

**City of Albany**  
**Citizens' Police Review Board**  
**161 Washington Avenue - Albany Public Library**  
**Large Auditorium**  
**June 13, 2005**  
**6:00 p.m. – 8:00 p.m.**

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

**Absent:** Jason Allen and Paul Weafer

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

Chairwoman Barbara Gaige called the meeting to order at 6:01 p.m. Chairwoman Gaige noted that a quorum of the Board was present.

**II. Approval of the Agenda**

The agenda was reviewed. Chairwoman Gaige asked for any additions or corrections to the agenda. None were offered. Ronald Flagg moved to accept the agenda. Vice-Chairman Herman Thomas seconded the motion. The motion carried unanimously.

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

The May meeting minutes were reviewed. Chairwoman Gaige asked for any additions or corrections to the minutes. None were offered. Ronald Flagg and Beresford Bailey moved to approve the minutes. Judith Mazza and Vice-Chairman Thomas seconded the motion. The motion carried unanimously.

**IV. Old Business**

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

Ms. Mazza reported that this is a follow-up on a complainant that was reviewed at the last three monthly meetings. Ms. Mazza also reported that there has been no new information or follow-up since the last meeting. Ms. Mazza then moved that the Board accept the findings of the Office of Professional Standards (OPS) as *exonerated*. The motion was seconded by Vice-Chairman Thomas. The motion carried unanimously.

**V. New Business**

A. *New Complaints*

1. New complaints received since the May 2005 Meeting

Chairwoman Gaige reported that six (6) new complaints had been received by the Board

since its May 9, 2005 meeting. Judith Mazza read a summary of each complaint.

**CPRB No. 17-05** The complainant alleges that he was falsely arrested for kicking a gentleman in the face. He claims that during his arrest, he was not told why he was being arrested and was not read his rights.

*A monitor was assigned to this complaint.*

**CPRB No. 18-05** The complainant alleges that following an altercation with another party, he was approached by two white males, one of whom grabbed the complainant, resulting in a tussle. A patrol car arrived and the complainant was subsequently arrested. The complainant claims that while in the patrol car, the white male showed him what appeared to be a badge and left. The complainant feels as though he should have been told who the white male was and given a reason why the white male grabbed him.

*A monitor was assigned to this complaint.*

**CPRB No. 19-05** The complainant alleges that during a stop of her son, his friend, and his cousin, her son spit around one of the officers and the officer slapped her son, grabbed his jaw, and told her son to “never spit in front of him or he would see [her son] in the streets and beat his a\*s.” The complainant alleges that when she drove to the precinct to speak with an officer about this incident, the officer who slapped her son approached her in a loud manner, followed her and would not leave her alone, and tried to make her listen to his side of the incident. When the complainant refused, the officer got angry and yelled at her to get out of the station.

*A monitor was assigned to this complaint.*

**CPRB No. 20-05** The complainant alleges that as she was heading to check on her son at a nearby park, an officer ran up behind her and asked what was going on. She claims she continued toward the park when the officer stated “[s]top, I’m talking to you.” The complainant further claims that when she told the officer that she had answered his/her questions and had nothing more to say, the officer grabbed her arm and told her that she was under arrest for disorderly conduct. The complainant alleges the officer refused to allow her to get an adult to watch her 4-year-old son and made no attempt to make sure that he was safe.

*A monitor was assigned to this complaint.*

**CPRB No. 21-05** The complainant alleges that she and another party were searched by police officers. She claims that when she explained that there was no reason for the search, an officer told her to shut up. The complainant further claims that when she asked the officer for his badge number, the officer said “here it is, can you read?” The complainant alleges that after

being asked for her ID, the officer snatched it out of her hand and continued to be “really rude.”

*A monitor was assigned to this complaint.*

**CPRB No. 22-05** The complainant alleges that while he was giving directions to another party, two officers stopped him, asked for identification, and searched his person. He further alleges that the officers searched the person and vehicle of the other party and found a controlled substance. The complainant claims that when the other party informed the officers that he would take full responsibility for being in violation of the law, the officer “went berserk,” using excessive force. According to the complainant, the officers kicked and threw him to the ground, causing a concussion and multiple lacerations as well as internal injury.

*A monitor was assigned to this complaint.*

2. New complaints for review

Chairwoman Gaige reported that two (2) new complaints were on the agenda for review.

**CPRB No. 01-05/OPS No. C05-21** (Presented by Ronald Flagg)

Mr. Flagg indicated that he reviewed the investigative report and some preliminary information, but has been unable to schedule a visit to the OPS to review their materials. As a result, Mr. Flagg moved for a postponement until next month. The motion was seconded, and all approved. The complaint will be tabled until the next monthly meeting.

**CPRB No. 02-05/OPS No. C05-35** (Presented by Marilyn Hammond)

Ms. Hammond summarized the complaint.

The complainant alleged he was involved in an altercation with a store employee and was thrown out of the store. An officer arrived. The complainant alleges he informed the officer that he was unable to move, was injured, and needed an ambulance. The complainant alleges the officer stated “you’re not going in an ambulance; your butt is going to jail.” The complainant further alleges upon arrival at Central Booking, he again informed the officer that he needed medical attention and was ignored. The complainant alleged that upon arrival at the Albany County Jail, he was treated in the infirmary and allegedly suffered from a collapsed lung. The complainant alleged he spent 6 days in the trauma unit at Albany Med as a result of his injury.

Ms. Hammond reported that this complaint was brought up last month and there were new papers filed, however, they were just a repeat of the complaint that was filed last month. Nothing new has come up. Ms. Hammond reported that the OPS was unable to find the second witness. The first witness helped the store manager detain the complainant when he tried to steal a 6-pack of beer. When the police arrived, they arrested the complainant and he did not complain of any injury. When they took him to Booking, he walked into the Booking room without any assistance. At that time, the video shows the complainant was holding his ribs.

Unfortunately, there is no audio to prove or disprove if he told anyone of his injuries. One of the issues that came up is that on the morning of the incident, the complainant was arraigned in front of the judge, which would have given him opportunity to request medical attention, but he didn't. The other issue is that he was attacked for no reason and falsely accused, but the evidence refutes these claims. Also, the investigation indicated that the complainant has been at that same Stewart's several times before for the same crime.

Ms. Hammond reported that the complainant said he refused to have his medical records released, but then he finally sent the medical records on May 1<sup>st</sup>. The records do show that he had a collapsed lung, but there was no sign of broken ribs. He claims that he asked for medical assistance and there is no way to tell if he did because there is no audio on the video.

Ms. Hammond noted that the Richard Lenihan was the monitor assigned to this case. Mr. Lenihan was recognized. Mr. Lenihan commented that there should be some kind of a standard form that an individual is requested to sign either declining or accepting medically treatment. He added that this is basically a he said/he said scenario, and there is no audio to substantiate that he in fact requested medical attention.

Ms. Fernande Rossetti was recognized. Ms. Rossetti noted that she works for the Albany County Conflict Defenders office, which is representing the complainant in his criminal proceedings that are still pending in Albany Police Court. Ms. Rossetti reported that she has met with the complainant on several occasions, including today, and many of the facts that were recited are not accurate according to the complainant's version of the events. According to Ms. Rossetti, the complainant does want the opportunity to be heard and to confront the officers involved. Her understanding is that there should be a video from the store which, she believes, the Albany police have in their possession. She does not have it as of yet.

Ms. Rossetti reported that the incident occurred on December 27, 2004. The complainant was charged with robbery and with larceny. Although robbery is a very serious felony, it is now six (6) months later and he has not been indicted. The complainant's version of the events is that it was not a 6-pack of beer. He was holding a case of beer, which is quite a large item, in plain view, it was snowing profusely that day, and he was standing by the door deciding whether to buy it or not because he would have had to carry it home since he did not have a cart. As far as him having been in that establishment previously and been accused of anything is absolutely false. There is no proof whatsoever that he had ever been in that establishment previously. That establishment had been the subject of petty larceny previously. She has all their incident reports; however, they did not arrest or locate the individual who had committed those petty larcenies.

The complainant tried to file a complaint against the store clerk, but the police would not take the complaint at the time. According to the complainant, the store clerk did attack him from the back as he was looking out the window and he did turn in reaction and may have struck the store clerk. The complainant then immediately fell to the ground because of the severity of the blows to him and his lung collapsed as was proven in the medical records show that he had 75% collapsed on one side of his lung. He did ask for medical assistance and he was taken immediately to the Albany County Jail. Once he was at the jail, they didn't process him because he couldn't breathe. His version of what transpired is quite different from what was obviously the information related to you and what you relate here. He did have very severe injuries. He was in the hospital for over a week. He sent the medical records to Detective Shade. Ms.

Rossetti offered to provide the Board with a copy if, for some reason, the Board doesn't have them.

The Board asked Assistant Corporation Counsel Patrick Jordan if the case could be tabled pending the complainant's release from incarceration. Mr. Jordan responded that it could, and added that if Ms. Rossetti says he is willing to speak to the Board, then it should be deferred. Ms. Rossetti indicated that there may be resolution on or around June 27<sup>th</sup> depending on the District Attorney's office.

Judith Mazza asked if there was any indication of when they think the injury happened or how it happened and inquired if the medical report shows what would have caused the injury. Marilyn Hammond responded that the medical report is difficult to read. Ms. Mazza asked how long it was from the time he was arrested, taken to jail, and then taken to Albany Med – the time span between the incident and the complainant being taken to Albany Med. Marilyn Hammond responded that it seems that it was 24 hours later. Ms. Rossetti replied that the complainant told her the incident occurred at 7:00 in the morning. The police came to the Stewarts, and at that time the store clerk was still there and the individual that you spoke of as a possible witness was kneeling over him with his knee in his back. He said the wind was knocked out of him and he couldn't move. He arrived at the jail about 10:00 in the morning. Virtually immediately after he arrived at the Albany County Jail, they took an x-ray. They didn't get that x-ray reading back until, I believe, the following day. When they got that x-ray reading back and learned of the severity of his condition, they immediately took him to Albany Med. Vice-Chairman Thomas asked who read the x-ray. Ms. Rossetti responded that the x-ray reading was from Columbia Memorial Hospital.

According to Ms. Rossetti, the complainant also states that as a result of the delay in receiving medical attention and treatment, fluid gathered in his lung and the complainant had to have a tube inserted. This required his hospital stay to be much longer and he now also has a pocket of air that formed in the back of his lung and he is still receiving medical treatment and they are saying he will likely require surgery for that condition, which according to the complainant, the doctors say is a direct result from the delay in receiving medical treatment.

Marilyn Hammond made a motion to table the complaint to allow an opportunity for the complainant to come before the Board. Ronald Flagg and Vice-Chairman Thomas seconded the motion. The motion carried unanimously.

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

The following members were appointed to the Committee on Complaint Review for July 2005: Barbara Gaige, Marilyn Hammond, Judith Mazza, Herman Thomas, and Michael Whiteman. It was noted that two complaints would be carried over to the July meeting.

C. *Approval of the Fourth Annual Report*

It was reported that the Government Law Center had presented the Board with its Fourth Annual Report at its May monthly meeting. The draft was reviewed. Changes and/or revisions were requested. No changes or revisions were offered. Vice-Chairman Thomas made a motion to

approve the report. Judith Mazza seconded the motion. The motion carried unanimously. A question was raised about whether the report would be made available to the public. Chairwoman Gaige and Judith Mazza explained that once the report is approved, it will be posted to the Board's Website and would be mailed upon request.

D. *Policy Review/Recommendations*

Judith Mazza reported that the committee did not meet this month, and therefore, had nothing new to report.

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 24 active complaints before the Board for review and one (1) complaint in the process of being closed. Five (5) complaints remain suspended, and 167 have been closed. A total of 196 complaints have been filed with the Board since it began reviewing complaints in 2001.

Training

It was reported that Board members Jason Allen, Beresford Bailey, and Ronald Flagg had been forwarded the contact information for Sergeant Fred Alberti to arrange for the scheduling of ride-alongs. It was reported that Mr. Allen had completed one of his ride-alongs.

It was reported that information relating to the upcoming NACOLE conference had been forwarded to each member of the Board as well as to the Chief and Assistant Corporation Counsel. It was noted that there is tremendous value to anyone involved in citizen oversight in attending NACOLE conferences, and the City and police department were encouraged to send representatives. It was reported that the Center would be drafting a memorandum to the City inquiring as to how many Board members would receive funding to attend this year's conference.

Mediation

It was reported that the Center had arranged to bring in Lauri Stewart, the Mediation Program Coordinator for Independent Police Review in Portland, Oregon to Albany to work with the Board on its mediation program and to train the Board, the department, the City, and the community on best practices in citizen oversight mediation. It was reported that a series of meetings had been set up for June 27-29, 2005 for Ms. Stewart to meet and talk with the Board and Center staff, the City, the Corporation Counsel, the police department command staff, supervisor and police officer unions, the officers, and the OPS.

F. *Report from the OPS*

Detective Sergeant Eric Kuck commented that there was nothing new to report.

**IV. Public Comment**

The floor was opened for public comment.

Trudy Magee was recognized. She noted that she had recently participated in the Citizen's Police Academy and now has more balance and understanding of the process. She noted that her comments were in reference to the first complaint presented at the meeting. Ms Magee reported that she received supervision of the complainant two years ago under Judge Breslin. The mother moved to Georgia, so Ms. Magee handled his affairs. The mother came back; she picked the ball up, and dropped the ball. Ms. Magee reported that the complainant's mother had some legal affairs, so she brought everything back to Ms. Magee. According to Ms. Magee, she had gotten a release of information form signed by the complainant today in jail, authorizing her to go ahead and speak on his behalf regarding this matter (CPRB 24-04/OPS CO4-502). The medical records were at issue. Barbara Gaige noted that a vote had already been taken on this issue. Ms. Magee commented that the reason she did not respond at that time is because she did not have the case number and did not recognize that it was on the agenda. Ms. Mazza and Chairwoman Gaige reported that the Board did see the medical records – medical records had already been received, but was waiting to hear from the mom about witnesses. Ms. Magee reported that she was there because she was concerned about the medical records, and thanked the Board for its time. She noted that the complainant will be released next month.

Bill Washburn, a resident of Albany, Betsy Mercogliano, Dan Jabonaski and Vera Michaelson were recognized by the Board. Mr. Washburn commented that they were there this evening to present some concerns, and added that there is a page and half that they wish to read (each reading a section). Copies were given to the Board and the document was read verbatim. Vera Michaelson said there are many of us that work very hard with the police on a regular basis. We work at an effective relationship to resolve problems in our neighborhood. We value these relationships.

Barbara Gaige commented the law, as established by the Common Council, gives the Board authorization to review complaints by citizens against the police department that are investigated by the Office of Professional Standards. Chairwoman Gaige noted that the Board does not have investigative powers, and added that the Board will take and discuss these concerns with Mr. Jordan and the Government Law Center, and will come back with some kind of response next month. Chairwoman Gaige commented that it may be that the Board doesn't have the powers, and that it is her initial impression that the Board doesn't have the power to pursue any of these issues that were brought up and that the complaint must be by a person who is involved in a specific incident. She added that the Board does appreciate that these concerns were brought forth.

In response to an inquiry, it was reported that the Board's meetings are held on the second Monday of every month.

Chief James Turley was recognized. Chief Turley noted that there had been a review of department policy in response to certain complaints. According to Chief Turley, the SOP

requires officers to identify themselves by shield and name. He noted that it doesn't say verbally. He reported that today, an order was issued stating that, in the Chief's interpretation, it should be verbal. Officers have been advised that upon request, they are required to identify themselves verbally.

**VI. Adjournment**

Vice-Chairman Herman Thomas moved to adjourn the meeting at 7:00 p.m. Marilyn Hammond seconded the motion. The motion for adjournment carried unanimously.

Respectfully Submitted,

Ronald Flagg  
Secretary