

City of Albany
Citizens' Police Review Board
Albany Public Library
161 Washington Avenue – Large Auditorium
February 13, 2006
6:00 p.m. – 8:00 p.m.

Present: Jason Allen, Ronald Flagg, Barbara Gaige, Judith Mazza, and Paul Weafer.

Absent: Beresford Bailey, Marilyn Hammond, Fowler Riddick, and Michael Whiteman.

I. Call to Order and Roll Call

Chairperson Barbara Gaige called the meeting to order at 6:05 p.m. She noted that a quorum of the Board was present.

II. Approval of the Agenda

The agenda was reviewed. Paul Weafer moved to approve the agenda. Ronald Flagg seconded the motion. The motion carried unanimously.

III. Approval of the January 2006 Meeting Minutes

The December 2005 meeting minutes were reviewed. Ronald Flagg moved to approve the minutes. Jason Allen seconded the motion. The motion carried unanimously.

IV. Old Business

Judith Mazza reported that there were three (3) complaints on the agenda under “Old Business” for review and findings. She presented each of the three (3) complaints.

CPRB No. 3-02/OPS No. C02-01

This complaint was received in January of 2002. It involved allegations of use of force and conduct. The complaint was made regarding the conduct of a police officer toward the complainant's son. The preliminary findings of the Office of Professional Standards (OPS) were: *exonerated* as to the use of force and *unfounded* as to the officer's conduct. There were no witnesses to corroborate the allegations. When the complaint was initially reviewed, it was referred to mediation. However, at that time, there was not a mediation process that could formally be used. There was an informal mediation of the complainant and then Police Commissioner John Nielsen. It appeared that the issues were resolved in the informal mediation. There was concern thereafter that another complaint would be filed. However, that complaint was never received.

Ms. Mazza moved to close that case as *exonerated* as to the allegation of use of force and *unfounded* as to the allegations regarding the officer's conduct. Paul Weafer seconded the motion. The motion carried unanimously.

CPRB No. 22-03/OPS No. C03-355

This complaint was received in 2003. The complainant alleges that he was not read his Miranda warning, that certain information should not have been used against him, and that he was denied access to an attorney.¹ The investigation revealed that a Miranda warning was given, as acknowledged by the complainant's initials.

Ms. Mazza commented that the issues complained of should have been dealt with in the course of a court proceeding. Ms. Mazza then moved to accept the findings of the OPS, and close the complaint as *unfounded*. Paul Weafer seconded the motion, and the motion carried unanimously.

A member of the public was recognized, and inquired about the process of complaint review. Ms. Mazza detailed the process from receipt of the complaint through investigation, reporting, and review by the Board.

CPRB No. 1-04

This complaint involved a police chase and the use of deadly force on New Year's Eve of 2003. The complaint is about police policy and whether or not police actions regarding chases and use of force were consistent with policy. Ms. Mazza reported that policies relating to the chases and the use of force have been changed and continued to be reviewed by the Chief of Police.

The complainant was recognized. She commented that she understands that the policies were reviewed in 2002 and changed, which she heard through the newspaper. She added, however, that the individual was killed in 2003. She noted concern with policy making and the ability for the public to have input. She added that she would like a copy of the policies and would like the Board's input on the policy changes. She concluded by saying that the complaint is about policy and judgment, which were both a problem.

Ms. Mazza responded that policies in place at the end of 2003 were followed. However, the policies have since been changed, and the Board has seen and reviewed the new policies. She added that as far as police personnel issues, the Board is not privy to whether or not the officer(s) were disciplined.

Chairperson Gaige commented that a public copy of the Department's Standard Operating Procedures is available for review.

¹ This allegation was made in the written complaint filed with the Board.

Paul Weafer noted that two (2) policies were changed. The “hot pursuit” policy and the use of force policy. He commented that under the new policies, an officer cannot shoot at a moving vehicle.

The complainant requested a copy of the new policies so that she could make a determination as to whether or not the policies were followed at the time. She added that she would like to see that the new policies prevent this type of thing from happening again.

Ms. Mazza commented that she would inquire as to whether or not the two (2) policies are available to the public, and would get back to the complainant. She then moved to close the complaint as *no finding* – the policies have changed, with a stipulation that the Board would inquire as to whether or not the policies were available to the public, and, if so, would make the information available to the complainant.

Paul Weafer commented that the Board should decide where the policy request will go. Mr. Weafer also noted that he had a very strong reservation regarding a person, who is not an eyewitness to a complaint, being permitted to bring a policy comment to the Board as a complaint.

The motion carried unanimously.

V. New Business

A. *New Complaints*

New complaints received since the January 2006 Meeting

Judith Mazza reported that eight (8) new complaints had been received by the Board since its January 9, 2006 meeting. Ms. Mazza read a summary of each new complaint.

CPRB No. 1-06

According to the complainant, her daughter and her daughter’s boyfriend were pulled over by Albany police officers at the intersection of Grant and Central Avenue. She alleges that two officers approached the vehicle on each side, instructed the daughter and her boyfriend to roll down their windows, and asked if they had a gun. After responding that they did not, she claims an officer asked the boyfriend to get out of the car, at which time the officer began to search him. She alleges that at the same time, the officer on the daughter’s side “began to touch [her] body, including her private parts.” She further alleges that her daughter was then asked to step out of the car, and the officer conducted a search, “touching her private parts [and] making her feel very uneasy.” Following the search of both individuals, the complainant claims one of the officers explained to the boyfriend the alleged reasons for pulling him over and for the search, and the other commented to the daughter, “Have a great night!” It is alleged that while speaking to a

desk sergeant at the police station, the daughter “expressed that she felt ...there was an element of racism involved in the way she was treated.”

A monitor was appointed to this complaint.

CPRB No. 2-06

The complainant alleges that as he and his 13-year-old brother were returning from picking up food for the complainant’s girlfriend, he was pushed from behind by 2-3 police officers against the screen door to a house on West Street. As he was being handcuffed, the complainant claims he was hit twice on his right cheek bone with a fist, and hit in the upper and bottom lips from the right side by an officer. The complainant further claims that while he was being patted down and searched, he saw his 13-year-old brother, who was handcuffed, being searched as well. He alleges that he and his brother were placed in patrol cars, that his vehicle was searched, and that he was questioned, but not read his rights and was not told the reason for his arrest until he arrived at the police station.

A monitor was appointed to this complaint.

CPRB No. 3-06

Following a verbal disagreement with a friend, the complainant alleges he left to take a walk to calm down when he was stopped by Albany police officers and forcibly detained against his will. The complainant claims he was questioned by the officer although he did nothing wrong. The complainant further claims the officer then proceeded to grab his backpack and duffle bag, and, with the assistance of another officer, picked him up in a horizontal manner in an attempt to falsely arrest him and dropped him on the brick laid street, causing him to sustain a deep laceration on his left eye and a contusion under his left eye. The complainant alleges that he was tased numerous times, and that his 4-year-old daughter was traumatized by seeing him on the ground bleeding. The complainant further alleges that his identification was retained by the Albany police.

A monitor was appointed to this complaint.

CPRB No. 4-06

The complainant alleges she observed a man, who was running across Lake Avenue, being followed by an Albany police officer. She claims that a patrol car pulled up and the man was forced to the ground. She further claims that the officers stated over and over “put your f*cking hands behind your back,” but the man kept saying, “I didn’t do anything.” According to the complaint, three other police cars arrived, and within a few minutes, 5-7 officers were trying to subdue the man. The complainant claims that from her observation, the man stopped saying anything. She alleges that a fire truck and ambulance arrived shortly thereafter, and that the paramedics “took the man who did not appear to be moving in the ambulance.”

A monitor was appointed to this complaint.

CPRB No. 5-06

The complainant alleges she witnessed a man walking on the corner of First and Lake Streets when a police car pulled up, followed by another police car. The complainant claims that approximately six police officers aggressively tackled the man to the ground. She further claims the man verbally complied with the officers and asked them to stop, stating "I didn't do anything." According to the complainant, "the officers continued on with aggressive force and continuously used the word 'f*cking' towards the man." The complainant alleges the man "continued to ask them to 'please stop' and they continued on being overly aggressive and using fowl language toward him." The complainant claims she heard the man let out a loud cry of pain and then was silent. The complainant alleges that when the ambulance arrived, the man was placed on a stretcher and was not moving or speaking.

This complaint involves the same incident alleged in CPRB No. 4-06. The monitor appointed to CPRB No. 4-06 was also appointed to this complaint.

CPRB No. 6-06

The complainant alleges that her son was searched, handcuffed, and held in a police car for no reason. According to the complainant, she observed her son's car double-parked and two police cars behind his. When she asked the officers on two occasions what they were charging her son with, the officers did not respond. The complainant claims that after being asked to go over to the porch and wait for the officers to come and explain things to her, she commented "I know why you pulled them over. It's because they are black." According to the complainant, one of the officers "went from calm to crazy in two seconds." She alleges the officer "approached [her] in a threatening manner, screaming, pointing [his/her] finger" in the complainant's face. The complainant claims that as the officer ordered her to get up on the porch, he/she "was right in [her] face with his/her "finger pointing right into [her] nose." "[F]eeling intimidated and in fear of being physically attacked and arrested," the complainant claims she went up on the porch and waited to see what was going to happen with her son. She alleges that her son was eventually released and given a ticket for double parking. She further alleges that this incident is the third time in six or seven months that her son has been harassed by the Albany Police Department, which she believes is because he is black.

A monitor was appointed to this complaint.

CPRB No. 7-06

According to the complainant, one of her two daughters was grabbed by two other girls after school because her daughter asked a group of unsupervised children to stop laughing at the complainant. The complainant alleges that the two girls later told an Albany police officer that the complainant's other daughter, who was not involved in the earlier incident, "was fighting them" and was the sister of the daughter. The complainant claims that upon hearing this comment, the officer grabbed her other daughter, who was waiting to be picked up from a canceled cheerleading game, by her keychain around her

neck; called her an ““animal and a little b*tch””; placed her in a patrol car; twisted her arm; and threatened to arrest her if she did not cooperate.

A monitor was appointed to this complaint.

CPRB No. 8-06

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 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.

A determination as to whether to appoint a monitor to this complaint had not yet been made.

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

The following Board members were appointed to the Committee on Complaint Review for March 2006: Jason Allen, Ronald Flagg, Barbara Gaige, Judith Mazza, Paul Weafer, and Michael Whiteman.

C. *Committee/Task Force Reports*

By-Laws Committee

Committee Co-Chairman, Paul Weafer, gave the report in Michael Whiteman’s absence. He noted that the committee had not met and that it had nothing new to report. He added that the committee will not act on any By-Laws or Rules until the Task Force resolves the complainant/standing issue. He noted that once that issue is resolved, it may require changes to the By-Laws and/or Rules of the Board.

Standing/Complainant

Chairman Paul Weafer reported that a meeting of Task Force had taken place. Chairman Weafer noted that he, Chairperson Gaige, and Ronald Flagg were in attendance. Although Michael Whiteman was unable to attend, he was briefed on the discussions that took place. Chairman Weafer recommended that a follow-up meeting to continue the discussion of standing and the definition of complainant be scheduled. He requested that Task Force members make themselves available for two-hours to allow time for a full discussion. He provided possible meeting dates.

Community Outreach

Committee Chairperson, Judith Mazza, commented that there was nothing new to report.

Mediation

Committee Chairperson Barbara Gaige gave the report. She reported that she had scheduled a meeting with Assistant Chief Paula Breen to begin discussing the development of mediation protocols. She noted that representatives of both officers' unions were invited to the meeting. She thanked Chief James Tuffey for his support.

Policy Review/Recommendations

Committee Chairman Jason Allen gave the report. Chairman Allen reported that he, Board Chairperson Gaige, Judith Mazza, and Paul Weafer met with Chief Tuffey and Assistant Chief Paula Breen. At the meeting, the Committee and the Chief discussed issues concerning the Albany Police Department's (APD) racial profiling policy and data that captures race and/or ethnicity of individuals having contacts with the police; the complaint filed over the summer by the Coalition for Accountable Police and Government; issues concerning the Board's complaint forms; and the backlog of complaints.

Chairman Allen reported that the Chief agreed to look at the race/ethnicity data to determine whether, and in what form, a report could be produced and forwarded to the Board on a regular basis.

He reported that the Board had discussed an appropriate announcement regarding the APD's racial profiling policy. According to Chairman Allen, the Chief had agreed to follow-up.

Chairman Allen reported that the Coalition had met with the Chief. There was quite a bit of ground covered, but there remain open items for discussion. He added that the Chief encouraged the Coalition to schedule a second meeting to discuss the open items. The Government Law Center was instructed to schedule the meeting.

Chairman Allen reported that the APD will be working with the Board to ensure that complainants are offered and receive assistance, when needed, in filling out and filing a written citizen complaint. The Chief agreed to prepare an Interdepartmental Correspondence to this effect, and to forward it to the Board for comment.

Chairman Allen concluded his report by stating that the Chief agreed to address the backlog of complaint issue, noting that the Board would be receiving reports for nine (9) complaints in advance of its March meeting.

Public Official Liaison

Chairman Ronald Flagg noted that the committee had nothing new to report. He added, however, that once the Task Force reaches consensus on the issue of complainant/standing, the committee will meet with the Mayor's Office, Common Council, and Corporation Counsel to present and discuss its findings.

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

Senior Staff Attorney, Justina Cintrón Perino, gave the report.

Complaint Summary

As of the date of the meeting, it was reported that there were 25 active complaints before the Board for review. Ten (10) complaints are suspended from review, and a total of 216 complaints have been filed with the Board to date.

Research Tasks

It was reported that the GLC been charged by the Task Force on Complainant/Standing to conduct research in the following areas: 1) definition of complainant/complaint and standing; 2) the procedure for filing issues of concern (i.e., complaints concerning policy, practice, or procedure); and 3) the number of complaints filed by witnesses.

It was reported that the GLC had expanded its research into the definition of complainant/complaint and standing, and that it had contacted a number of new agencies not included in its first research memorandum. The research were captured into chart form and forwarded to members of the Task Force.

It was reported that a law student intern had initiated preliminary research into issues of concern. A proposal from one jurisdiction, Tacoma, Washington, appears to be the best example to date. Tacoma has proposed a procedure for the filing of policy complaints outside of the traditional complaints of misconduct.

It was reported that the GLC was in the process conducting its research into the number of complaints filed by witnesses, and would provide the Board with a follow-up report of its findings.

Outreach

It was reported that the GLC is supporting the Outreach Committee in its ongoing effort to update the Board's outreach materials and work on expanding the Board's outreach program. It was noted that the Board had received two additional responses from area churches willing to make complaint forms available to the public.

Training

It was reported that the February 27, 2006 scheduled Ride-Along night could not take place. The GLC was informed that, for staffing and safety reasons, the APD can only accommodate two (2) Board members for ride-alongs per shift. The GLC expected to schedule two (2) ride-alongs on the 27th, and the remaining ride-alongs in pairs over the next 4-6 weeks.

It was reported that the GLC would be scheduling Orientation with new member Fowler Riddick before the March meeting.

F. *Report from the Office of Professional Standards*

Sergeant Eric Kuck gave the report. He reported that the OPS is currently collecting the numbers for the final quarterly report for 2005.

Chief Tuffey was recognized. He reported that the Board would be receiving reports for nine (9) complaints. He stated that the Board would be receiving reports in the last week of the month, and that the APD would provide a progress report of where each complaint stands at each monthly meeting. He noted that complaints will be given a priority designation, and that while the high priority will be given immediate attention, the lower priority complaints will be given attention.

G. *Report from the Chair*

Chairperson Gaige reserved her report.

V. **Public Comment**

The floor was opened for public comment.

Jose Lopez was recognized. He commented that he had made a complaint to the Board, and inquired as to when it would be on the Board's agenda. Chairperson Gaige responded that he would receive correspondence from the Board as to when his complaint would be ready for review and on the Board's agenda. A discussion ensued about the process for investigating and reviewing citizen complaints. Mr. Lopez commented that a detective told him he must prove his allegations of harassment, and asked if he could take pictures and turn them in as proof. Chief Tuffey advised him to note name and badge number of officers with whom he had contact, and to forward that information to the OPS.

Bill Washburn was recognized. He commented that he appreciated the opportunity to meet with the Chief again and to follow-up on some of the open items. He then read a statement to the Board (*see attached*).

Dan Jabonaski was recognized. He commented that he had reviewed the APD's policies and procedures and determined that the policies and procedures were broken on New Year's Eve of 2003. He added that if the policies and procedures are not public information, then they should be. He noted that he has a copy of the policies and procedures and would share them. He stated that the special prosecutor assigned to the case was quoted as saying the policies and procedures were broken that night. He concluded by saying that even if the policies were changed, the APD will not enforce those policies.

Paul Weafer commented that he personally felt the pursuit policy was broken that evening by discharge of a firearm at a moving vehicle, but added that the policies have been changed since then. He disagreed with Mr. Jabonaski, stating that it is difficult to conclude that the APD will not enforce its policies, especially in light of the APD's investigation into the Loudonville chase and whether or not policy was violated in that case.

Family members of the young man killed on January 18, 2006 were recognized. They inquired as to the police policies for sharing information with family members. They commented that the APD is not sharing any information with the family as to its investigation, and that the detectives assigned to the case are difficult to reach. Chairperson Gaige suggested that the family contact Assistant Chief Steven Krokoff to inquire about the policy for sharing information with family members.

Dr. Alice Green was recognized. She introduced Charles McCourt, noting that he is the Center for Law and Justice's Outreach Coordinator. She added that he would be attending the Board's meetings.

Dr. Green commented that she was happy to hear about research surrounding the number of complaints being made by people who are not witnesses to the incident. She stated that she is curious to see how many come from people who are not witnesses. Paul Weafer clarified that the Board is looking into the number of times that actual witness complaints are being investigated by the OPS.

Dr. Green commented that she was happy to hear that the Chief is considering making public statement about the racial profiling policy. She added that the Chief and the Mayor should make a clear statement to the community about the composition of the APD and where it stands.

She noted her dissatisfaction with her complaint. She added that policy is very important.

An announcement was made about an event taking place on February 21st; a speak out meeting about racial profiling and police abuse.

Dr. Green inquired as to whether members of the public could be part of the Board's committees and task forces. Chairperson Gaige responded that she would give consideration to this inquiry.

Jose Lopez was again recognized and asked how members of the Board were appointed to the Board. Judith Mazza explained the appointment process.

VI. Adjournment

Ronald Flagg moved to adjourn the meeting. The motion was seconded by Barbara Gaige. The meeting was adjourned at 6:50 p.m.

Respectfully Submitted,

Ronald Flagg
Secretary