

City of Albany
Citizens' Police Review Board
Albany Law School
80 New Scotland Avenue - Dean Alexander Moot Courtroom (Room 421)
December 5, 2005
6:00 p.m. – 8:00 p.m.

Present: Jason Allen, Beresford Bailey, Ronald Flagg, Barbara Gaige, Marilyn Hammond
Paul Weafer, and Michael Whiteman.

Absent: Judith Mazza

I. Call to Order and Roll Call

Chairperson Barbara Gaige called the meeting to order at 6:10 p.m. Chairperson Gaige noted that a quorum of the Board was present.

II. Approval of the Agenda

The agenda was reviewed. Paul Weafer moved to accept the agenda. Marilyn Hammond seconded the motion. The motion carried unanimously.

III. Approval of the November 2005 Meeting Minutes

The November 2005 meeting minutes were reviewed. Ronald Flagg moved to approve the minutes. Paul Weafer seconded the motion. The motion carried unanimously.

Government Law Center [GLC] Senior Staff Attorney Justina Cintrón Perino noted that minor revisions were made to the draft minutes.

IV. New Business

A. *New Complaints*

1. New complaints received since the November 2005 Meeting

Chairperson Gaige reported that three (3) new complaints had been received by the Board since its November 14, 2005 meeting. Chairperson Gaige read a summary of each complaint.

CPRB No. 32-05. The complainant alleges that while driving alone on the intersection of Myrtle Avenue and Delaware Avenue, he observed an Albany police officer following him. At the intersection of Second Avenue and Delaware Avenue, the officer turned on his lights and siren and pulled over the complainant, who was driving a 2002 Lexus. The complainant alleges that the officer asked for his license, registration, and insurance card,

which the complainant states he provided. The complainant claims that he asked the officer “why he had been stopped,” since to the best of his knowledge he had not violated any traffic laws. The officer responded, “You have warrants issued.” The complainant alleges that he explained to the officer that he found that hard to believe, because he was coming from a meeting with the District Attorney’s Office Community Accountability Board [on which he serves] and the DA’s office had not mentioned any warrants. The complainant further claims he told the officer he had just run for public office and no one had mentioned any warrants or charges against him. The complainant claims the officer responded by saying, “I find that hard to believe. You can’t come up with a better story than that?” It is alleged that the officer went back to his vehicle and returned a few minutes later, handing the complainant his license, registration, and insurance card. The complainant asked for the officer’s name and the officer provided it to him. The complainant alleges he asked the officer “if it was proper to run [his] license when [he] had done nothing wrong,” to which the officer replied, “I don’t have to answer that question.” The complainant was not issued any tickets or charges, and states there were no warrants issued for him. The complainant alleges that the officer violated his civil rights. The complainant believes “the officer would not have taken any action - including running [his] license plate - had [he] not been a young African-American man driving a Lexus.” The complainant believes he was treated in a disrespectful manner based on his race, and the officer’s apparent disbelief that he was involved with the District Attorney’s Office or had run for public office.

A monitor was appointed to this complaint.

CPRB No. 33-05. This complaint is related to CPRB Nos. 29-05 and 31-05. The complainants allege that on Tuesday, September 20, 2005, police officers entered the home of their children’s grandmother without a warrant. The female complainant alleges the officers shot and killed her four-year-old dog in front of her two-year-old son and while her eight month old son was sleeping in the living room. She claims that the children’s grandmother told the officers that “they could go inside if they let her put the dog up and get [the female complainant’s] son out of the house.” The complainants claim the officers refused and dragged the grandmother off the stairs in front of her two-year-old grandson, and arrested her. According to the female complainant, the officers endangered her children when their first priority should have been to remove them from the area like her mother-in-law had wanted to do. She claims her dog was “merely walking down the stairs as if he wanted to go outside, not growling [or] barking.” She further claims that the dog would not have attacked anyone if it was approached first.

The monitor appointed to CPRB Nos. 29-05 and 31-05 was also appointed to this complaint.

CPRB No. 34-05. The complainant alleges that she and her guests are being harassed by the Albany Police Department based on racial profiling. According to the complainant, the same Albany police officer arrested an African-American male on two occasions for trespassing in her apartment building. She alleges that following both incidents and the

man's release from custody, the gentleman was not told by the court that he could not be in the building, and a restraining order was not issued. While the gentleman was in her apartment visiting, the complainant claims the same officer wanted to enter her apartment to arrest the gentleman a third time. When the complainant told the officer that he could not enter, she claims the officer knocked on her door for one-half hour before leaving. The complainant alleges that while the officer was knocking, she contacted and spoke with the officer's supervisor at South Station, who later came to the building. The complainant claims that once the arresting officer left, she had left her apartment to go to a friend's apartment. As she was returning to her apartment, she alleges the arresting officer and the supervisor followed her, pushed into her apartment, and searched it fully, without her consent. She further alleges the officer told her that he would report her to HUD to have her evicted for drug use in her apartment. The complainant believes that the gentleman was arrested "continually" based on his skin color.

Paul Weafer moved to appoint a monitor to this complaint. Ronald Flagg seconded the motion. The motion carried unanimously.

2. New complaints for review

Chairperson Gaige reported that there were no new complaints on the agenda for review.

B. *Appointment of two new members to the Committee on Complaint Review for January 2006*

The following Board members were appointed to the Committee on Complaint Review for December 2005, and were asked to serve on the Committee for January 2006: Jason Allen, Barbara Gaige, Marilyn Hammond, Judith Mazza, and Paul Weafer.

C. *Committee/Task Force Reports*

1. By-Laws Committee

Committee Co-Chairman, Paul Weafer, gave the report. He reported that once the issue of "standing" and definition of "complainant" is decided, the committee will then address issues concerning the format of the Board's monitors' reports.

2. Community Outreach Committee

In the absence of the Committee Chair Judith Mazza, Chairperson Gaige gave the report. She reported that the committee was able to obtain a mailing list of the area churches. A letter was prepared, asking if the churches were willing to provide a place for complaint forms. The letter also asked whether the churches would be interested in learning more about the CPRB. She concluded that the letter was expected to be sent out that week.

3. Mediation Committee

Committee Chairperson, Barbara Gaige, gave the report. She reported that the Board members had received the mediation report prepared by Lauri Stewart, and that she had spoken with Assistant Chief Paula Breen about setting up a meeting. She commented that, in light of a new Chief being appointed; the Board is going to wait on the meeting and a discussion regarding the development of mediation protocols until the new Chief is officially on the job.

Paul Weafer addressed Chief Turley and asked whether the police contract is under complete construction, whether it is officially up on December 31, 2005, and if mediation will be a subject for negotiation. Chief Turley responded by stating that he does not believe that mediation is a contractual issue that is up for negotiation, but rather is a policy issue. He also believes that the new Chief shares his opinion on the importance of mediation.

4. Policy Review/Recommendations Committee

Committee Chairman, Jason Allen, gave the report.

Jason Allen commented that he had two issues to report on: 1) the complaint from the concerned citizens Coalition, and 2) the racial profiling issue that was discussed at the two previous meetings during public discussion.

Jason Allen thanked the Coalition for combining and raising many of the issues that are present in the public's mind. Mr. Allen reported that the committee met with Chief Turley before last month's meeting and he made some candid statements about the complaint. The Board can not investigate the Coalition's complaint, but the Chief has agreed to sit with representatives from the Coalition and Board members to discuss the issues and concerns raised by the complaint.

Paul Weafer asked Chief Turley whether he would be able to have the Coalition's questions addressed before he leaves his position. If this is not possible, Mr. Weafer asked whether Chief Turley had any idea if his successor would be willing to participate in these meetings and answer some of the issues that the Coalition is raising. Chief Turley responded by saying that he was willing to address certain issues that he had first hand knowledge of, but that some of the issues that were raised are currently in litigation, therefore, he cannot comment on them. He suggested the meetings be scheduled and take place as soon as possible. He stated that he will serve as Chief until December 31, 2005.

The Board then held a vote on whether to hold a meeting with Chief Turley, representatives of the Coalition, and a few Board members. The vote carried unanimously. The Board requested that the Government Law Center (GLC) set up the meeting, and Chief James Turley requested that the meeting be held at the Public Safety building because the Chief would have certain resources available to him and the meeting participants.

Betsey Mercogliano was recognized. She asked the Board which member/s would be present at the meeting. Jason Allen and Chairperson Barbara Gaige indicated their interest in attending the meeting. The Coalition requested that all four members that signed the complaint be present at the meeting.

Ms. Mercogliano asked whether the new Chief, James Tuffey, will be part of this discussion. Chief Turley stated that he is committed to the meeting and discussion with the Coalition members.

Jason Allen reported that the issue of racial profiling has been brought up at several previous meetings and that Chief Turley has provided the Board with the racial profiling statistics. Dr. Alice Green, who had made several previous inquiries and requests, was provided with a copy of the statistics.

Ronald Flagg noted that he and Barbara Gaige had attended a program held by SUNY Albany's Criminal Justice Center on racial profiling. He explained that the researcher who gave the seminar said that the important data is not stops by the police, but rather the number of searches resulting from the stops. The researcher reports that if you look at the amount of stops that resulted in searches, the numbers drastically increased if the subject was a racial or ethnic minority. According to the researcher, the other important piece, when a search took place, was whether contraband was found or not found. These statistics paint a clearer picture of whether or not racial profiling is taking place.

Chief Turley stated that Albany does collect information on searches and whether contraband is found on traffic stops. Chief Turley introduced the Albany Police Department's statistician to explain how the information is collected on the back of traffic tickets. An explanation and discussion of the raw data was given.

Chief Turley explained that one of the main problems with the raw data is that Albany has a large student population that is not accounted for in the U.S. Census. For this reason the Chief suggested a discussion of the statistics rather than just looking at the raw numbers.

5. Task Force on Standing/Complainant

Task Force Chairman, Paul Weafer, gave the report. Mr. Weafer reported that he, Michael Whiteman, Jason Allen, and Barbara Gaige held an hour and a half meeting on the "standing" issue. He noted that there was some confusion about members of the task force, and that Jason Allen was present at the meeting instead of Ronald Flagg, who should have been present.

He reported that the GLC had provided research on how seven other cities define "complainant," and explained that during the meeting, Board members had a frank discussion and exchanged different philosophical viewpoints on how

“standing”/“complainant” is or should be defined. He noted that in some cities, the legislation is silent with respect to this issue as is the case in Albany, some cities provide a broad-based definition, and other cities have taken a composite approach to the definition. He noted that a second meeting of the task force was scheduled for Friday December 9th, at 8 a.m., and encouraged task force members to be prepared to exchange more ideas. He added that the Task Force hopes to have some consensus before it makes any recommendations and the Board takes any action.

Mr. Weafer recommended that the Board extend a courtesy to the Common Council, Mayor’s Office, and the Corporation Counsel’s Office by reaching out to them as part of its discussion on “standing,” and hearing any suggestions or observations that these groups might offer that the Board has not considered or thought about. Chairperson Gaige suggested that the Council, Mayor’s Office, and the Corporation Counsel’s Office receive the information that the Board was given by the GLC on “standing” to review before a discussion takes place. Paul Weafer reported that the Board and the GLC would continue to reach out to other cities about this issue, and requested the GLC to put together a chart of how other cities have defined and looked at the standing issue. The Board requested that the information be provided to them by the GLC in late January/early February.

D. *Nominations*

Nominations were held for the positions of Chair, Vice-Chair, and Secretary.

For the position of Chair, Paul Weafer nominated Barbara Gaige for another term. Jason Allen seconded the motion. No other nominations were made for Chair. For the position of Vice-Chair, Marilyn Hammond nominated Jason Allen. Paul Weafer seconded the motion. No other nominations were made for Vice-Chair. For the position of Secretary, Paul Weafer nominated Ronald Flagg for another term. Jason Allen seconded the motion. No other nominations were made for Secretary. Each nomination was accepted.

The slate will be voted on at the January 2006 meeting.

E. *Approval of the Third Quarterly Report for 2005*

Chairperson Gaige called for a motion to approve the draft of the Third Quarterly Report for 2005, as submitted by the Government Law Center. Ronald Flagg moved to accept the Report. Marilyn Hammond seconded the motion. The motion carried unanimously.

F. *Report of the Government Law Center*

Justina Cintrón Perino gave the report.

Summary of Complaints

As of the date of the meeting, it was reported that there were 20 active complaints, 4 of

which were in the process of being closed. Nine (9) complaints have been suspended, and 177 complaints have been closed. The total number of complaints filed to date is 206.

It was reported that the Board's review of two complaints – CPRB Nos. 29-05 and 31-05 - was suspended by the Mayor, upon the advice and recommendation of the Corporation Counsel in a letter to the Chair dated November 17, 2005. Letters have been sent to the complainants notifying them of the suspension.

It was reported that the Board had received copies of correspondence from the complainant who filed CPRB No. 2-05/OPS No.C05-35, the complaint involving an incident at a Stewart's Shop. The complainant requested that his complaint be "put back on for investigation." In June 2005, the complainant's attorney, Ms. Fernande Rosetti requested that the Board table its review pending the release of the complainant from incarceration, which she believed was imminent. Since that time, the Board received correspondence from the complainant, explaining that he had not yet been released, but wanted the Board to table review, pending a decision from Parole regarding a hearing held in July 2005. At the complainant's request, the GLC forwarded copies of the documents enclosed with the correspondence to the Office of Professional Standards [OPS].

Policy

It was reported that a letter was drafted on the Board's behalf to the Chief, following-up on the discussion concerning race/ethnicity data that took place at the November meeting. The letter, confirming that the Chief had agreed to make a presentation about the way in which the APD collects and records race/ethnicity data of those individuals with whom police officers have contact, requested that the Chief provide the Board with a sample of the data that is being collected and recorded. A copy of the letter was forwarded to the Board.

Mediation

It was reported that Lauri Stewart's mediation report had been forwarded to the mediation meeting participants. It was reported that Chairperson Gaige had been in communication with the Chief, and was advised to contact Assistant Chief Paula Breen to schedule a preliminary meeting to discuss mediation protocols. The GLC contacted Assistant Chief Breen to coordinate the scheduling of the meeting. The Assistant Chief corresponded with the Center, and explained she is unclear as to whether or not she or another member of the department would be handling the mediation issues under the new Chief. She stated, however, that she would be available in December or January for a meeting.

Outreach

It was reported that the Center is engaged in an ongoing effort to update the Board's outreach materials and to expand the Board's outreach program. It was reported that the Chair had forwarded language for correspondence to the area churches. A draft of the letter was forwarded to the Board for its approval.

It was reported that Center is making progress on updating the Board's complaint review brochure, and expects to have a draft for review soon.

Training

It was reported that the NACOLE (National Association for Civilian Oversight of Law Enforcement) Conference was scheduled to take place December 11-14th in Miami. Chairperson Gaige, Marilyn Hammond and Ms. Perino will be in attendance. Board members not attending the conference were asked to forward any requests for information from the conference.

It was reported that Chairperson Gaige and the GLC have been in communication about the 2006 training schedule. Trainings will be offered on a quarterly basis – topics, dates, times, and locations to be announced. Two topics have been identified: 1) ethics – police ethics, board ethics; and 2) dealing with complainants with mental/emotional issues.

Ms. Perino reported that she would explore training topics and ideas at the NACOLE Conference.

Appointments-Reappointments

It was reported that the GLC had not received any new information regarding the appointment of a new member to fill the seat vacated by Herman Thomas.

Other

Paul Weafer inquired about the complaint involving Board monitor Joel Pierre-Louis, where Mark Mishler was representing the complainant regarding an incident on New Year's Eve. Assistant Chief Steven Krokoff was recognized. He stated that OPS had just heard back from Mr. Mishler on Thursday regarding OPS's request for further information on witnesses. Assistant Chief Krokoff reported that the OPS is still in the process of investigating the complaint.

Chairperson Gaige asked whether or not the Board has heard anything back from Assistant Corporation Counsel Patrick Jordan regarding the status of several complaints. Ms. Perino responded that the GLC has not yet received information from Mr. Jordan about the complaints. She added, however, that she had been in communication with Mr. Jordan, and he had a meeting scheduled with the OPS to discuss the complaints. She offered to provide the Board with another report, which would outline the status of each complaint. She informed the Board that some of the complaints date back to 2001 and

that it is not likely the OPS can offer additional information because the complaints require the advice and/or guidance of the Corporation Counsel's Office. She concluded by stating that no new movement has occurred with respect to any of these complaints.

Chairperson Gaige commented that she and Ms. Perino would discuss these complaints at their next meeting. Chairperson Gaige added that she would then contact Mr. Jordan and find out what can be done in order to close out some of the complaints.

H. *Report from the Office of Professional Standards*

Assistant Chief Steven Krokoff was recognized. The Office of Professional Standards has recently been screening candidates for Fire, Police, and Communications. OPS is preparing for the annual unit and facility inspection, which is scheduled to take place in the next couple of weeks. OPS has 3 new cases, 10 active cases that they are investigating, and 1 case that is waiting administrative review before it can come back to the Board.

I. *Comments from Chief James Turley*

Chief Turley was recognized, and addressed the Board.

He stated that public service is an awesome responsibility, and feels blessed to have served with his fellow police officers for 27 years and for the community. Chief Turley thanked the Board as a resident of the City of Albany for what they do. He recognized the Board's competence and unrecognized, unselfish community service. He commented that the Citizens' Police Review Board should be viewed as the first step in improving communications between the community of Albany and the Albany Police Department. Chief Turley extended an invitation to the Board to reach out to him whenever they need his service, and he further extended his service to the community-at-large.

Chairperson Gaige thanked the Chief for his comments. She reflected on how much progress she feels the Board has made in the last few months as a result of working with Chief Turley. She stated that the Board looks forward to working with the new Chief.

Paul Weafer addressed Chief Turley and recognized his commitment to the Board and to attending the Board's monthly meetings. He noted that Chief Turley has always been open and flexible to attend outside meetings. He also noted that Chief Turley has always been respectful and congenial. Lastly, he gave the Chief credit for his service to the department and the work that he has done with the Board.

V. **Public Comment**

The floor was opened for public comment.

Dr. Alice Green was recognized. She asked why she did not receive a copy of the mediation report since she was a participant at the meetings. Justina Cintrón Perino apologized for the oversight, and assured Dr. Green that she and Melanie Trimble would be mailed a copy of the report.

Dr. Green discussed one of the main goals that she wanted achieved through the racial profiling request. She commented that she believes it would be good for the community to hear a public statement released by the police department about their racial profiling policy. The Chief said that the policy was released in May of 2004 and he is not sure how a public statement can now be made in retrospect. The Chief welcomed discussion on how the statement could be made.

Dr. Green wanted to know what the Board's role would be with respect to the police department's use of deadly force. She commented that she does not believe the Board has fully discussed this issue. Jason Allen commented that the Board has reviewed the department's deadly force and pursuit policies. Paul Weafer added that many policy changes have occurred on the subjects of police pursuit and use of deadly force. Policy committee meetings with the Chief have resulted in changes to the police policies on issues of racial profiling and firing at a moving vehicle. Paul Weafer reminded the public that everything that the Board does is not limited to what takes place at the monthly meetings, but rather a lot of changes occur at committee meetings.

Dr. Green asked whether the Board would be involved if deadly force was used tomorrow by an Albany police officer. Paul Weafer responded that if a complaint was filed, then the Board would definitely be involved.

Dr. Green said the public is unaware of policy recommendations and policy changes that are made if they occur outside the monthly meetings. Chairperson Gaige said that she will try to include any policy changes or recommendations in the Chair's Report. Ronald Flagg reminded the public that it is not merely discussion, but actual policy changes that result from complaints and meetings.

It was noted that the policy recommendations and changes made by the Board in the last 3 or 4 years appear in the Board's quarterly and annual reports. Paul Weafer said that throughout these policy discussions the Board has successfully been able to get policies amended.

Dr. Green addressed Chief Turley and acknowledge his cooperation. She thanked him for the work he has done. She commented that the Chief has been both cooperative and easy to work with, and she wished him well.

Betsey Mercogliano said that she appreciates the Board's willingness to grapple with the complaint and issues presented by the Coalition. She found that it was helpful to know that the Board sat with the Chief for two hours before the last meeting to discuss the issues in the complaint.

Chairperson Gaige addressed the Board about the cumbersomeness of the minutes. She asked whether the Board wanted to continue the minutes “as is,” with all of the detail. The Board agreed to consider the minutes issue and discuss it at the January meeting.

VI. Adjournment

Chairperson Gaige moved to adjourn the meeting. The meeting was adjourned at 7:15 p.m.

Respectfully Submitted,

Ronald Flagg
Secretary