

**City of Albany
Citizens' Police Review Board
161 Washington Ave. - Albany Public Library
Large Auditorium
May 9, 2005
6:00 p.m.–8:00 p.m.**

Present: Jason Allen, Barbara Gaige, Marilyn Hammond, Judith Mazza, Herman Thomas, 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 6:21 p.m. Chairperson Gaige noted that a quorum of the Board was present.

II. Approval of the Agenda

The agenda was reviewed. Herman Thomas moved to accept the agenda. Judith Mazza seconded the motion. The motion carried unanimously.

III. Approval of the April 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 (Report given by Judith Mazza)

At the Board's April meeting, Ms. Mazza asked that the OPS follow-up on its investigation of this complaint by going out to the Albany County Jail and re-interviewing the complainant. There was supposed to be information given to Sergeant Eric Kuck, OPS, after that meeting. However, there was no follow up by the persons who said there was information. Therefore, the Board requested that the OPS go out and review the case, ask questions, get a consent for medical information, find out whether a pre-existing medical condition was responsible for what happened, and re-interview the people who claimed they were witnesses. Sgt. Kuck was asked to report back on what was found. Sgt. Kuck reported that he had no luck with the case. He went to the jail and the complainant had said that he had not had seizures since the year before. As far as witnesses went, the complainant had no knowledge of them. Neither the mother nor the advocate has followed up.

Since we have gotten no further information, and the complainant does not agree with the issue of a pre-existing medical condition having any impact on what had happened, Ms. Mazza moved to accept the OPS's finding.

The mother of the complainant was recognized. She stated that no one tried to contact her regarding her son's case. She did go out and try to find the witnesses. As far as the medical condition, she has the forms, but didn't bring them because she rushed to the meeting right from work. Judith Mazza made the request at the meeting two months ago that the advocate that was with the complainant's mother stay and meet with Sgt. Kuck to give him whatever information she had so the OPS could follow up with the investigation. Since then, he has seen her at other events, but has not received any information. At the last meeting, Judith Mazza asked that the OPS go back out and interview the complainant, which they did. They talked to him directly about the situation and about obtaining a medical release. The complainant said that he has not had seizures for over a year. With respect to the witnesses, the complainant only had their names and where he thought they were. However, the witnesses don't exist in any of the places identified in the complaint, so no one was able to find them. According to Sgt. Kuck, the OPS does not have any information beyond what it was given by the complainant. They did go out and meet with him directly about the complaint as it was written and what he said in that complaint.

The person (advocate) made no attempt to contact Sgt. Kuck with whatever information she had after the meeting. The OPS informed the Board that it had not received anything.

Ms. Mazza commented that she did not want to leave this complaint hanging any longer if the OPS can't get hold of other people or witnesses. The mother, however, stated that she doesn't want to just drop it. Barbara Gaige then asked what would be the purpose of waiting another month. The complainant's mother indicated that she would like to try to talk with her son and try to find the witnesses. She knows the area well and would like to talk with his friends that say they were there. She indicated that she didn't take the time to go out and do that. She did go out and look but didn't do so extensively and would now like the opportunity to do that.

Judith Mazza asked that she work with Sgt. Kuck. Sgt. Kuck spoke to Mr. Boyd at the jail and was given two names and addresses. One was at 578 and the other was at 580 Clinton Avenue. The OPS spoke to the landlord at 578 and canvassed the building. No one by the name given lived there. Sgt. Kuck noted that there is no 580 at the end of the driveway – it goes right to 582. There is no more to go on. Ms. Mazza asked the mother if she was willing to work with Sgt. Kuck to let him know if she finds someone or if she doesn't. Ms. Mazza noted that the Board would like to close the complaint in June, but was willing to give her extra time to see what she can find out. She explained that the OPS is going to have to interview any witnesses she finds - there is going to have to be a formal interview. She added that Sgt. Kuck would give her his card so that she can contact him directly about what she does or doesn't find out so that the Board can move on it at the June meeting.

V. New Business

A. New Complaints

1. New complaints received since the April 2005 Meeting

Chairperson Gaige reported that six (6) new complaints had been received by the Board since its March 11, 2005 meeting. Judith Mazza read a summary of each complaint.

CPRB No. 11-05

The complainant claims an Albany police officer used excessive force and acted rude and unprofessionally during an incident that took place on March 5, 2005. According to the complainant, when three to four cop cars arrived in the early morning hours to break up a house-party, “one officer . . . was attempting to show his authority from the moment he stepped out of his vehicle.” The complainant claims the officer had a “club” in his hand when he exited the car, walked up to two gentlemen leaving the party, pushed one to the side, told the other to open his trunk, and searched the trunk. As the officer made his way up to the stairs of the house, the complainant alleges he got into an argument with another young man. He began violently pushing him and telling him to cross the street. When the officers reappeared from the house, the officer began screaming at the complainant and her friends to get out of the street. The officer crossed the street, got into their faces, and told them to move. The complainant claims she attempted to calmly explain that she had an intoxicated friend in the party who she wanted to make sure got home safe. She alleges the officer turned to one of her friends “with his club up at his chest and without warning or reason [and] violently pushed her several time[s] across the street.” The complainant claims the officer then turned to her and “without reason or warning began to violently push [her] across the street with his club.” After the complainant told the officer not to push her, the officer became upset and pushed her two to three more times. The complainant’s friend, who was also pushed, then called 911 and informed them that she had just been assaulted by an officer.

A monitor was assigned to this complaint.

CPRB No. 12-05

During an appearance in Police Court in September 2004, the complainant alleges he was charged with an assault that occurred in 1990. The complainant claims that he had gotten a letter from supreme court, stating that there was not an outstanding warrant and that the charge did not exist anymore.

A monitor was assigned to this complaint.

CPRB No. 13-05

The complainant claims that while driving South on Lexington Avenue, she drove around a marked police car where she observed two young men “spread eagle” against the trunk of the car. The young men seemed to be handcuffed by two city police officers. The complainant alleges the boys were not offering any resistance. The complainant proceeded down the street, where she encountered two cars traveling down the street in her direction, when “all of a sudden, with no warning or caution, the second car swerved out into [her] lane,” forcing the complainant to drive up onto the curb to avoid a “head-on” collision. The complainant claims the car was an unmarked police car, which turned on blinking white lights on its lower part and stopped about 100 feet from the marked police car down the street. According to the complainant, the officer showed no regard for her safety, and could have easily injured anyone who was in his way.

A monitor was assigned to this complaint.

CPRB No. 14-05

The complainant alleges Albany police officers used excessive force on him during an incident that took place on March 21, 2005. The complainant claims that two officers, who arrived at his home following a domestic argument that took place between him and his wife, grabbed him and tried to throw him off his porch. The complainant asked the officers if he was under arrest, but received no response. The complainant states that, after receiving no response, he resisted the officers' attempts to throw him off the porch. The complainant alleges the officers told him he was under arrest "when they figured out that they couldn't throw [him] off the porch." The complainant claims he stopped resisting, but the officers got rougher, slammed him to the ground, and proceeded to punch and kick him about the body and head, which caused him serious pain.

A monitor was assigned to this complaint.

CPRB No. 15-05

On April 19, 2005, sometime between 11:00 p.m. and 12:30 a.m., the complainant was called to the Albany Medical Center. When she arrived, she was informed that her husband was in critical condition and was possibly not going to survive. The complainant alleges that hospital security denied her access to visit him. The complainant claims she was told by security that they were instructed by the Albany Police Department not to let her in. According to the complainant, her husband's uncle was granted access after speaking with a member of the Department, but was only granted access as a member of the clergy and not as a family member. The complainant claims, however, that she went throughout the night without seeing her husband, even after the doctor recommended that she visit with him. The complainant alleges that it was not until 8:00 to 10:00 a.m. the following morning that she was allowed to visit with her husband, who died approximately one hour later.

A monitor was assigned to this complaint.

CPRB No. 16-05

The complainant alleges she was assaulted by an Albany police officer on March 31, 2005. The complainant claims that she went to the South Station to file a complaint against someone who was harassing her. She asserts that although she gave the officer an order of protection, he told her that she had a lot of orders of protection and that he could not file a report. According to the complainant, another officer handed her a report and told her to write down what was going on. As she started to fill out the report, the first officer took the paper from her, walked from behind the window, and asked the complainant to leave. The complainant claims she tried to explain to the officer that she was filing a report, but the officer grabbed her and started pushing her out the door. At that time the complainant had a piece of paper in her hand and a pin, which she used to point to a name on the paper. The complainant alleges that the officer grabbed her again,

threw her against the wall, told her to put her hands behind her back, threw her to the floor, and started hitting her. The complainant claims two other officers then jumped in.

A monitor was assigned to this complaint.

2. New complaints for review

Chairperson Gaige reported that three (3) new complaints were on the agenda for review.

CPRB No. 2-05/OPS No. C05-35 (Presented by Marilyn Hammond)

Ms. Hammond had just received new information and moved that the Board's review of the complaint be postponed until June. Herman Thomas seconded the motion. The motion passed unanimously.

CPRB No. 04-05/OPS No. C05-63 (Presented by Herman Thomas)

Herman Thomas summarized the complaint.

The complainant alleged she was walking along Lexington Avenue to meet a friend. They were going to go to the store. It is alleged that while walking along Lexington Avenue in the area of Sherman Street, the complainant observed a police unit driving along side of the complainant, which continued over Lexington Avenue and turned into Orange Street. The complainant stated she observed her friend walking toward her and that the store they were going to appeared to be closed. They began walking back toward Lexington Avenue. When the police unit pulled up, and the officers exited the vehicle, it is alleged that the officer stated – “freeze, hands out of your pocket, put them up in the air.” At that time, the complainant allegedly was separated from her friend. The officers began to question her about who she was with and how long she had known him. The complainant stated that they were later allowed to leave the scene and began walking away when she allegedly requested from the officers the purpose for the stop. It is alleged that the officers stated “let's just say you live in a prostitution area.” The complainant stated that she felt that she was improperly stopped and detained by the officers.

The complainant was recognized. The complainant stated that she lives at 373 Washington Avenue. She came out of her home, made a left towards Cruz Automotive, which is parallel to Washington Avenue and Rapid Street. There were two parking lots. She was heading along Lexington Avenue when she noticed the police officer on the right side of her. She stated that she didn't think he was watching her. She thought that he was going up the street. The complainant stated that the store she was heading to, Champs Store, which is on the corner of Central and Lexington, was closed so she continued up to the next store on the corner of Clinton and Lexington. At this time, the officer proceeded up the street, stopped at Marvel Street, and made a left. She noted that she did not see him anymore. At this time, the complainant saw her friend coming down the street and noticed that the store was closed. They turned around and continued

straight back to Bradford Street to Cruz Automotive. As soon as she and her friend made the left, that's when the officer stopped them.

Herman Thomas asked what the officer said. The complainant replied that the officer said "freeze, put your hands out of your pockets and put your hands up." The complainant had her hands up and was separated her from her companion. They took the companion over to the police car off to the side of the parking lot where the cars being worked on were lined up. According to the complainant, the stop was more about the young man with her, since they were not asking her anything. She noted that the officers frisked the young man and checked and ran his name. The complainant asked the officers why they were being stopped. She stated that no one would say anything. At this time, the complainant proceeded to volunteer her information, giving her name and address and explaining that she was just walking to the store. The officers wanted to know who it was with her, how she knows him and for how long, were they intimate, things of that nature. She added that the officer was very persistent and disrespectful.

At this time, the officers still would not say why they had stopped them. Vice-Chairman Thomas asked if the complaint was based on why they stopped them. The complainant responded that there was no reason for the officers to stop her and her friend. Vice-Chairman Thomas added that it was the understanding of the Board that she would like to take her complaint to mediation. The complainant responded that she would and that she would like a respectful apology. She noted that even though the police officers realized they were wrong, they still did not apologize.

Chairperson Gaige asked if the complainant was more concerned with the attitude of the police officers and the fact that she was stopped. The complainant explained what she was wearing and felt the officers had to come up with something because they sensed that she knew what she was talking about and they were being disrespectful. When asked about whether or not the officers would agree to participate in mediation, Chief James Turley explained that the two unions feel it is subject to terms of employment and subject to negotiation. He also stated that the Administration is not opposed to mediation.

Ms. Mazza asked how many officers were involved. The complainant explained that there were two officers, a police dog, and a jeep. Ms. Mazza asked if there is any opposition for the officers who made the stop to meet with her. Chief Turley responded that he does not know if the officers have the same feeling about the stop. Ms. Mazza asked the Chief to inquire. Vice-Chairman Thomas explained that in the OPS report, mediation was requested. Ms. Mazza asked what was the finding. Vice-Chairman Thomas replied *exonerated*. Vice-Chairman Thomas then asked if there was a way to find out if the officer would be willing to talk to the complainant.

According to Assistant Chief Paula Breen, the way the program is currently in place, the Board can request of the Chief to review the case to see if the Chief feels it is appropriate for mediation. If he feels it is appropriate for mediation then the officers can be asked if they are willing to participate. If the officers aren't willing, then it doesn't go to mediation. That's the nature of mediation, both parties have to be willing. The Chief was asked to review the complaint for mediation. Ms. Mazza explained to the complainant that she still may not receive an apology. Mediation gives both of them an

opportunity to explain their positions. It's not a win/lose proposition. It is just a chance to hear an explanation. Vice-Chairman Thomas explained that the complaint would be given back to the Chief for his review and the Board would get back to the complainant. He then moved to send the complaint to the Chief to review for mediation. Ms. Mazza seconded the motion. The motion passed unanimously.

CPRB No. 09-05/OPS No. C05-135 (Presented by Judith Mazza)

Judith Mazza summarized the complaint.

In this case, the allegation is that the complainant was falsely arrested. There had been a robbery in the town of Colonie, where some jewelry, money, and credit cards were stolen from a home. The complainant and a friend went to a gas station to get cigarettes, candy, and snacks. As they were leaving, a police car drove up, stopped the car, and took the two people out of the car. They were arrested on the allegation that they had stolen credit cards. One of the stolen credit cards had been used in the purchase of the cigarettes, etc. They actually had the credit cards and cigarettes in their possession at the time. The one person who actually used one of the credit cards in the store admitted to having the stolen credit cards and said they belonged to the girlfriend of the friend that he was with and that he had received the credit card from the complainant. The complainant is claiming that he was falsely arrested and that he is being held and not being charged or indicted. He is still in jail at this time.

A monitor, George Kleinmeier, was assigned to the complaint. Mr. Kleinmeier was recognized. He stated he had nothing to add. Basically, the complainant was there, they had the credit cards in their possession, and both people were arrested for possession of the credit cards. The one guy actually admitted that he used it and signed the name when he purchased the items in the store. The other guy said he didn't actually have them in his possession at the time, but he was with him, and his friend said he is the one that gave them to him to go buy the items. The OPS, in its review, the monitor, in his review, and Ms. Mazza, in her review, agreed with the recommendation that the investigation be closed as *exonerated* because this situation actually occurred. The complainant was properly arrested for possession of stolen property since he was together with the other person. What has taken place since then is a problem for the District Attorney's office and the complainant's lawyer, and is not something that can be dealt with by the police at this point in time. He really has a complaint about the lack of judicial process.

Ms. Mazza then moved that the Board accept the recommendation that this case be closed as *exonerated*. Marilyn Hammond seconded the motion. The motion 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 June 2005: Barbara Gage, Marilyn Hammond, Judith Mazza, and Michael Whiteman.

C. *Reports*

The Government Law Center presented the Board with its Fourth Annual Report. Board members were asked to review the report and forward their comments and/or recommendations for changes to the Government Law Center in advance of the June meeting, at which time the report will be presented for approval.

D. *Policy Review/Recommendations*

Jason Allen, Chair of the policy committee, reported that eight of the nine members of the Board had a good review (training) at the Police Department headquarters regarding policies and procedures relating to taser use, video cameras in patrol cars, vehicle pursuits, and the use of force. He reported that three of the committee members would be providing Assistant Chief Breen with input about what the Board would like to see in terms of maintaining a database. He noted that the committee would like to set up a meeting with Corporation Counsel to discuss video cameras in patrol cars and whether the Board can and should be able to review the tapes. Mr. Allen commented that if the Board has any suggestions or anything that it should discuss with the Chief or the Assistant Chief, to please let the committee know.

Chairperson Gaige agreed that the training was excellent last week. She reported that she had a conversation with a representative from the police officer's union, and asked if it would be possible for the Board to sit in on in-service trainings for the officers. Assistant Chief Breen responded that it would not be possible to sit in on in-service trainings, but the Board could present at a training. She added that the Board would be more than welcome. She noted that when the Department runs in-service training, it puts all 338 officers through. She also noted that the Board has the Citizen's Police Academy schedule, and members are free to come and sit in on those sessions at any time.

E. *Report from the Government Law Center (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 25 active complaints before the Board for review, which included six (6) recently filed complaints and five (5) complaints in the process of being closed. Five (5) complaints remain suspended, and 159 have been closed. A total of 189 complaints have been filed with the Board since it began reviewing complaints in 2001.

Correspondence - Communications

It was reported that the GLC has received a number of requests for legal assistance from complainants. It was noted that some of these requests are directed to the Board while others are directed to GLC staff. It was reported that the GLC maintains a list of organizations that provide legal assistance, and forwards this information to those persons seeking legal help.

It was reported that the GLC has received a call on the Board's behalf from a woman who alleges she observed an incident of police officer misconduct. The caller explained that she had been in contact with the OPS and that one of the detectives advised her that the incident was being handled by the office. It was reported that the GLC had followed-up on this call with the OPS and would contact the caller to confirm that the incident was being addressed.

Training

It was reported that the Board as well as Ms. Perino had attended the policy training session coordinated and conducted by the Police Department on May 2nd. It was also reported that the GLC was working to put together a training session on credibility issues.

Reports

Ms. Perino noted that each member had received a draft of the Board's Fourth Annual Report for its review, and would be forwarded the Second Quarterly Report for 2005 upon its completion.

F. *Report from the OPS*

Detective Sergeant Eric Kuck gave the report.

He noted that there was nothing new to report. Complaints have been assigned out, and the OPS will follow-up on CPRB No. 24-04/OPS No. 502. The Board noted that it was not asking the OPS to do more than it has already done with regard to this complaint unless the complainant's mother is able to locate additional witnesses. If the witnesses appear, then the OPS must have an opportunity to talk to them. Otherwise, the Board cannot accept the information and will close the complaint in June.

Chief Turley reported that the Department had purchased Early Warning System software. He added that they are working on how they are going to get the information into the system.

Chairperson Gaige reported that she and Officer Kevin Raducci, a representative of the police officers' union had met before the meeting and will be talking more about a mediation plan.

IV. Public Comment

The floor was opened for public comment. No comment from the public was offered.

Judith Mazza and Jason Allen reported that they will not be present at the August meeting. Mr. Allen added that he will also not be present at the June meeting.

VI. Adjournment

Herman Thomas moved to adjourn the meeting at 7:11 p.m. Jason Allen seconded the motion. The motion for adjournment carried unanimously.

Respectfully Submitted,

Ronald Flagg
Secretary