

City of Albany
Citizens' Police Review Board
Albany Public Library
161 Washington Avenue – Large Auditorium
September 14, 2006
6:00 p.m. – 8:00 p.m.

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

Absent: Beresford Bailey.

I. Call to Order and Roll Call

Chairman Jason Allen called the meeting to order at 6:09 p.m. He noted that a quorum of the Board was present.

II. Approval of the Agenda

The agenda was reviewed. Corporate Counsel, Patrick Jordan, pointed out that in the bylaws it calls for the public comment to occur right after changes for the agenda and before the complaints are reviewed. There is also a section in the bylaws giving authority to change the order. There are two advantages in moving this to the beginning. First, if someone cannot stay until the end of the meeting, they can speak in the beginning. Second, it allows for people to comment and make constructive criticism before their cases are heard, rather than after. This could be managed by allowing each person four minutes to speak.

Chairman Allen asked if anyone had experience with why it is done this way rather than what the bylaw says. Paul Weafer recalled that former Board Chair Kenneth Cox felt that if the public comment was in the beginning that it may run so long into the time frame for the available time that is reserved in the library. Also, the majority of the initial meetings were in the library and Mr. Cox opted to have the public comment at the end, but the bylaws were never changed. Judith Mazza said that it also gives people a chance to have a discussion about the issues and policies and they cannot comment on what they haven't heard. Complainants get to talk at the time their complaint is reviewed. Chairman Allen decided to leave the public comment period where it is.

Michael Whiteman is ready to review his case as long as monitor Joel Pierre Louis is present. Mr. Weafer will do two out of the three cases he was assigned because the monitor, Teresa Balfe, is not present and will do that case at the next meeting (CPRB No. 4-06). Marilyn Hammond is ready to present both of her cases. Ronald Flagg will present one of his cases. Chairman Allen is ready to present his two cases. Fowler Riddick recused himself from presenting his case, as he knows several members of the complainant's family. This case will be reassigned for next month's meeting. Ms. Mazza is ready to present her case. Agenda items five and seven are

stricken from the agenda for this meeting and the first item will be moved to the end of the agenda. Mr. Weafer moved to approve the agenda. Mr. Riddick seconded the motion. The motion carried unanimously.

III. Approval of the June 13, 2006 Meeting Minutes

The June 13, 2006 meeting minutes were reviewed. 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 June 13, 2006 Meeting

Ms. Mazza reported that there were ten (10) new complaints received by the Board since its June 13, 2006 meeting. Ms. Mazza read a summary of each new complaint.

2. New Complaints For Review

It was reported that there were eight (8) new complaints on the agenda for review by the Board.

CPRB No. 34-05/OPS No. C05-607 (Presented by Paul Weafer)

Paul Weafer summarized the complaint.

The complainant's situation has been resolved to her satisfaction. The complainant lives at the Old Dewitt Motel. The nature of her complaint has two points. First, the police harassed a friend of the complainant at the site of her residence, by arresting the friend several times for trespassing the building based solely on racial prejudice. The second point is that the police entered her apartment, seeking to remove this friend from the building, without her permission. With respect to the first charge the complainant was unaware that the former owners of the building had prohibited her friend from entering the building because he was suspected of drug use and possible drug sales within the building. The complainant was also unaware that her friend had pleaded guilty to two trespass charges related to his arrest at her residence and was given a conditional discharge by two judges. He was specifically told that the condition of the discharge was not to go back in the building. Under the former ownership of the building, there was a formal committee of tenants who participated in a neighborhood watch program with the aid of the Albany Police Department. The police were called by an agent of the former owner that this individual had again entered the building in violation of both conditional discharges in order to visit the complainant and other people who live there. When the subject officer went to the complainant's apartment to look for this individual, the complainant told him she did not want him to enter. She claims he stood outside her

apartment for thirty minutes, periodically knocking on her door. The complainant called the officer's supervisor and he arrived and went to her apartment where the subject officer was standing. The complainant initially let both officers in - two witnesses gave statement to such a fact. The complainant then stated abruptly after they had both entered, to leave her apartment. The complainant alleges that the subject officer walked further into her apartment to look for the visitor.

The supervising officer gave a statement saying that he and the other officer left immediately upon request and the same two witnesses agree that this happened. Under new ownership of the building a sign-in system was created, where individuals could enter the building to visit residents who express their consent to the visitor. The complainant's friend was then permitted to enter and visit the complainant and others as long as he signed in. The visitor admits that he has been through drug rehab and states that he has no problem, racial or otherwise, with the subject officer.

In June, Mr. Weafer called the complainant to inform her that her complaint was going to be laid aside until September because of the summer recess.¹ She was also informed of the two trespass charges to which the friend had pled guilty. During that call, she told Mr. Weafer that her relationship with the man had changed, deteriorated and that he had been threatening and verbally abusive to her since she filed the complaint. The complainant said she knew he was using and possibly selling drugs in the building and expressed her respect to the subject officer because after she had filed the complaint she read a story about him in the TU about how he intervened and saved a woman. She expressed her concern to Mr. Weafer that now she was concerned for her safety that the subject officer may not respond to her call for help on his shift if there were further problems with her former friend. With the complainant's permission, Mr. Weafer called OPS to have them explain the situation to the subject officer. He was assured by Detective Romano that the subject officer would respond to any calls for help that she placed during his shift. This information assured her and she expressed a willingness to go to mediation with the officer in the fall.

During the middle of the summer, the complainant spoke with Mr. Weafer again, and told him that the situation had gotten worse with her former friend and that she had received an order of protection.² Mr. Weafer gave the complainant some assurance and left a message for her that he would speak with Detective Romano again to apprise him of the order of protection and he said that he would alert all shifts of this. Detective Romano also suggested that he call the complainant back and tell her that she should call the south station anytime she felt threatened by this former friend. Mr. Weafer left this message

¹ During the meeting, Mr. Weafer inadvertently reported that this communication with the complainant was initiated at the request of Government Law Center Senior Staff Attorney Justina Cintrón Perino. However, it was the complainant who contacted the Government Law Center and asked that a member of the Board contact her about the status of her complaint. Ms. Perino communicated this request to Mr. Weafer.

² During the meeting, Mr. Weafer inadvertently reported that the complainant had spoken to Ms. Perino about her situation. However, it was Mr. Weafer and not Ms. Perino who communicated with the complainant about the status of her situation.

and never received a call back. In a recent conversation with Detective Romano, Mr. Weafer was told that the former friend was arrested for violating the order of protection and also for possession of controlled substances. He is currently in Albany County Jail. Based upon Mr. Weafer's conversations with the complainant and how she spoke very highly of the officer after she had filed the initial complaint, he suggests two things.

He motioned that each one of the recommendations of OPS be upheld and also hold in advance her willingness to go to mediation, if we have a mediation program that goes into effect under the new contract. If the complainant calls Sharmaine Moseley and seeks mediation then a recommendation should be made for the officer to go to mediation.

Mr. Flagg questioned why he recommended mediation. Mr. Weafer responded that based upon his conversations over the summer they discussed how the situation had changed based on her relationship with the former friend. The complainant changed her opinion of the officer based upon his intervention and that her former friend had started to terrorize her. Her main concern was if she would get the help that she needed based upon the fact that she filed a complainant against the officer. She is willing to sit down and talk with the officer and go through mediation to resolve if he did or did not go too far into her apartment. Mr. Weafer motioned to accept OPS findings and have Ms. Moseley offer the opportunity for mediation.

Chairperson Allen questioned that in the absence of a formal policy it would be unreasonable to ask the officer to meet with the complainant. Assistant Chief Bruno replied that this was not unreasonable. Based upon Mr. Weafer's conversations with Detective Romano the officer was very understanding and willing to meet with the complainant.

Mr. Weafer moved to accept OPS findings on this case and offer mediation. Marilyn Hammond seconded. The motion carried unanimously.

CPRB No. 32-05/OPS No. C05-574 (Presented by Michael Whiteman)

Michael Whiteman summarized the complaint.

The complainant was driving and perceived that he was stopped for no reason related to the operation of the vehicle, by two police officers. One of the officers was a member of the APD (the subject of the complaint) and the other was a NYS Trooper. The complainant was told by the subject officer that he was stopped because he had an outstanding warrant, which was later confirmed. The complainant tried to explain to the officer that there were no outstanding warrants and offered an explanation why he was fairly confident that there was no warrant. In response, the officer was sarcastic and the complainant felt that the officer did not credit his explanation. He explained that he had just come from a two hour meeting at the District Attorney's Office in which he was a participant not a subject, target or witness and no one said anything to him about a warrant. In addition when he asked the officer why his license and registration had to be

checked on the computer, the officer was unresponsive, saying that he didn't have to answer that question. The officer's response was that he had received a call telling him of a domestic violence complaint that had been presented at the station. Part of the complaint was that the subject of the domestic violence complaint had a gun, and was associated with another person in a car that was similar to the complainant's car with a similar vanity license plate and perhaps he had given this gun to another person. When the officer ran the license plate before making the stop he got an "associated hit," meaning that he was associated with the subject of the domestic violence complaint. The complainant alleges that the basis for being stopped was for "driving while black" but one could also infer that he was stopped because he was driving a fancy car with tinted windows and vanity plates.

The subject officer denied that race was a motive, he stopped the complainant because he had received this call from a dispatcher. There are a number of officers whose testimony corroborates that the subject officer did in fact receive this call. They say that they were present and heard the call. However, the call about the domestic violence complaint (Sept. 30) took place seven weeks prior to the time he stopped the complainant's car (Nov. 17). This case was sent back to the OPS for further investigation and there is no explanation in the further investigation why it was deemed a valid stop seven weeks later.

The officer who sent out the domestic violence complaint says nothing about another person, a car or a gun. This discrepancy is not explained in the follow-up report.

The trooper offers a different explanation for the stop. According to him, the subject officer said that they had to stop this car with this vanity plate because the complainant was wanted on a drug related charge and a gun charge. This is inconsistent with the explanation given by the subject officer of a domestic violence complaint. The trooper's explanation is inconsistent with the failure of the two officers to conduct a search of the visible areas in the car. All the trooper knew was that the complainant was wanted on a gun violation and there might be a gun in the car.

The complainant also alleges that the subject officer treated him with disrespect and rudeness. If you adopt the "driving while black" theory as the motivation for the stop, then with respect to that charge we have conflicting testimonies. The subject officer claims that he wasn't rude or disrespectful.

The trooper said that he was on the passenger side of the car and didn't hear the exchange. The OPS recommends *unfounded* with respect to the improper basis for the stop and *not sustained* for being rude and disrespectful to the complainant. This would have been a wonderful opportunity for mediation if only the Board had a mediation program in place.

Joel Pierre-Louis was recognized. He re-reviewed the file and spoke with Detective Romano to compare the reports. Mr. Pierre-Louis's initial report raised four issues with respect to the investigation and findings. The first issue was that he disagreed with the

OPS findings because the subject officer pursuant to that report had not stated or given any testimony to the OPS that he knew at the time he stopped the complainant's vehicle that he had any outstanding warrants. In the follow-up, the officer states that at the time of the stop he knew that the complainant had an "active warrant, possibly out of family court." While Mr. Pierre-Louis accepts the officer's explanation, the rationale for the stop of the complainant's vehicle fails to explain how and when the officer came to learn that the complainant had any outstanding warrants. The second issue that he raises is the inconsistency between the subject officer's rationale for the stop and the trooper's explanation. A third issue raised is why didn't the officer and trooper search the complainant's vehicle during the stop. The officer did not feel as if there was any safety issue that warranted a search of the vehicle, the officer did not feel he had a legal basis for searching the vehicle. Mr. Pierre-Louis implicates in his follow-up report that he is satisfied with this explanation. The fourth issue that he raised was why didn't the domestic incident report filed make reference or mention of a handgun or vanity plates. The OPS follow-up investigation did not address this issue and so it remains unresolved.

The complainant was recognized. The domestic violence complaint was issued from North Station in Arbor Hill. The officer was stationed in the South Station where he was pulled over. The complainant questions how this officer knew about the complaint that was issued at the North Station. The officer's unwillingness to answer questions concerning the legality of driving down the street and running their license plate and registration concerns him. The most important things were the warrants issued for his arrest. The explanation was that he doesn't know how you got this off his license when you just ran it and there were no warrants issued on that plate. How did the officer get from a warrant on his plate to a complaint filed by someone? He is trying to understand why he was pulled over; there is no evidence why his car was pulled over. He would like to say for the record that his car does not have tinted windows. The officer could see him as he drove by. Studying racial profiling incidents and instances, which he found very alarming, was that when you are racially profiled an officer will follow you, pull you over in a well-lit area so they can see directly into the vehicle. The stop was unjust. The officer made a bad stop. He has attended these meetings several times and he keeps hearing unfounded and not sustained decisions. He asked the Board when is a person's word credible enough that his/her word is taken. It deeply troubles him that a person can come in front of this Board, tell the truth and it becomes unfounded or not sustained, even after the number of inconsistencies presented. With this said, the complainant disagrees with the unfounded and not sustained decisions. The police officer should be held accountable for this bad stop. The complainant thanked the Board for their time.

Mr. Whiteman said that the Board members were troubled by the number of times that they find themselves in a situation where they feel a need to say not sustained and unfounded. It is very difficult, in the face of a report that doesn't provide either directly or by deductive logic a conclusion of sustained. It is extremely frustrating. Perhaps a different kind of review or investigative process is needed to get beyond that. He is interested to see whether his fellow Board members are more prepared to reach a different conclusion on the basis of what is in the file.

Mr. Flagg is concerned that the OPS investigation was not thorough and left some unanswered questions. A state police officer says one thing and an Albany police officer says something else.

Assistant Chief Bruno was recognized. The subject of the complaint was in a restaurant having a meal with his supervisor and a partner. Those two officers said that they heard the call. Part of this call was that the vehicle in question was said to be driven occasionally by the person from the domestic violence complaint. There is a crucial statement from an uninterested witness, the woman that made the domestic violence complaint, who said that the subject had given a gun to another person with the same first name as the complainant and she described a vehicle with the same license plate.

Mr. Weafer said that the domestic violence complainant retracted what she originally said, although she did reiterate what she told the officer at the North Station that the subject had a gun and frequented a car owned by a person with the same first name as the complainant. She admitted that it was a lie but she did make that statement back in September.

For Mr. Pierre Louis this is a major unanswered question. That explanation should come from either the person who prepared the report at the North Station and that is not in the file in terms of a follow-up. Why was that information not part of the Domestic Incident Report? As it was explained to him, the reason was that it was a domestic incident report and that was unrelated to the issue at hand, but it seems to him that it is a crucial element. He is not sure if this is protocol to include it in the report, he didn't see it in any follow-up or subsequent report filed by the officers to indicate that this witness ever made this statement.

Attorney Mark Mishler was recognized. The alleged restaurant conversation that the subject officer claims to have had, that was witnessed by other officer, did this happen around September 30th and was it close in time to the original complaint of domestic violence? Or was this some time closer to November 17th? Mr. Pierre-Louis replied that the call allegedly came over the radio and the subject officer, in the presence of his superior officer, heard the call on September 30th.

Mr. Mishler is concerned that seven weeks went by and these were seven extraordinary weeks for his client. From September 30th to November 17th the complainant was working 24 hours a day, 7 days a week running for a hotly contested election that received tremendous press coverage. The complainant is not an unknown person, and to think that it is credible for a police officer or department during that time period to think that he might have had a gun in his car or might somehow have been involved with this, and nobody did anything... is absolutely incredible. There was extreme disrespect from a police officer to a young man of color driving what was perceived as a car that was too fancy for him to drive. The inconsistencies and stories don't make sense. The only

consistent account of events is the complainants'. He strongly urges the Board to reject the OPS findings.

Mr. Whiteman agreed that Mr. Mishler pointed out part of his explanation. There were seven weeks that don't make sense. The only way to reach the conclusion that the domestic violence issue was pretextual is to find all the other explanations given implausible. There is no other explanation to come up with so you have to get there by inductive logic. Mr. Whiteman is not happy with the outcome, he is not happy with the investigation and follow-up investigation which left unanswered holes. His instinct is to send this complaint back for further review. The Board has several choices: not sustained or sustained, there is no outcome that says we do not offer our own findings but we reject the recommended findings of the OPS.

Ms. Mazza stated that the choices are to reject the OPS findings and send it to the Chief of Police. The Chief then has to come up with a final decision and if the Board doesn't like this decision it is sent to Mayor and if the Board doesn't like this decision it is sent to the Common Council with a request to subpoena the officers for interview. The Board cannot come up with its own conclusion.

Patrick Jordan was recognized. There are three choices: accept the OPS findings, reject the OPS findings, send it back to OPS for further investigation, or send it to the Chief of Police. If the Board doesn't like the Chief's decision then it goes to the Mayor and the Chief, and if the Board doesn't like that decision it goes to the Common Council.

Mr. Whiteman motioned to reject the findings of the OPS because he doesn't agree with an unfounded conclusion with respect to the basis of the traffic stop. If this is rejected, then the denial of rudeness becomes less credible and he therefore rejects the not sustained finding on the disrespect and the rudeness.

Mr. Weafer does not want to vote without knowing what Mr. Whiteman's next recommendation is going to be. He recommends sending it back to the OPS but he could also agree to send it to the Chief with a letter saying that the Board would like a heightened review by the Chief.

Mr. Flagg's concern is that it seems there is some uncomfortableness in making a decision. The Board has taken on the responsibility to agree or disagree with the findings. Mr. Flagg strongly disagrees with the findings of the OPS and since it has already been sent back to the OPS once, the next step would be to send it to the Chief. There are some glaring holes in this investigation and this incident occurred last fall. Mr. Pierre-Louis's review was in March or April and the OPS review occurred last November. Everyone has had the opportunity to ask questions and by now it needs to move to the next level.

Mr. Whiteman motioned to reject the findings of the OPS and to send it to the Chief. Marilyn Hammond seconded. The motion carried 6-0, with Judith Mazza recusing herself from voting.

CPRB No. 2-06/OPS No. C06-24 (Presented by Paul Weafer)

Paul Weafer summarized the complaint.

The complainant is a resident of West Street and he complained of excessive use of force by the subject officer and other officers. He alleges that he was punched twice in the cheek and again in the lip while the subject officer was attempting to arrest him on the porch of his home. The incident occurred after the complainant and his thirteen-year-old brother³ drove to buy food on Central Avenue. The complainant returned to his residence by way of East on Washington Avenue and then taking a left onto North Lake and then left onto West Street. The complainant states that there were three or four police cars on both sides of the corners of Washington and North Lake when he made his left turn onto North Lake. According to police statements, these cars were there conducting an investigation. According to the statement made by the subject officer, he left the other police cars and pursued the complainant to West Street because he alleges the complainant made his turn, by the police cars, within an imprudent speed given the nature of how many police cars were in that intersection. According to the statement made by the subject officer, he pulled up behind the parked car, of the complainant, with his overhead lights on. The complainant said that he thought, by looking at the glass door of the residence, that it was a Capital District Ambulance light because they have an office right down the street from his residence. The police officer got out of his car and told both the complainant and his brother to get back in their car. The brother complied immediately, but according to the subject officer, the complainant ignored him and kept walking to the house one house up from where he parked. The complainant then frantically banged on the door, because it was locked, to gain entrance. Other units arrived and one officer stayed with the brother who was placed in one of the police cars. The complainant's girlfriend was attempting to unlock the door as the complainant was attempting to get in with a key. When the subject officer attempted to prevent the complainant from entering the residence, a struggle began. The subject officer attempted to get the complainant under custody to handcuff him and alleges that the complainant began swinging his arms and body checked him into the porch railing, which almost sent him through the railing.

The subject officer admits that it was necessary to use physical force to subdue the complainant and admits to punching the complainant with a closed fist. The complainant was finally subdued with the help of other officers, handcuffed, and placed in a separate car from his brother. He was given a uniform traffic ticket and charged with obstructing governmental administration and resisting arrest.

³ It was reported that the thirteen-year-old boy involved in this complaint is the complainant's son. This characterization was made in error. The thirteen-year-old boy is the complainant's brother.

Two witnesses who work for the ambulance company stated that they observed the struggle to subdue the complainant. One of these witnesses stated that the complainant was resisting the officer's attempt to handcuff him with such force that the witness thought that the police officer would have to eventually use a taser to bring the complainant under control. This witness said that the complainant continued to struggle even after being brought down off the porch in handcuffs. The witness further stated that under the conditions of the intense struggle, he didn't think that the officer used excessive force.

The monitor, George Kleinmeier, viewed a written version of an oral admission allegedly made by the complainant stating that he left the car instead of returning to his vehicle and that was the reason for his arrest. This oral statement was allegedly made down at the station.

According to the OPS, no picture of the complainant's face was taken at the station house because there was no appearance of injury. A few days later, the complainant went to a hospital or doctor and was given medicine for neck strain and contusions to his face but didn't provide any pictures.

The complainant gave the names of six witnesses to the incident including his brother, girlfriend and members of her family all who live at this residence. Detective Hendrick sent postmarked witness inquiries to each of the witnesses and the monitor viewed copies of the postal receipts. Only the complainant's brother responded by giving a statement to the OPS in the presence of his mother. His statement verifies the physical struggle and the use of physical force by the officers to subdue his brother. Allegedly, one of the officers struck his brother in the legs with a nightstick. None of the other witnesses of the complainant responded to the postal inquiry by the OPS although the father of the complainant's girlfriend did go to the station house to inquire how to make a complaint. The officer said that if the complainant had returned to his car as his thirteen-year-old brother did, upon the initial direction of the officer, he would have been issued a uniform traffic ticket only for imprudent speed and he would have been free to go into his residence.

The monitor, George Kleinmeier, was recognized. It is important to point out that the OPS did sustain a portion of the complaint.

Mr. Weafer reported that the OPS did *sustain* the subject officer after taking the complainant's car away and arresting him. They turned the thirteen-year-old boy over to the girlfriend's mother and father and what they should have done was bring the boy to a juvenile center or should have tried to track down the boy's mother or other legal guardian. The OPS found that this was a violation of police conduct.

Paul Weafer motioned to accept both of the OPS's recommendations. Marilyn Hammond seconded. The motion carried unanimously.

CPRB No. 3-06/OPS No. C06-52 (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint.

The complainant alleges an excessive use of force and a false arrest. The complainant is alleging that he was arrested for no reason and during his arrest the officers assaulted him. The complainant was stopped because he had been involved in a verbal altercation with a group of individuals, which was part of a domestic call. He was highly agitated and combative. The officer approached the complainant and he lunged at another victim in a threatening manner. He had to be escorted to the rear of a patrol car. The officers tried talking to him and he continued to try to fight with the victim as the police tried to place him under arrest for disorderly conduct. The complainant became combative and had to be tased.

The officer spoke with the complainant's mother on May 10th and she didn't see the incident but arrived after. She stated that the officers appeared to be doing their job holding him down but didn't see the officers mistreating the complainant or doing anything wrong. She also states that she has told her son not to go down to his girlfriend's house because there would be a problem.

On June 6th, one of the witnesses, a friend that he was arguing with when the police arrived, said that the police tried to calm him down; the complainant said "f" police and took a swing at an officer. So, the officers took him to the ground and tried to handcuff him but he kept fighting.

Another witness, on June 5th, stated that the complainant was arguing with his girlfriend. The police tried to calm him down and they finally had to tase him. He was treated at Albany Medical Center for lacerations and a contusion to his head, which is consistent with falling to the ground.

The monitor, Richard Lenihan, was recognized. The argument started over the complainant trying to get visitation of his four-year-old daughter. As Ms. Hammond indicated, the complainant's mother had told him not to go over to the area because it would turn confrontational and it did. The complainant alleges that he went for a walk to the store and when he came back he was subsequently stopped for no reason at all, detained, questioned and thrown to ground where he sustained an eye injury to his eyebrow from hitting the pavement. A review of the police reports indicate that the complainant was stopped because he was becoming combative and about to attack another male in the vicinity of his girlfriend. The intervening officer tried to separate them, called for back-up and another officer arrived. The complainant then became even more agitated. A third officer was a half a block away and saw what was transpiring and he felt that more assistance was needed. When he got to the scene he was directed by a superior officer to stun gun the complainant in his thigh, also called a "dry" stun, meaning that they didn't use darts as a projectile. They gave him five and four second

jolts to subdue him. The injury to the eye occurred when the officers were trying to get him down to handcuff him and when they were unable to do so the stun gun was used. He was treated by the Albany Fire/EMS that came to the scene and transported to the emergency room at Albany Medical Center. The medical reports stated that he was not cooperative there. He was sutured for a 1.5cm laceration over his eyebrow and released. It is noteworthy to add that the complainant is bipolar. The girlfriend was interviewed over the phone but wouldn't come in to give a signed statement. She did indicate that her boyfriend was combative and violent, and she did not see the police do anything. The complainant's mother arrived after the fact, when he was already on the ground and was uncooperative. She also didn't see the officers do anything that they should not have done. The male witness said that the complainant was combative and brought this upon himself.

Marilyn Hammond agrees with the OPS findings as *exonerated* on both the excessive use of force and arrest authority procedure. Ronald Flagg seconded. The motion carried unanimously.

CPRB No. 7-06/OPS No. C06-77 (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint.

The complainant alleged that an officer grabbed her daughter by a key chain that was around her neck, twisted her arm and called her an "animal" and "a little b*tch." It is also alleged that the officer threatened to arrest the complainant's daughter if she didn't cooperate. When Ms. Hammond checked, the witness that was interviewed said that when she pulled up she asked who was fighting and was told that it was the complainant's daughter. The complainant told the witness to call 911 and she did. The complainant's daughter had been involved in an altercation with a group of individuals, which was part of a domestic call. She alleged that the officer ripped the chain off of her neck. There are two independent witnesses. One witness was there the entire time and the other also said that this happened. None of the witnesses recalled seeing the complainant handcuffed. The OPS found that all of the charges were *unfounded*.

Marilyn Hammond agrees with the OPS findings as unfounded and not sustained on all of the allegations. Ronald Flagg seconded. The motion carried unanimously.

CPRB No. 14-06/OPS No. C06-197 (Presented by Jason Allen)

Jason Allen summarized the complaint.

On March 14, 2006, the complainant alleged that an officer responded to the area of Third Street and Judson in reference to a vehicle running unattended. The complainant alleges that the officer searched him for weapons for no reason. The complainant further alleges that he informed the officer of his identity, address, and that he lived in the house that they were standing directly in front of, but the officer did not allow him to retrieve

his identification from the house. It is further alleged by the complainant that shortly thereafter he responded to the North Station to obtain a complaint form. An officer refused to supply him with a form. The complainant alleges that the officer stated that “we don’t have any complaint forms here.” The complainant stated that he pointed to the file cabinet to where the forms were kept and alleges that the officer then stated that “Well I’m new here and don’t know where they are.” The complainant alleges that after approximately five minutes the officer gave him a complaint form. A monitor was not assigned to this case

Officer #1 sent an IDC to the Chief stating that he and the trooper were on Second and Judson detail when they came upon a car running unattended. This officer shut off the car, secured it and took the keys. There was no sign of the owner being present at that time. A few minutes later he came back to the car and the complainant was there and he told them that cars left running could be stolen or driven unsafely which is why it is against the law to leave a vehicle running unattended. The officer stated that the complainant was defensive and wanted to go into his house to get his ID. The officer told him no because he already had his information. The complainant became more agitated and noncompliant. The officer stated that “for my safety the complainant was then patted down.” The complainant was issued a summons for leaving the vehicle unattended.

Another IDC was issued by the officer in the North Station. He states that he was the only officer in the station at the time when the complainant came in for the form. The officer told the complainant to wait and that he didn’t know where they were. The complainant pointed to where they were. The officer doesn’t recall how long the transaction took. There is a discrepancy here between the complainant’s version and the officer’s version.

The complainant was also with one other person at this time. An email was sent to this witness and no response was received.

The trooper was interviewed as well. His statement corroborates with his partner’s. He also stated that the complainant became upset and said “This is bullsh*t, this is my neighborhood, I didn’t do anything wrong.” The trooper maintains that the complainant didn’t yell.

The OPS’s findings were *unfounded* regarding the allegation that there was a search conducted for no reason. The second allegation was found to be *exonerated* in that the officers were justified in not letting that complainant go into house during the transaction. In regards to the allegation about the form being unavailable, the OPS found this allegation an *ineffective policy or training*. They are sending a recommendation that forms will now be stored in an open public space rather than behind the desk or in a filing cabinet. The OPS also pointed out that this officer is not normally assigned to this station or to desk duty so he wasn’t familiar with where the forms were kept.

Mr. Allen motioned to agree with the OPS's findings. Paul Weafer seconded. The motion carried unanimously.

CPRB No. 16-06/OPS No. C06-250 (Presented by Jason Allen)

Jason Allen summarized the complaint.

A monitor was assigned to this case. On April 13, 2006, the complainant alleged that an officer assaulted her when he responded to assist the Albany Housing Authority with an eviction. The complainant alleges the officer threw her against a sink, punched her in the left side of the face, that she was handcuffed and thrown against a wall, and that she was then thrown down the stairs. She further alleges that she was also thrown down the stairs outside the apartment and while she was down on the ground she could not get up. She alleges that the officer threatened to pepper spray her if she did not get up and when she told the officer that she couldn't get up, she was pepper sprayed.

The first witness is the Albany Housing Authority Assistant Director of Operations. Chairman Allen questions if it is standard operating procedures for an officer to be with the assistant director at all times when he does an eviction or if it is just when he sees a need. In this case there was a foreshadowing that there would be a problem during this eviction. The assistant director stated that one officer stayed outside the apartment and the other officer went inside. The officer asked the complainant to leave and she refused. The officer offered her time to get her medication, belongings and to leave. The complainant refused and the issue escalated. The assistant director heard scuffling and at that point he went outside. The next time he saw the complainant and the officers they were coming down the stairs and she was handcuffed. She tumbled of her own accord upon leaving the housing unit and fell on the landing outside. The officers tried to pick her up and she wouldn't stand. At this point, the officers' pepper sprayed her.

The second witness is the complainant's thirteen year old daughter who was also in the apartment. She stated that the assistant director asked her to leave and then called for the officers when she didn't leave. Her mother was on the phone when the officers entered the apartment. The officers asked her to hang up the phone and when she refused he took the plug out of the wall. The complainant went towards the officers and he pushed her in order to handcuff her. She claims that her mother stumbled and got on her knees. Then the other officer came in and punched her mother in the face. The complainant asked for help down the stairs and the officer said to just walk.

There were also four males waiting outside as this was occurring. The complainant refused to supply the names of these individuals, stating that the officers would start harassing them as well.

The first officer stated that before coming to the apartment, the assistant director advised them that the lessee, the complainant's mother, had already left the premises and the lessee's daughter was still there. The complainant had been verbally abusive to the

assistant director. Upon arriving, the complainant was screaming, abusive and disobeyed an order to collect her belongings and leave. She waved a cordless telephone at the officers while using obscenities and she did attack the second officer, driving him into the stove. It took both officers to subdue and handcuff her.

The second officer corroborates the first officer's story. He adds that they allowed her twenty minutes on the phone before they disconnected it. They pulled the plug out of the wall because she was on the phone with social services and was verbally abusive to the person on the other end of the phone. The second officer alleges that he was driven into the stove and was lying on his back. He is 175-lbs and the complainant is 300-lbs and he needed the second officer to help pull her off because he was frozen in place.

Additionally, the OPS canvassed for more witnesses and found none. The complainant was admitted to the hospital and the medical records and photos did not corroborate her allegations. The medical report discharged her with a contusion and abrasion on her right arm and chemical conjunctivitis due to pepper spray.

The charge/arrest report sites criminal trespass, resisting arrest, disobeying a mandate and sites the tackling and kicking of the officers.

The monitor, Richard Lenihan, adds that the complainant had no legal standing to be in the apartment because it was her mother leasing it. There was a 72-hour notice that they had to vacate. The OPS did sustain the allegation of being pepper sprayed because she had already been handcuffed and the pepper spray was unnecessary.

Jason Allen motioned to concur with the OPS finding on the allegation of use of force and all the other allegations *unfounded*, except for the pepper spray allegation, which was *sustained*. Marilyn Hammond seconded. The motion carried unanimously.

CPRB No. 24-06/OPS No. C06-345 (Presented by Judith Mazza)

Judith Mazza summarized the complaint.

This is a complaint made by a civilian employee of the police department. The complainant was driving north on South Pearl Street and the officer was driving south, both heading towards the police station on Morton Avenue. The complainant alleges that there was a black SUV in front of her, which turned onto Morton Avenue, and she thought that it was clear to follow him into the turn. The police officer, driving an unmarked vehicle, was going to make a right turn onto Morton Avenue and had the right of way. When the complainant realized this other car was turning, she stopped in the middle of the intersection to let the other car go. The other car began to turn towards her, gunning the car at her and frightened her. The uniformed officer told her to pull over and she did. When the complainant realized that it was a police officer driving the other vehicle, she rolled the window down but the officer admittedly screamed at her "What the h*ll do you think you are doing?" The complainant claims that she was frightened,

upset and didn't know what to do so she called her supervisor. The officer pounded on her car door, screamed at her and then opened the car door to get her out. The complainant called into the South Station and officers come out to the incident. The complainant said that the officer actually threatened her.

The officer did admit to asking her what she was doing. The officer alleges that she went to park her vehicle and then returned to the complainant, who was now on the phone. The officer tried to get the complainant to put the phone down, to roll the window down, to ask for a license, registration and proof of insurance. The complainant wouldn't roll the window down and the officer then opened the car door. The officer claims that the complainant told her to get the registration herself. The officer said that the complainant made the statement "why don't you just hit me."

The OPS interviewed a sergeant that came out of the South Station. The sergeant stated that when he realized that something was going on he separated the parties. He doesn't comment what was going on with the officer only on the complainant. The sergeant called in a supervisor and was told to issue a uniform traffic ticket for the incident and to complete an IDC report.

A detective who was also interviewed saw the officer with the complainant and recognized that the officer was upset because the complainant was uncooperative and belligerent.

The complainant received three tickets: failure to yield right of way, failure to keep right and failure to obey a police officer, which was dismissed. The complainant paid the two tickets and she admitted she was in error. A monitor was appointed to this case.

The monitor, Richard Lenihan, was recognized. The monitor concludes that both the complainant and the subject officer need remedial training on personal conduct while not on duty. There were no witnesses.

The OPS found that conduct allegation was not *sustained*.

Ms. Mazza motioned not to accept the OPS findings of not sustained and to send this complaint back to Chief Tuffey. Ms. Hammond seconded this motion. The motion carried unanimously.

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

The following Board members were appointed to the Committee on Complaint Review for October 2006: Jason Allen, Ronald Flagg, Marilyn Hammond, Judith Mazza, Paul Weafer, Fowler Riddick and Michael Whiteman.

Mauri Davis will be joining the Board in November 2006. In October 2006, there will be six vacancies. The Board sent a letter to the Common Council and the Mayor regarding the vacancies.

C. *Committee/Task Force Reports*

By-Laws Committee

Paul Weafer and Michael Whiteman noted that the committee had nothing new to report.

Task Force Committee

Chairman Allen noted that the task force met with Chief Tuffey but were unable to meet on standing document meeting. A meeting will be scheduled for next Friday so that changes for the standing document will be in the next packets to the Board.

Monitor Taskforce

Chairman Jason Allen noted that input and feedback on protocol will be covered in the meeting next Friday with the Chief.

Policy Review/Recommendations

Committee Chairman Jason Allen noted that the committee had nothing new to report.

Community Outreach

It was reported that a revised draft copy of the complaint form was forwarded to the Board for its review. The Board was urged to review the draft and make necessary changes. It was reported that revisions to the brochure will not be made until the new Board is seated. Committee Chairperson Judith Mazza asked if the Board has access to someone who can translate the brochure. Government Law Center Senior Staff Attorney Justina Cintrón Perino commented that a translator could be identified through the law school.

Mediation

Committee Chairman Jason Allen gave the report. He has met with Assistant Chief Bruno to discussed the topic and give input. He would like to touch base with Barbara Gaige before he can say if it's promising.

Public Official Liaison

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

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

Senior Staff Attorney Justina Cintrón Perino gave the report.

Complaint Status as of Date of Meeting

As of the date of the meeting, it was reported that there were 37 active complaints before the Board for review. 197 complaints 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 had forwarded to the Board correspondence from Reverend Beresford Bailey regarding his resignation due to health reasons which would be effective September 30, 2006. The Center also prepared and forwarded correspondence to the Mayor, requesting the appointment of new members to fill the six (6) vacancies left from term expirations and resignations.

New Member

It was reported that in August the Mayor appointed a new member, Mauri Lewis-Davis, to join the Board in October to fill one of the expired seats vacated.

Monitor Task Force

It was reported that over the summer the Task Force met for a series of meetings. The Task Force is working to expand the monitor pool, and has developed a job description, qualifications and requirements, and protocol for monitoring and reporting back to the Board. The Center forwarded the protocol to the monitors and the APD for input. Board members may wish to forward it along to Corporation Counsel for input as well.

Outreach

It was reported that the Center gave copies of the complaint form and brochure to each member of the Board for review and revisions before the hiatus. The Board was asked to comment on content language, and the need for edits and revisions. The Center will be holding off until new appointments, but urged those Board members who are leaving this year to provide input. The revised copy of the complaint form was forwarded to the Board for comments. Some features will be revised and added at a later time, but the Center wanted to be inclusive and get comments.

Training

It was reported that the Center was instructed by the Chair to hold off on training pending new appointments.

The NACOLE Conference is being held from September 25-28th in Boise, Idaho. No members of the Board are attending this year. The Center has initiated the process of Board Orientation which included preparing the agenda and materials.

New Staffing

It was reported that in August, the Center forwarded to the Board correspondence announcing that Ms. Perino would be taking a leave of absence from the Government Law Center and Board. This leave begins on Monday, September 18, 2006. She has been engaged in six (6) weeks of transition training with Sharmaine Moseley. Ms. Moseley is the Executive Assistant to the Dean and Director of the Center and has been an integral part of the staff team for the CPRB. Ms. Moseley will assume primary staffing during her 11 week absence.

Formal letters announcing Ms. Perino's leave will go out to the City, Police Department, Council, etc. and notices will be placed on her phone and email.

F. *Report from the Office of Professional Standards*

Assistant Chief Bruno gave the report. Chief Bruno congratulated Ms. Perino on her leave from the GLC to work with Judge Randolph Treece. Regarding translating the form, the APD has 20 police officers enrolled in Spanish 101 at Hudson Valley Community College who will receive college credit. At the end of the course there will be a 2nd level and then a 3rd level all offered through Hudson Valley. At the end of the 3rd level the officers are certified as translators, which will diversify police officers. Through In-Service training the officers will also receive training on relevant stop and frisk/ search and service.

G. *Report from the Chair*

Chairman Allen thanked the public for attending. He also congratulated Justina Cintrón Perino on her new book and wished her luck on the tremendous opportunity with Judge Treece. He noted that Ms. Perino is the author of a new book, "Citizen Oversight of Law Enforcement" which was published by the ABA in May.

It was reported that Ms. Sharmaine Moseley of the Government Law Center will staff the Board during Ms. Perino's leave.

It was reported that Reverend Beresford Bailey submitted his resignation from the Board, which will take effect on September 30th. With the vacancy being created by Reverend Bailey and the term expirations occurring this October, the remaining members of the Board will include: Fowler Riddick, Ronald Flagg and Jason Allen.

It was reported that the Government Law Center is preparing its Orientation Program for new Board members. Chairman Allen noted that he was aware of a call for nominees made by the Common Council a few months prior and that the Council had individuals it was currently considering for the impending vacancies, adding that the Council is expected to make its appointments by the end of the month.

VI. Public Comment

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

VII. Adjournment

Chairman Allen moved to adjourn the meeting. The meeting was adjourned at 8:39 p.m.

Respectfully submitted,


Ronald Flagg
Secretary