

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

Present: Jason Allen, Ronald Flagg, Marilyn Hammond, Judith Mazza, Fowler Riddick, and Paul Weafer.

Absent: Michael Whiteman.

I. Call to Order and Roll Call

Chairman Jason Allen called the meeting to order at 6:00 p.m. He noted that a quorum of the Board was present.

II. Approval of the Agenda

The agenda was reviewed. Marilyn Hammond recused herself from presenting her case because she was out of town. Judith Mazza asked if the complainant was at the meeting. It was noted that the complainant was not present. Chairman Allen noted that the case will be reassigned for next month's meeting. Paul Weafer asked to move agenda item six to agenda item two to follow Ms. Mazza's case since both cases are related.

Ms. Mazza is ready to present her two cases. Mr. Weafer will present his case after Ms. Mazza. Ronald Flagg is ready to present his two cases. Fowler Riddick and Chairman Allen will present their case. Mr. Weafer moved to approve the agenda. Mr. Flagg seconded the motion. The motion carried unanimously.

III. Approval of the September 14, 2006 Meeting Minutes

The September 14, 2006 meeting minutes were reviewed. Paul Weafer brought to the Board's attention that noted that there was an error in the voting record for CPRB No. 32-05 which is on page nine of the minutes. Mr. Weafer noted that in the minutes the motion on this complaint carried six to one with Judith Mazza recusing herself. Mr. Weafer stated that the vote was actually six to zero and there were no negative votes on that motion. The vote should read 6-0 with Ms. Mazza recused from voting. Mr. Flagg moved to approve the meeting minutes. Mr. Weafer seconded the motion. The motion carried unanimously.

IV. New Business

A. *New Complaints*

1. New Complaints Received Since September 14, 2006 Meeting

Ms. Mazza reported that there were no new complaints received by the Board since its September 14, 2006 meeting. Ms. Mazza reported that the Board received an addendum to CPRB No. 32-06 and as a result a monitor was appointed to investigate the complaint.

2. New Complaints For Review

It was reported that there were seven (7) new complaints on the agenda for review by the Board.

CPRB No. 4-06/OPS No. C06-71 (Presented by Judith Mazza)

Judith Mazza summarized the complaint.

Ms. Mazza summarized the complaint. This complaint was filed with another complaint that was resolved a couple of months ago at a Board meeting. The complainant alleges that he was in his vehicle coming from an event with several friends and saw an African American male running down Lake Avenue. Police officers were chasing this person, caught him and called in for back-up. More officers arrived at the scene and the witnesses saw 5-7 officers during the arrest. The officers forced the male to the ground and the complainant alleges that profanity was used and there was an excessive use of force. At one point during this scene, the complainant realized that the male being arrested was not moving. The paramedics, fire trucks and an ambulance arrived to take the person away. The complainant believes that there was an excessive use of force.

A monitor, Theresa Balfe, was appointed to this case but she is unable to attend this meeting. Ms. Mazza summarized the monitor's report. The report found that there were two allegations. The first is an excessive use of force. This allegation is that during the struggle the officers grabbed and forced the suspect to the ground, the suspect put his hand underneath him hanging onto his belt. The officer couldn't get the suspect's hand out from underneath him and was also concerned that the suspect might have a knife in his hand. The paramedics were called because during the struggle the suspect was tased three times.

The OPS found that the use of force was *exonerated* where the review showed that such acts were proper. The complainant admitted that she saw the suspect struggling and that the officer would see that as resisting arrest. As far as the conduct allegation concerning language the OPS found that there were insufficient facts to prove or disprove the allegations made in the complaint.

If this case was taken solely by itself, it may be not sustained because it is a he said/she said situation. However, if you look at it with the other complaint that came in, which was dropped, because the people who made the complaint also said the same thing, then the complaint might be sustained.

Paul Weafer asked that the Board review both cases together since they're related. When the entire record is read, there is an awful lot that has to be known by the Board. The situation was extremely volatile where the suspect is 5'11", 225 pounds and admitted at the hospital that he had taken between 200 and 300 dollars worth of crack in the immediate time before the robbery and assault. Ms. Mazza disagreed and asked that the Board keep the cases separate and rule on them separate because the complainant of this case is a witness to the event that occurred. The complainant in Mr. Weafer's case is the alleged victim of what took place and both individuals have a different view of what actually happened. The OPS recommends exonerated as to the use of force allegation and not sustained as to unprofessional conduct use of profane language allegation that the police officer repeatedly stated "put your f***ing hands behind your back" to the man. Mr. Weafer asked to have his complaint moved after this complaint because the complainant that he is presenting, is the suspect that was arrested. Ms. Mazza questions whether there were other witnesses to what occurred. Ms. Mazza moves to accept the findings of the OPS as use of force *exonerated* and not sustained as to the unprofessional conduct use of profane language allegation *not sustained*. Mr. Allen seconded this motion. The motion carried unanimously.

CPRB No. 20-06/OPS No. C06-281 (Presented by Paul Weafer)

Paul Weafer summarized the complaint.

The complainant had a live-in relationship with the person that was assaulted. The complainant was an admitted crack addict; he robbed the victim of \$3000 mink coat which he still had on him when he was stopped by police officers. The complainant allegedly took his girlfriends \$185 microwave and sold the microwave out on the street. He then went back into the apartment to look for other things to sell. When the girlfriend came home she said "That's it. I've had it with you. Your life is a wreck, my life is a wreck." The complainant then grabbed a steak knife and said he was going to kill her. He stabbed her in the chest and stomach several times, he tried to cut her throat and she bolted from the apartment. With the help of a neighbor across the hall, the complainant was scared away. Four to five officers apprehended the complainant at the corner of North Lake and First Streets. The complainant admitted that he had \$200-\$300 worth of crack in his system and he was a big, strong guy and it took that many officers to subdue him. He resisted arrest and he was tased three separate times. The officers left the probes in his body. When the witness from the first complaint saw this complainant, he was obviously stunned and not moving. He was taken to the hospital where he made the statement over and over again about his crack use, about assaulting the women and how his life was over because he was a parole violator. He was charged with attempted murder, criminal possession of a controlled substance, criminal possession of stolen property greater than \$3000, burglary in the first, grand larceny in the third, and resisting arrest. On the basis of this testimony, Mr. Weafer motions to uphold the OPS findings that the use of force was unfounded because of an absolute necessity to subdue the complainant. The use of force allegation was *exonerated* and the conduct allegation was

exonerated because he wasn't read his Miranda rights until after he was brought to the hospital.

Mr. Weafer makes a motioned to uphold OPS findings on all three counts. Ronald Flagg seconded. The vote was unanimous.

CPRB No. 8-06/OPS No. C06-98 (Presented by Ronald Flagg)

Ronald Flagg summarized the complaint.

After being given a ride to the store by another individual who the complainant knows from a group, the complainant alleges that he and the individual were grabbed by Albany police officers and pulled out of the store. The complainant thinks the officers were watching that individual for some time. The complainant claims the officers asked him "where the drugs at," and proceeded to search him. According to the complainant, he was searched five times by an Albany police officer and twice by a parole officer, who he alleges did not find any drugs in his possession or near him. The complainant claims that after the store owner found drugs in his doorway, the complainant was arrested for possession and the other individual was let go. The complainant feels this situation was a racial incident. The complainant alleges several things. The complainant alleges false arrest, excessive search, excessive use of force and racially motivated arrest.

A monitor was appointed to this complaint. Monitor, Richard Lenihan was recognized. Mr. Lenihan noted that there are a number of inconsistencies in the complainant's version of what happened. The officer was part of Operation Impact with the NYS Police which is a drug interdiction in Albany. The officer was informed by an informant that a male Hispanic was leaving 1st Street to go to the Deli to give drugs to another person. The clothing description of the male Hispanic fitted the complainant. The complainant was observed leaving the residence and walking to the Deli. The complainant was not cooperative during the strip search by the officer at the police station. Based on the police department's screening form, the complainant admitted to being an addict to heroin and cocaine. The store owner did not see any mistreatment of the complainant by the officers. Mr. Lenihan agreed with the OPS' findings.

Ronald Flagg motioned to support the OPS findings of *exonerated* as to the false arrest authority and procedures allegation, *exonerated* as to the excessive search arrest authority and procedures allegation, *not sustained* as to both use of force allegations and *unfounded* for the conduct allegation. Marilyn Hammond seconded the motion. The motion was approved unanimously.

CPRB No. 12-06/OPS No. C06-189 (Presented by Ronald Flagg)

Ronald Flagg summarized the complaint.

The complainant alleges false arrest, illegal entrance, excessive use of force and planting of a controlled substance on the complainant. The complainant alleges two members of the Albany Police Department illegally entered his residence on Morton Avenue, physically threw him to the ground, illegally arrested him, and falsely charged him with the sale of a controlled substance. Ronald Flagg agrees with the OPS findings.

A monitor was assigned to this complaint. Monitor, Theresa Balfe was recognized. Ms. Balfe supports all of the OPS findings.

Ronald Flagg motioned to agree with the OPS findings of *unfounded* for the false arrest and planting the sale of a controlled substance on the complainant; *exonerated* for the illegal entry to the residence allegation; and *not sustained* for the excessive use of force allegation. Judith Mazza seconded the motion. The motion carried unanimously.

CPRB No. 15-06/OPS No. C06-228 (Presented by Judith Mazza)

Judith Mazza summarized the complaint.

A monitor was assigned to this complaint. During a physical altercation with another individual, the complainant alleged that a police officer, in breaking up the fight, struck her with an ASP baton; kicked and stomped on her right arm; pepper sprayed her in the face for no reason; and arrested her. The complainant claimed that during her transport to the police station, she asked the officer for help, explaining that she couldn't breathe, that her skin was burning, and that she was having an anxiety attack, but the officer stated, "you should of thought of that before." Following her transport to Albany Medical Center to have her eyes flushed, the complainant alleged she asked the officer if she could press charges, but the officer told her not with him and wanted to know what the complainant was made of since she was pepper sprayed.

Judith Mazza noted that she reviewed the OPS preliminary report and monitor's report and couldn't find anything wrong with the OPS' findings. Monitor, George Kleinmeier was recognized. Mr. Kleinmeier agreed with the OPS findings in this case. Judith Mazza motioned to accept the OPS' findings. Ronald Flagg seconded the motion. The motion was approved 5-0 with Fowler Riddick recusing himself from voting.

CPRB No. 17-06/OPS No. C06-284 (Presented by Fowler Riddick)

Fowler Riddick summarized the complaint.

During processing for an arrest on a misdemeanor charge, the complainant alleges that he was taken into the back of the station – in a hallway – where a strip search and cavity search were conducted. In the course of the search, the complainant claims that he was searched in his genital area as well as in his rectum. According to the complainant, "for whatever reason," the officers assaulted him for no reason while he was naked. The complainant alleges that EMS was called following the assault and he was taken to

Albany Medical Center, where he was treated for cuts on his head, and cuts and abrasions on both legs. The complainant alleges three things; false arrest, improper search and use of force. A monitor was appointed to this complaint.

Monitor, George Kleinmeier was recognized. Mr. Kleinmeier agreed with the findings of the OPS. Mr. Riddick motioned to agree with the OPS' findings. Ronald Flagg seconded the motion. The motion carried unanimously.

CPRB No. 21-06/OPS No. C06-260 (Presented by Jason Allen)

Chairman Jason Allen summarized the complaint.

A monitor was assigned to this case. On March 13, 2006, during a concert event at a local club featuring the complainant's artists, the complainant alleges that an officer intervened in a conversation he was having with his brother, the club's owner, and the promoter, and told him he could not enter the club. The complainant claims the officer told him to leave or he would be arrested. The complainant further claims the officer grabbed his brother and told him, "If he looked at him again he would be arrested." The complainant alleges that after being threatened with arrest a second time, he left. According to the complainant, the officer then told the complainant's brother to call the complainant and tell him if he came anywhere near the club, the police were looking for his truck and he would be arrested. The complainant alleges three (3) things that the Albany Police Officer on duty acted unprofessional, threatened the complainant and grabbed his brother. The complainant was not arrested on any charges. The OPS interviewed the officer and the three (3) witnesses that the complainant listed on the complaint form and also the owner of the club. All three witnesses did not back up the complainant's allegations. Chairman Allen motioned to agree with the OPS' findings. Fowler Riddick seconded the motion. The motion carried unanimously.

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

The following Board members were appointed to the Committee on Complaint Review for November 2006: Jason Allen, Ronald Flagg and Fowler Riddick. Chairman Jason Allen suggested that the new Board members pair up with the veteran Board members and go down to the OPS when it comes time to review files for the next meeting to see how the process works.

C. *Approval of First Quarterly Report*

Chairman Allen noted that the Board reviewed the draft of the First Quarterly Report and there were no changes to report. Chairman Allen motioned to accept the quarterly report. Judith Mazza seconded. The motion carried unanimously.

D. *Approval of By-Laws Amendment*

Chairman Allen noted that the quorum required to vote in the Board's By-laws need to be amended to five (5) so that it's the same as the quorum required to vote in the CPRB Legislation. Chairman Allen also noted that the Board should look at changing the affirmative vote required for adoption of any action or motion from five to unanimous. Paul Weafer noted that the original intent is to have five instead of a unanimous vote. Jason Allen motioned to keep the original language for the number required for the adoption of any action at five and to replace the quorum number required to vote from seven to five. Marilyn Hammond seconded. The motion was approved.

E. *Committee/Task Force Reports*

By-Laws and Rules Committee

Chairman Allen noted that the Board received the Standing/Complainant document and Monitor's Protocol in their meeting packets and he would like to have the Board comment on and discuss both documents at tonight's meeting. Paul Weafer noted that if anything happens with the Standing/Complainant document then it's going to be a Common Council issue. Mr. Weafer also noted that the Monitor's Protocol should be in the Board's By-Laws. Judith Mazza commented that she has two issues with the way the Standing/Complainant document is set up. The first issue is that the document is confusing. Ms. Mazza further commented that numbers four and five on the last page of the document is confusing. The second issue is if a witness complains and the victim doesn't. That doesn't mean that the Police Department's behavior is appropriate. Either the Board or the Chief of Police decides on whether or not to investigate the witness complaint. Ms. Mazza proposes that what's written in "a" should remain there. Mr. Weafer commented that the original intent is still there in number five and this is not a finished document. It has to go before the Common Council and the Mayor. Mr. Weafer motioned to send the document to the appropriate body. Chairman Allen seconded. Ms. Mazza voted in the negative. The motion was approved.

Chairman Allen noted that the Board will now exchange ideas & discuss the Monitor Procedures and then bring it up to vote with the new members of the Board. Monitor, George Kleinmeier was recognized. Mr. Kleinmeier commented that the problem he has with the new procedures before the Board is that the monitors are required to be present in the field with the OPS. Chairman Allen inquired as to whether monitors are allowed to go in the field with the OPS. Mr. Weafer commented that the Monitor Procedures says that the monitors would have to go to the OPS and not in the field. Chairman Allen cited paragraph seven page 3. Mr. Kleinmeier commented that he has a full time job and if he's required to be at the OPS between the hours of 4pm-6pm then he can't do it. Mr. Weafer suggested that some flexibility with the hours be included in the procedures. Monitor, Theresa Balfe was recognized. Ms. Balfe commented that each monitor drafts their reports differently and the way the procedures is written the monitor, the reports would have to all look the same. Mr. Weafer added that there's no consistency in how monitor reports look. The Monitor Protocol tries to make it uniform in how things look

when the Board member reads the report. Judith Mazza suggested that the Monitor Protocol go to the new members before any decisions are made and also for the monitors to go to monitor training.

Community Outreach

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

Mediation

Chairman Allen reported that he is going to work on the mediation process with Barbara Gaige.

Policy Review/Recommendations

Committee Chairman Allen reported that these meetings will resume once the new board members are set.

Public Official Liaison

Committee Chairman Ronald Flagg noted that the committee had nothing new to report.

Task Force on Standing/Complainant

Chairman Allen noted that this item was already discussed earlier on the agenda.

Task Force on Monitor Procedures

Chairman Allen noted that this item was already discussed earlier on the agenda.

F. *Report of the Government Law Center (GLC)*

Executive Assistant Sharmaine Moseley gave the report.

Complaint Status as of Date of Meeting

As of the date of the meeting it was reported that there are currently 29 active complaints before the Board for review. 205 have been closed and ten (10) complaints suspended from review. The total number of complaints filed with the Board to date is 244.

Correspondence

It was reported that the Center forwarded to the Board correspondence from the Mayor regarding the appointment of Andrew Phelan which was made in September. Mr. Phelan will join the Board this month to fill one of the expired seats vacated by a Mayoral

appointment. Mauri Davis will also be joining the Board this month. The Center forwarded to the Board at the beginning of this meeting correspondence from the Common Council regarding the appointments of James Malatras, John Paneto and Anthony Potenza. The Center would like to welcome Mr. Phelan, Ms. Davis, Mr. Malatras, Mr. Paneto and Mr. Potenza to the Board.

Training

It was reported that the Center's Orientation Program for new Board members has been scheduled for Saturday, October 28, 2006 from 9am-3:30pm at Albany Law School in the Boardroom of the 2000 building. This is the first segment of orientation for the new board members. The Center has been in contact with Chief Bruno to try to arrange a second segment of orientation at the Office of Professional Standards before November 14, 2006. Once the new members complete orientation, they will be able to vote at the CPRB meeting scheduled for November 14, 2006.

F. *Report from the Office of Professional Standards*

Detective Sergeant Kuck reported that Chief Bruno had a scheduling conflict and was not able to be at this meeting. Detective Sergeant Kuck had nothing to report from the OPS.

G. *Report from the Chair*

Chairman Allen acknowledged that correspondence regarding Complaint No. 32-05 was forwarded from the Board to the Chief of Police and the Mayor in error, so followup correspondence was drafted and forwarded to the Chief and Mayor. Chairman Allen apologized for the error. Chairman Allen thanked the departing members of the Board for the work they have done while being on the Board for the last several years. Paul Weafer thanked Rev. Kenneth Cox, Barbara Gaige, Chairman Jason Allen, Patrick Jordan, the staff at the Government Law Center, the OPS and the Chief of Police for everything. Chairman Allen noted that new Board members Mauri Davis and Andrew Phelan were present and welcomed them to the Board.

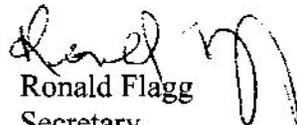
V. Public Comment

The floor was opened for public comment. Common Council Member Richard Conti acknowledged the departing members of the Board and welcomed new members Jim Malatras and Anthony Potenza who were present at the meeting. Mr. Conti also noted that the Common Council appointed John Paneto to the Board but he did not see him at the meeting.

VII. Adjournment

Chairman Jason Allen motioned to adjourn the meeting. Judith Mazza and Ronald Flagg seconded the motion. The meeting was adjourned at 7:26 p.m.

Respectfully submitted,


Ronald Flagg
Secretary