman's apartment. It was determined that the complainant's sneaker matched the footprints left in the snow near the woman's home.

As to the officers' badge numbers, the officer stated that the complainant had continuously asked for the badge number, which the officers had displayed on the outside of their jackets. According to the officer, the complainant had ample opportunity to get the number. The complainant alleged that the officer threw her hands around his neck and forced him to the ground. The officer claimed she did this to protect herself. She alleged the complainant jumped up at her and she perceived the complainant's actions as a possible threat.

As to the allegation that the officer criticized the complainant's jacket, the officer admitted to making a statement about the jacket. During the officer's questioning of the complainant, he told the officers that he was cold and needed to go home, it was a school night. The complainant claimed the officer said to tell his father to buy him a bigger jacket if he is cold. In an interdepartmental correspondence, the officer stated she told him that everyone is cold and that the investigation wouldn't be much longer. She claimed the complainant continued to complain so she commented that he should ask his father to buy him a warmer jacket.

The complainant was subsequently released because the woman couldn't positively identify him as the suspected burglar.

The complainant was recognized, and stated that he could not see the one officer's badge number because a spot light was shining on him, and the officer's jacket was folded over her badge.

The complainant's father was recognized and stated the complainant was emotionally distraught when he came home that evening. Once the father found out what occurred, he called the police station. He was directed to another police station. After talking to two or three people at command, he was able to speak to one of the officers who was at the scene during the stop. The officer explained to the father that his son was a suspect in a burglary case. The officer told the father that a police dog had led officers from a burglary scene to his son at a Stewart's Shop. The father stated that his son told him that "the dog was not going crazy...he was chilling." The father wanted to point out that he was not aware that a dog could track footprints and that many people in his neighborhood wear the same sneakers as his son.

The father commented that he has seen this type of thing happen time and time again in his neighborhood, and that police officers are not always the friendliest of people. He further stated that he was told in the past, by an officer, that they will say anything to keep control over a situation. The father then asked the Board how to seek justice in that type of atmosphere, and furthermore, what would they do if it was their son that was stopped, and how would they feel.

The complainant's father further asked why he had to contact the Mortan Avenue Station when the incident occurred less than two blocks away from the North Station. He further stated that he is trying to resolve this matter in a mature fashion, and he was proud of his son, who is trying to handle this matter with civility. The father commented that he sees the way police slant things one way or another, and citizens do not have a leg to stand on unless they have a video camera.

Paul Weafer asked why the officers gave the complainant his shoe back if it matched the print made in the snow outside of the home where the attempted burglary took place. OPS Detective Sergeant Eric Kuck responded that it was out of courtesy and because it was cold. He added that if they were going to arrest the complainant, the shoe would have been in their custody. He noted that enough independent circumstances existed to demonstrate probable cause to stop the complainant, including: the description of the suspect, which matched that of the complainant, the complainant was out of breath and sweating profusely when stopped, the sneaker print matched the print in the snow outside of the woman's apartment, and the dog alerted them to him.

Paul Weafer then asked if a dog is capable of tracking someone in the snow. Sgt. Kuck responded yes, the dog follows the scent of an individual.

Paul Weafer then directed a question to the complainant's father by asking him how he would have handled the situation if he had all of the evidence presented. To which the father responded that his son was not out of breath. The complainant clarified that he was out of breath from walking fast, and added he was coming from the opposite direction of the alleged burglary when stopped by officers. The father claimed that the dog was wrong. The complainant stated that he was wearing a kind of shoe that is very common in his neighborhood.

Judith Mazza asked Sgt. Kuck why the officers did not give their badge number when requested. Saying "I don't have to tell you" when they are going to find out anyway, sets up a dynamic in a situation that is already tense. She recognized that this may be a training issue. Ronald Flagg agreed that it seems to set up an unnecessary conflict.

Chief Turley responded that, as part of departmental policy, officers are required to give their badge numbers whenever that information is requested.

Judith Mazza noted that two of the complaints mentioned at different points of the meeting involved a scenario where an officer failed to give such information when requested. Therefore, it appears that, even though the policy exists, there is a problem with its enforcement.

Ronald Flagg noted that giving such information when requested will not hurt anyone; in fact, the present complainant was released at the scene.

Reverend Bailey asked the complainant why, if coming from his friend's house, he did not list his friend's name in his complaint as a witness. The complainant responded that his friend went to NYC for a few days.

The complainant's father commented that the issue is having a right to know why you are being stopped and patted down. It is a community relations, quality of life issue, to be patted down at any officer's request while one is merely walking down the street. The complainant's father explained that he instructs his son to keep quiet and to be compliant in this type of situation. He added that he has taught his son to be a respectful member of the community.

Paul Weafer then asked the complainant how long was he detained. The complainant stated that he was detained for some 45 minutes.

The complainant's father stated that he felt as though this was a lack of courtesy and protocol on the officers' behalf. The complainant added that he didn't think the one officer should have placed her hands around his neck, forcing him to the ground. When asked what his primary grievance in this case was, the complainant's father responded that it was the lack of courtesy and professionalism displayed by the officers involved.

Judith Mazza questioned the attitude of the officer for not giving her badge number. Paul Weafer commented that the complainant was only asking for her badge number. Assistant Chief Paula Breen stated that all officers are required to display their badge number and name, and give this information to anyone who requests it; that is why officers also wear identification tags.

Judith Mazza noted that this complaint is about the officer failing to give her badge number and not about the reasons why the complainant was stopped. Since it is the policy of the department to give that information when requested, it looks like the officer was not complying with department policy.

Reverend Bailey moved to accept the OPS's preliminary findings of *unfounded* as to the officer's conduct and *exonerated* as to the officer's stop, search and questioning of the complainant. Paul Weafer seconded the motion, noting that something needs to be done to better enforce the department's policy of being forthcoming with an officer's identifying information.

Before the Board voted on the motion, Judith Mazza stated again that the officer did not tell the complainant her badge number. After consultation with Chief Turley and Assistant Chief Breen, Sgt. Kuck reported that the complainant did ask for the officer's name and badge number, and the officer did not provide the information.

Reverend Bailey then amended the motion to accept the OPS's preliminary finding of *exonerated* as to the allegations surrounding the handling of the call, and *sustained* as to the allegation that the officer failed to provide her name and badge number upon request. Judith Mazza seconded the amended motion, and the motion was carried unanimously.

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

The following members were appointed to the Committee on Complaint Review for May 2005: Ronald Flagg, Marilyn Hammond, Judith Mazza, Herman Thomas, and Paul Weafer.

C. *Approval of First Quarter Report*

Ronald Flagg moved to accept the First Quarterly Report subject to the addition of information concerning the topics covered at the new member Citizen's Police Academy training session that took place during the first quarter. Paul Weafer seconded the motion. The motion carried unanimously.

D. *Policy Review/Recommendations*

Judith Mazza reported that, prior to the Board's meeting, the committee spoke with Chief Turley and Assistant Chief Breen. She reported that a policy training session would be set up to review the department's policies regarding tasers, video recording devices in patrol cars, pursuits, and the use of force. The Board agreed to schedule the session for May 2nd.

E. *Report from the GLC*

Government Law Center Staff Attorney Justina Perino gave the report.

Status of Complaints

As of the date of the meeting, it was reported that there were 19 active complaints before the Board for review. Five (5) complaints remain suspended, and 159 have been closed. A total of 183 complaints have been filed with the Board since it began reviewing complaints in 2001.

Correspondence

The Board was forwarded the drafts of two letters referring to items requested at the Board's last meeting.

The first letter was drafted in response to the Board's motion at the March meeting to return CPRB No.24-04 /OPS No. C04-502 to the OPS for further investigation. In light of the Board's earlier discussion and motion, it was reported that the letter would be revised to include the Board's new request.

The second letter was drafted in response to action taken by the Board at its March meeting. The Board voted unanimously to approve the letter, which notifies a former complainant that the Board had voted unanimously not to reopen his complaint.

Training

It was reported that the April 4th session of the new member Citizen's Police Academy had been cancelled, but would be rescheduled. The Board was reminded that the next session of the Academy was scheduled to take place on April 25th.

The Board was forwarded the schedule of classes and topics for the regular session of the Albany Citizen's Police Academy. New members were encouraged to attend as many classes of the regular session as their schedules permit, and remaining Board members were encouraged to attend as well.

It was reported that the Center would be working with the department to coordinate the May 2nd policy training session, and is working to put together a session on credibility.

F. *Report from the OPS*

Detective Sergeant Eric Kuck gave the report.

He noted that for the First Quarter of this year, the department had received a total of 31,893 calls for service, and a total of 2,298 arrests were made. There were a total of nine (9) civilian complaints, four (4) of which were left over from the previous year.

Sgt. Kuck also noted that the department invited the entire class of the Citizens' Police Academy to this meeting; however, no one participating in the program was in attendance.

IV. Public Comment

The floor was opened for public comment.

Dr. Alice Green was recognized. She commented that she thought the Board owed the young man, involved in the last complaint reviewed, an apology. She thought the Board conveyed to the last complainant that he needed to prove his innocence. She commented that complainants should not be put in this situation because that is not the way that the system works.

Paul Weafer responded by asking Dr. Green to further elaborate as to how the Board mishandled the last complaint, before he reminded Dr. Green that the Board sustained part of the complaint.

Dr. Green stated that she did not want the complainant's father to leave like he did with the thought that he and his son had to prove his son's innocence. It is dangerous for kids on the streets to walk away with that understanding. There is a general misunderstanding and confusion as to what the Board actually does. In fact, some people think that the Board does their own investigation. Dr. Green asked the Board what they are doing to inform the public of their role within the investigation process.

Barbara Gaige replied that the Board will be looking into publishing more outreach materials during this Quarter, which prompted Dr. Green to respond that this is a problem the Board needs

to address. Both Barbara Gaige and Judith Mazza replied that they are aware of the problem and assured Dr. Green that the Board is taking the necessary steps to address it correctly.

However, Paul Weafer commented that this may be a problem, but he didn't think it was a problem with the way the Board functions. Judith Mazza noted, though, that even after four years people are still not clear as to what the law allows the Board to do and what it prevents the Board from doing.

Paul Weafer noted that, for every year since the Board's creation, the number of complaints continues to go down, and he further asked Dr. Green for her opinion why this is. Dr. Green responded that some people may not think that it is worth the time or energy, and another could be that the police may have changed their image. She further commented there are still problems, but she did give the department credit for taking a proactive approach towards changing their policies.

Judith Mazza commented that the Board continually encourages attendance at its meetings, and added that neither members of the Common Council nor anyone else from City government have been present. She stated that the Times Union fails to publish articles dealing with the CPRB, and noted that the Board must address this issue. She added that the Board will continue to make attempts through outreach to inform the public of meetings and educate members of the community about the Board.

VI. Adjournment

Barbara Gaige moved to adjourn the meeting at 7:35 p.m. Ronald Flagg seconded the motion. The motion for adjournment carried unanimously.

Respectfully Submitted,

Ronald Flagg
Secretary