

**City of Albany
Citizens' Police Review Board
Albany Law School
80 New Scotland Avenue – Dean Alexander Moot Courtroom
May 18, 2006
6:00 p.m. – 8:00 p.m.**

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

Absent: Michael Whiteman.

I. Call to Order and Roll Call

Acting Chairman Jason Allen called the meeting to order at 6:10 p.m. He 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. Fowler Riddick seconded the motion. The motion carried unanimously.

III. Approval of the April 2006 Meeting Minutes

The April 2006 meeting minutes were reviewed. Ronald Flagg moved to approve the minutes with a revision on page 14; accurately reflecting that he was not present at the meeting to give the report for the Public Official Liaison Committee. Paul Weafer seconded the motion. The motion carried unanimously.

IV. Old Business

Judith Mazza reported that there was one (1) complaint on the agenda under “Old Business” for review and findings. She presented the complaint.

CPRB No. 1-06/OPS No. C06-31

This complaint was heard several months ago and was tabled at that time. The complainant has since met with Assistant Chief Anthony Bruno to begin the informal mediation process. Judith Mazza moved to close this case with the first allegation of call handling as *exonerated* and the second allegation of call handling as *not sustained*. Ms. Mazza moved to accept these findings because of the informal mediation process that has taken place with Assistant Chief Bruno. Paul Weafer seconded the motion. The motion carried unanimously.

V. New Business

A. *New Complaints*

1. New complaints received since April 2006 Meeting

Judith Mazza reported that nine (9) new complaints had been received by the Board since its April 10, 2006 meeting. Ms. Mazza read a summary of each new complaint.

CPRB No. 15-06

During a physical altercation with another individual, the complainant alleges that a police officer, in breaking up the fight, kicked and stomped on the complainant's right arm; pepper sprayed her in the face; and arrested her. The complainant claims that during her transport to the police station, she asked the officer for help, explaining that she couldn't breathe, that her skin was burning, and that she was having an anxiety attack, but the officer stated, "you should of thought of that before." Following her transport to Albany Medical Center to have her eyes flushed, the complainant alleges she asked the officer if she could press charges, but the officer told her not with him and wanted to know what the complainant was made of since she was pepper sprayed.

A monitor was appointed to this complaint.

CPRB No. 16-06

During an eviction of the complainant and her daughter, the complainant alleges police officers rushed her and her daughter and looked through their belongings. The complainant claims that when the officers asked why her daughter was not in school, she responded by saying, "you dumb motherf*cker school is out." The complainant alleges one of the officers then grabbed her by one arm and threw her against the kitchen sink. The complainant further alleges that as she looked to the other officer for help, the first officer who punched her in the left side of her face, grabbed her other hand, and handcuffed her. The complainant claims she was thrown against the wall, pushed down the hall, thrown down the stairs, and thrown on the ground outside. The complainant alleges the officer ordered her to get up, and when she told the officer that she could not because she was handcuffed, the officer threatened to pepper spray her. The complainant claims that she was then pepper sprayed, picked up, and dragged to a truck.

A monitor was appointed to this complaint.

CPRB No. 17-06

During processing for an arrest on a misdemeanor charge, the complainant alleges that he was taken into the back of the station – in a hallway – where a strip search and cavity search were conducted. In the course of the search, the complainant claims that he was

searched in his genital area as well as in his rectum. According to the complainant, “for whatever reason,” the officers assaulted him for no reason while he was naked. The complainant alleges that EMS was called following the assault and he was taken to Albany Medical Center, where he was treated for cuts on his head, and cuts and abrasions on both legs.

A monitor was appointed to this complaint.

CPRB No. 18-06

During his arrest, the complainant alleges that an officer punched him in the face and threw him to the ground, hurting his leg. At the station, the complainant claims that the officer and another officer made him strip his clothes off. The complainant further claims that the officer stated, “shut the f*ck up and do what I say or I will hurt you.” According to the complainant, he was denied medical attention at the station.

A monitor was appointed to this complaint.

CPRB No. 19-06

During a traffic stop, the complainant alleges his person and his truck were searched without his permission, and that each of his passengers was also searched. The complainant claims that the officer hung up the complainant’s phone while he was speaking to his attorney and “snatched” a video camera from his brother. According to the complainant, a sergeant on the scene picked up an empty bag on the ground, found grass on the floor of his truck, and a baggie in his center console, and, subsequently, arrested and charged him with possession of drug paraphernalia. The complainant claims that during the search of his truck, a K-9 scratched his front panel, hood, and door. The complainant further claims that when he called traffic safety to get an incident report for the damage, it wasn’t until after three calls were made and 3-3 ½ hours passed before an officer showed up to take the report. The complainant alleges that at first, the officer did not want to take the report, but after speaking with his boss and another officer, he gave the complainant an incident report.

A monitor was appointed to this complaint.

CPRB No. 20-06

The complainant alleges that during the course of his arrest, he was tased, beaten and kicked about his body and face. He further alleges that he was not read his Miranda rights until one hour after his arrest.

A monitor was appointed to this complaint.

CPRB No. 21-06

During a concert event at a local club featuring the complainant's artists, the complainant alleges that an officer intervened in a conversation he was having with his brother, the club's owner, and the promoter, and told him he could not enter the club. The complainant claims the officer told him to leave or he would be arrested. The complainant further claims the officer grabbed his brother and told him, "If he looked at him again he would be arrested." The complainant alleges that after being threatened with arrest a second time, he left. According to the complainant, the officer then told the complainant's brother to call the complainant and tell him if he came anywhere near the club, the police were looking for his truck and he would be arrested.

A monitor was appointed to this complaint.

CPRB No. 22-06

The complainant alleges that she was followed by a police car and pulled over. During the traffic stop, the complainant claims the officer laughed when he asked to see her license, insurance card, and registration, and did not respond when she asked him why she was being pulled over. According to the complainant, the trooper who accompanied the officer shined a flash light in the face of her three-month-old child and mother who were in the back seat, causing the baby to cry. The complainant alleges she was given a ticket for not signaling, although she told the officer she signaled at every turn. After the stop, the complainant claims the officer continued to follow her, and when she pulled over, the officer stopped along her passenger side and stared at her. When the complainant asked what the problem was, the officer rudely asked if she was parking.

A monitor was not appointed to this complaint.

CPRB No. 23-06

While waiting for an AA meeting, the complainant alleges two officers stopped and questioned him, asking him for identification. The complainant alleges that despite repeated requests, the officers would not tell him why they wanted to see his identification. When the complainant did not provide his I.D., one of the officers took his right arm behind his back, bent his left arm over his head, went through his pockets, and pulled out his wallet. The officer handed the wallet to the other officer to run the complainant's identification for warrants, and when none were returned, they released him. The complainant states that he spoke with a sergeant, who explained the levels of engagement and told him that he would notify the officers' supervisor. According to the complainant, the supervisor contacted him and explained that the area he was in was infested with drugs and that the officers had not searched him. The complainant alleges his arms were sore from the incident, but that he did not get any medical attention.

A monitor was appointed to this complaint.

Paul Weafer asked about the time frame in which these new complaints came in. Ms. Mazza replied that they had all come in since the Board's April meeting. Government Law Center Senior Staff Attorney Justina Cintrón Perino added the complaints had all been filed since the April 10th meeting and were received up through two days prior to the meeting.

Mr. Weafer then asked how many active monitors the Board has. Mrs. Perino replied that the Board currently has five (5) active monitors, and noted that Chairman Allen had planned to address monitors in his Report from the Chair. Mr. Weafer noted his concern with the low number of Board monitors. Ms. Perino reported that the monitors are receiving several appointments because of complaint volume.

Chairman Allen commented that one of the new incidents involves a state trooper, and asked whether troopers fall under the Boards' purview and whether they are interviewed. Assistant Chief Bruno replied that the Office of Professional Standards (OPS) would interview the trooper. Assistant Chief Bruno added that the New York State Police internal affairs' unit would likely conduct their own investigation of the complaint. In these types of cases, the OPS and the state police would have to work these cases together. Ms. Mazza pointed out that the complaint is against the Albany police officer; however, there are now situations where troopers are also in the cars with officers in certain areas, at certain times. Chairman Allen asked if a joint complaint would be processed through the OPS and the Board even though the trooper is involved. Assistant Chief Bruno added that it is something he would have to address with the state police.

Ronald Flagg asked why a monitor was not appointed to CPRB No. 22-06. Ms. Mazza explained that five Board members are called when a complaint comes in. If three out of the five members say that a monitor should be appointed, an appointment is made. She noted that she is not sure what the judgment was in this case. Chairman Allen pointed out that abuse was not alleged or ethnic discrimination, nor was there a civil rights violation, and this is usually what prompts a monitor. Ms. Mazza added that excessive use of force or a violation of civil rights will also trigger a monitor. The Board has a very liberal standard of how to view a violation of civil rights. With regard to this case, Board members must have decided not to appoint a monitor.

2. New Complaints For Review

It was reported that there were five (5) new complaints on the agenda for review by the Board.

CPRB No. 20-05/OPS No. C05-232 (Presented by Judith Mazza)

Ms. Mazza summarized the complaint. She reported that a monitor was appointed to the complaint.

The complainant was standing in a parking area and was talking with two other people when a police car came into the lot. Three police officers got out of the car and walked toward them. The complainant alleges that two of the officers began to search one of the other individuals and then the complainant. When asked why she was being searched or what she was being searched for, the officer claimed that it was for weapons. The officer asked her where she lived and what she was doing there. She claims that the officer told her to “Shut up,” at which point she asked for his badge number and he said “Here it is, can you read?” The complainant wrote it down. Next, the officer asked for her identification (ID) and when she handed it to the officer, he snatched it out of her hand and continued to be rude. After given the ID back, she turned and went inside her cousin’s house. There was no arrest involved.

Ms. Mazza commented that when she looked at the report, there were three officers involved. The first officer said that as the male in the group was turning away from them, they saw a bulge in his front pocket and his hands kept on going back and forth in front of that pocket. The officers were concerned and went over, pulled out the bulge, and found that it was a wallet.

The second officer, who was the officer named in the complaint, said that there were two females and one male standing in the parking lot. As he approached, one of the women left and he noticed that the other woman also had a bulge in her pocket, which she said was her cell phone. He patted her down and found the cell phone. The officer claimed that she was very uncooperative and he called for backup. The other two officers arrived, but there was only one information interview card filled out on the male, the other female had left so there was no information about her.

Ms. Mazza found that there was some conflicting information between the complainant’s, the witness’, and the officers’ statements. The complainant and the witness say there were three (3) officers in the beginning, but the officer that is being complained about says that he was there alone, called for backup, and the other two officers arrived.

The findings for this complaint are as follows. As to the first allegation of being patted down and searched, the OPS made a preliminary finding of *sustained*, where the review discloses sufficient facts to prove the allegations made in the complaint. The complainant alleged an officer searched her for no reason and based on the articulation of the officer regarding his observations and the actions of the witness, the officer did not have probable cause or authority to conduct any search of their person.

As to the second allegation regarding conduct standards, the complainant alleges that the officer was rude and told her to “Shut up.” The officer indicated that at no time did he say this to her. The OPS also noted that the complainant’s witness never refers to the officer being rude or telling the complainant to “Shut up,” during the entirety of the incident. The witness never claims that this happened. The OPS found this allegation to

be *not sustained* because there is not enough evidence to show that this actually did occur.

As to the third allegation regarding conduct standards, the complainant claims that the officer snatched her identification out of her hand. There is a lot of conflicting information here. The witness says that the officer never asked for any ID, while the complainant says that the officer asked for it, she gave it to him, and he threw it back at her. The officer says that the complainant never produced any form of identification, but he asked for her name and where she lived. She gave her name and address, but never gave any identification. There is conflict here. Ms. Mazza asked the monitor whether he would like to comment on the case.

Joel Pierre-Louis was recognized. Mr. Pierre-Louis commented that there is a lot of conflicting information from the officers as well as the complainant. He noted that Ms. Mazza had indicated that the complainant makes some allegations that are not supported by her own witness who was there at the scene at the time, particularly with respect to the third allegation of snatching her ID.

The field report notes that the witness does not make reference to any identification being handed to the officer. In fact, part of the officer's statement indicates that the complainant originally gave him an address where she was staying. According to Mr. Pierre-Louis, the officers also gave conflicting information because the subject officer clearly indicated that he was there alone and that the other officers came upon the scene and backed him up. The second officer, who indicated that he was on foot as he approached, saw the man "blading" his body away from the officer, which caused the suspicion that there might be some weapon in the bulge of his pocket. The third officer gave another version. He says that he was there to witness the whole incident and denied all of the complainant's allegations.

Mr. Pierre-Louis reported that, based upon his review of the entire file and information provided, he agrees with Detective Alisa Murray's report with respect to each one of the allegations. With respect to the unlawful search, Mr. Pierre-Louis noted that Detective Murray cited a Court of Appeals decision, which talks about the probable cause standard that allows an officer to pat someone down or to search someone. The subject officer essentially tried to characterize his actions as not an invasive search, but simply a pat down. Mr. Pierre-Louis disagreed with this.

With respect to the allegations that the subject officer acted in a rude manner, Mr. Pierre-Louis reported that he did not find any evidence in the file to substantiate this and he agreed with Detective Murray. He also agreed with the finding of *not sustained* as to the allegation that the officer snatched the identification out of her hand. Mr. Pierre-Louis agreed with Detective Murray on all three findings.

Ms. Mazza noted her disagreement.. Based on the investigation, which found that the witness was never asked for his name or identification, whereas, the complainant says

that she was asked about information and she gave her identification. Also, the field card was filled out so she must have given some form of identification or information. Then it says that this inconsistency calls the witness' credibility into question because, clearly, the officer did get the pairs' pedigree information.

According to Ms. Mazza, if the inconsistency of the witness calls something into question then the inconsistency from the police officers' statements calls their credibility into question in the same way. This is a problem; a problem that is stated in the report. It is a problem because *not sustained* means that the review fails to disclose sufficient facts to prove or disapprove the allegation made in the complaint. Ms. Mazza requested to have the statement regarding credibility taken out of the OPS' report. She noted that she does not accept the report with that statement in it because of the inconsistencies given and would like the report revised with the statement removed.

Chairman Allen summarized the findings as follows. He stated that the first allegation regarding the search is *sustained* and the second allegation of rude/unprofessional behavior/conduct with no evidence to prove it one way or the other is *not sustained*. This doesn't mean that it didn't happen, but the Board does not have any evidence or way of proving it because it is a he said/she said situation. The same is true of the third allegation of snatching the identification out of her hand. The conduct was unprofessional is also *not sustained* because we do not have any evidence that there was an actual form of identification given. The complainant says that she was asked. The male witness says that they were never asked. The officer says he asked and got a partial answer. Another officer says that he had a conversation with the witness after the complainant left and was told that the complainant really lives in the Bronx.

Chairman Allen added that Ms. Mazza moved to accept the OPS' findings of *sustained* as to the improper search, *not sustained* as to rude and unprofessional conduct in two instances with a revised report that this does not go on file with that. Ms. Mazza wants the report revised because if they are saying the witness was not credible then the credibility of the officer has to be questioned. Chairman Allen proposed that no vote is taken until the report is sorted out.

Assistant Chief Bruno replied that he will look at the report again as it pertains to this discussion of credibility. He added that when the word credibility is used, it doesn't always mean that you are calling the person a liar. Credibility can mean mental state at the time, physical state at the time, intoxicated level at the time, distractions, or memory issues; he does not want to get hung up on the word credibility. Ms. Mazza suggested that the Board does not get a report that makes a judgmental statement about a complainant or a witness if in fact the officers' credibility is also questioned in the same way.

Assistant Chief Bruno commented that the fact that the conduct standards allegation is *sustained* places the credibility of that officer into question. The officer didn't properly articulate reasons for the actions that he took. Ms. Mazza replied that this is a judgmental

statement about someone and the Board has no evidence about who is telling the truth in this situation. The inconsistency of the officers' and the witness's statement calls their credibility into question. Let us then include the officers in the same statement or revise to remove the statement.

Ms. Mazza restated her motion, moving to accept the findings of the OPS with the statement removed from the report. Paul Weafer seconded Ms. Mazza's motion. The motion carried unanimously.

CPRB No. 21-05/OPS No. C05-231 (Presented by Judith Mazza)

Ms. Mazza summarized the complaint.

The complainant came out of her house at 5:30 p.m. to check on her son who was playing in the park. Upon her arrival in the parking lot, three (3) police cars were at the red light and one (1) of the three (3) turned into the parking lot where she was standing. She claims she was calling her son out of the park and had turned around to ask for a cigarette lighter from other friends who were standing there. She proceeded to walk across the grass to get a light from a friend who was also standing outside. The officer ran up behind her and asked her what was going on. She replied that she was not aware of a problem because she had just come out two minutes ago to check on her son. She then continued to light her cigarette and walk away towards the park to get her son. The officer followed her back to the parking lot all the while telling her to stop because he was talking to her. She told him that she had answered his questions and had nothing more to say. The officer then grabbed her arm, saying that she was under arrest for disorderly conduct. She also claims that during this whole procedure her four year old son was coming out of the park and she wanted to make sure that he was safe with another adult. She claims the officer was handcuffing her right in front of him and wouldn't let her get someone to take care of him. She was subsequently arrested, her son was left with someone else and she was concerned with his welfare. She was put in the van while her son was still standing there. She also had a list of witnesses to tell her side of the story.

The monitor appointed to the complaint, Joel Pierre-Louis, was recognized. He reported that a key element missing for the summary is the allegation of a lit, marijuana "dutch" on the ground. Her complaint does not mention the cigarette though.

Ms. Mazza reported that she had read the monitor's report and case file, and this case is intertwined with the previous complaint. This complaint has even more inconsistencies. Assistant Chief Bruno commented that the case needs to be looked at again, sorted out, and the witnesses and police officers need to be spoken to again, adding that there is a lot of clarifying that needs to be done. In light of reading the monitor's report, this is a confusing and complicated case. Assistant Chief Bruno requested an opportunity to look at the case again.

Ms. Mazza pointed out that the first complaint had a date of April and this complaint is dated in May. She recommended sending the complaint back to the OPS to look at whether or not there was some bias around why this complaint was filed after the other complaint and why a portion of the other complaint was sustained. There is a direct correlation between the sustaining of that complaint and why this complaint came along to begin with. Since the Board receives no demographics about how many officers, what officers, how often, if they are directly involved in the case, she suggests that this be looked at.

Mr. Pierre-Louis reported that the complaint he originally received didn't have information with respect to complainant's allegation that there was a lit marijuana "dutch" on the ground next to the chair where she saw someone run from. He added that OPS Detective Murray provided him with a missing page, and that is the only reason that he is bringing this up because he is not sure if the complaint that the Board has is the actual complaint that he received.

Ms. Mazza then moved to return this report to the OPS for further investigation. Marilyn Hammond seconded. The motion carried unanimously.

CPRB No. 26-05/OPS No. C05-482

Chairman Allen moved to table review of this complaint until the next meeting.

CPRB No. 36-05/OPS No. C05-657 (Presented by Ronald Flagg)

Mr. Flagg summarized the complaint.

The complainant alleges that he is being harassed by his personal physician and that the doctor hired the Albany police department to place him under continuous surveillance. The claim specifically states that in November 2003 and August 2004 he was abused by his doctor in the office. The complainant contends that since the third week of September 2004 he has been followed by his doctor, who drives past his house three times a day. He further alleges that when the complaint was made to the Department of Health and to the police, the doctor retaliated by using the police to monitor the complainant's movements. There was a review of the letters from the Department of Health, Central Intake Office, professional medical conduct file, and a letter from attorney Paul Dwyer who represents Primary Care and the physician. The complainant was advised by the attorney that the Department of Health finds insufficient evidence to substantiate his complaints.

On December 29, 2005, the OPS received a complaint. The complainant states that he was protesting with a sign on December 13 & 14, 2005 in the city of Albany, concerning the treatment of his doctor and alleged harassment by the Albany police. He further alleged that a police officer requested the complainant to stop protesting with his sign or he would break the sign up. After review of the OPS report and all of the events, OPS recommended that this case be closed as *unfounded* in that the events described did not

occur or were misconstrued. Mr. Flagg reported that the monitor saw no need for further review of this case and concurred with the OPS' findings. He reported that he concurred with the OPS' findings as well.

The complainant, Jose Lopez, was recognized. He stated that he had spoken with Dr. Alice Green before the meeting, told her she should say more about what is going on to the community, and that he is very angry. He commented that he prefers not to speak to Assistant Chief Bruno. He asked Mr. Flagg to clarify what he just said in his report of the case. Mr. Flagg responded by saying that he is supporting the monitor's report who in turn supports the investigation done by the OPS. He added that the OPS made a finding of *unfounded* where the review shows that the act or acts complained of did not occur or were misconstrued. The complainant's allegations that members of the Albany Police department have been hired by another party to follow him are *unfounded*. Mr. Lopez interrupted by commenting that he never said that.

Mr. Lopez then asked if Mr. Flagg wanted to close this case. Mr. Flagg replied he will recommend that the case be closed. Mr. Lopez asked how the Board is going to close his case when the police are still harassing him. Mr. Flagg responded that there is no evidence to substantiate Mr. Lopez's allegations that the police are continuing to follow him and harass him. Mr. Lopez noted his disagreement.

Mr. Lopez mentioned that he made a complaint against the Guilderland Police Department and wanted that complaint to be investigated. Mr. Flagg replied that they cannot investigate the Guilderland Police Department. Judith Mazza asked Mr. Lopez to clarify against whom he is making the complaint. Mr. Lopez replied that the police are following him and harassing him. He originally made the complaint against the doctor. Ms. Mazza asked whether the complaint he just turned is about the doctor or the Guilderland Police.

Chairman Allen commented that Mr. Flagg's motion has been presented. Judith Mazza seconded the motion. The motion carried unanimously. Chairman Allen then noted for Mr. Lopez that the case had been presented and that the Board has made a decision.

Mr. Lopez asked what he has to do to prove what is going on. Chairman Allen replied that he has to offer some proof for what is going on, and that he does not know Guilderland's process for dealing with the complaint. He suggested that Mr. Lopez seek assistance from Dr. Green.

Mr. Flagg reported that Mr. Lopez had provided handed a new complaint to Ms. Perino about the doctor. He added, however, that the Board has no responsibility or jurisdiction to deal with this.

CPRB No. 9-06/OPS No. C06-127 (Presented by Beresford Bailey)

Reverend Bailey summarized the complaint.

A review of the police records show that on November 21, 2005, the complainant was arrested at 269 Clinton Avenue for robbery, forceable theft with a deadly weapon, and criminal possession of a firearm.

On February 14, 2006, the OPS received a complaint that a police officer fabricated a statement that he had given them on November 21, 2005. On March 20, 2006, the detectives from the OPS interviewed the complainant at the Albany County Correctional Facility. He was requested to kindly repeat to the best of his recollection the events of November 21, 2005. The records show that his statement on March 20, 2006 was identical to the complaint given on November 21, 2005. This statement was read back to the complainant to make sure that it was correct. The records show that statement that he gave on March 20, 2006 was consistent with the statement he gave on November 21, 2005. The records also show that he pled guilty to the crimes he committed on November 21, 2005 of burglary in the second degree and all of the other criminal acts that he admitted in both statements. He is now serving eight years in prison.

After reading the recommendations, Mr. Bailey reported that he concurred with the findings of the OPS. It is his recommendation that the investigation be closed as **unfounded** as to call handling, where the review showed that the acts or act of fabricating records did not occur or were misconstrued. Regarding the allegation that the police officer signed an oral statement report, it is recommended that this investigation be closed as **unfounded** where the act or acts complained of did not occur or were misconstrued. The signature at the bottom of the complaint form was indeed that of an officer on the line that is marked officer's signature. The review showed that the complainant was not required to sign that particular form. A monitor was assigned to this case and he concurred with the OPS findings.

Beresford Bailey moved to accept the OPS' findings. Ronald Flagg seconded the motion. The motion carried unanimously.

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

Judith Mazza asked if the Board knew if Michael Whiteman's case would be ready for June. Mrs. Perino replied that it is done and is ready to go from the OPS.

The following Board members were appointed to the Committee on Complaint Review for June 2006: Jason Allen, Beresford Bailey, Ronald Flagg, Fowler Riddick, Judith Mazza, Paul Weafer, and Michael Whiteman. It was reported that Marilyn Hammond would not be available on June 12th.

Ms. Perino reported that there are at least two cases carried over for the June meeting: one tabled from this meeting and Mr. Whiteman's complaint.

C. *Monthly Meeting Change*

Chairman Allen stated that Fowler Riddick has been appointed by the Mayor as a member of the Board; he is also a county legislator and is a highly regarded member of the community since he has been elected to a higher office. He commented that the Board meets on the second Monday of every month and this poses a conflict with the meetings of the county legislature. Chairman Allen, proposed for the Board's consideration, a new regular meeting date, adding that this is not the first time that there has been a proposal to move the Board's regular monthly meeting date. He stated that the Board had met on the first Monday of every month, but moved it so as not to conflict with the meetings of the Common Council.

Chairman Allen moved to change the meeting to the fourth Monday of every month. Ronald Flagg commented that he does not have a problem with the fourth Monday of the month starting on June 26th.

Judith Mazza commented that she has already freed up the second Monday of every month because it is very difficult for her to plan around her work schedule. She added that she would rather not move it because she would have to rearrange things. She explained that the Board had changed the meeting date from the first Monday because of a conflict with the Common Council meeting, but this hasn't resulted in council members attending the Board's meetings.

Mr. Flagg noted a conflict with the third Monday of the month. Ms. Mazza stated that the new meeting date would be difficult for her.

Paul Weafer commented that it is only fair that the courtesy the Board extended on behalf of the Common Council be extended to a duly-appointed member of the Board by accommodating a change that fits his schedule. Ms. Mazza added that the change may result in another member not being available for the next three months if the Board adopts this change.

Common Councilwoman Barbara Smith was recognized. She commented that it is critical that those individuals who are actually members of the Board be able to attend its meetings, adding, however, that as the vice-chair of the Public Safety Committee of the Common Council she would like to have the option of attending. She noted that she has a standing meeting every fourth Monday.

Mr. Weafer replied that the Board would have to accommodate an appointed member of the Board before it could accommodate her schedule. Chairman Allen stated that they want to avoid the first and third Mondays for the Council. Mr. Weafer then suggested the fourth Tuesday of the month.

Ms. Mazza noted that the change is going to result in someone who is not going to be present at every meeting, and in October there will be a whole new Board to schedule around. Ms. Perino added that Michael Whiteman may have a conflict with Tuesdays. Chairman Allen proposed a motion to vote on either the second or fourth Tuesday, subject to communication with Michael Whiteman as to which Tuesday best accommodates his schedule. Ronald Flagg seconded this motion. The motion carried 6-1, with all in favor except for Judith Mazza who opposed the motion.

D. *Committee/Task Force Reports*

By-Laws Committee

Committee Chairman, Paul Weafer, noted that the committee had nothing new to report.

Community Outreach

Committee Chairperson, Judith Mazza, noted that the Committee had nothing new to report. Chairman Allen commented that the Board's brochure needs to be updated.

Mediation

Acting Committee Chairperson, Jason Allen, gave the report.

Chairman Allen spoke with Chairperson Barbara Gaige who is putting some finishing touches on the protocols with Assistant Chief Bruno. Assistant Chief Bruno has been working with the Chief and Chairperson Gaige on a model that will work and that will encourage complainants and officers to take advantage of it. Chairman Allen noted that he is not sure where it is yet, but will make sure there is something to vote on and approve by the next meeting. Once the protocols are approved, they will be a police policy. Paul Weafer asked if the union would approve the protocols before they get a contract approved. According to the Chairman Allen, the Assistant Chief has reported that he hasn't received any opposition.

Policy Review/Recommendations

Committee Chairman, Jason Allen, gave the report. Chairman Allen reported that the committee had not met due to a pending opinion from the Corporation Counsel's Office regarding whether or not the Board's subcommittee meetings were in compliance with Open Meeting Laws.

Chairman Allen commented that last year, data was presented regarding police-citizen contacts and race demographics. Chairman Allen reported that he did some research and found that the city of Syracuse embarked on an effort to try to interpret the data that they had collected regarding racial profiling in the city. His concern in reading about the

results of Syracuse's study is that \$25,000 was spent on the study yet, the results were not conclusive. There were different interpretations of the end product. He could not find a best practice that he could take to the Chief and say this is the way to go. He added that it is important to rely on a best practices. Chairman Allen commented that he is not sure if it is a path the Board should go down, using the city of Syracuse as an example. He noted that Syracuse had hired a consultant to take data and analyze it and if you read the report or newspaper article, they interviewed different people and everyone had different conclusions/interpretations.

Ronald Flagg mentioned that in one of the Board's other discussions, the Board talked about hiring someone from SUNY's Criminal Justice Department. Chairman Allen replied that this is the path that Syracuse went down, hiring a consultant. He doesn't know the numbers on how much this would cost, but he would rather look at a best practice first. Mr. Flagg stated that he and Ms. Gaige attended a seminar last year. One of the presenters was someone who is a graduate of SUNY, a Ph.D.; someone who is lauded as being a national expert in interpreting this kind of data. She has contracts with the states of Pennsylvania and Arizona. He asked why the Board couldn't check with SUNY to see if this person is available and even review the way in which she interpreted the data.

Chairman Allen stated that this is a different path from Dr. Robert Worden. He doesn't know if he was involved with Syracuse, but Boston University was involved with Syracuse. Again, if Mr. Flagg could present to Chairman Allen and the police department with a place where it worked and good conclusive news came out of it, then this would be helpful.

Chairman Allen noted his concern that the community was presented with broad data back in December and that different people can make different things out of it. He wants someone to run the input and get the same output. Ms. Perino agreed to provide the Board with the name of the researcher from SUNY. She also offered to use the resources of the Center to canvas best practices amongst the civilian oversight agencies in the country and to find out who has undertaken this type of review and how they did it, whether internally or externally with the assistance of a consultant.

Paul Weafer asked whether this is something that the New York State Division of Criminal Justice Services would be involved in. Ms. Perino replied that it may be, she agreed to inquire as part of her research into best practices.

Chairman Allen concluded by saying that he is very open-minded about this and if there was a best practice, he would say to go for it. He is just concerned that in looking at our sister city, that his interpretation of the news report led him to believe it didn't work out the way they had expected.

Public Official Liaison

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

Task Force on Standing/Complainant

Chairman Paul Weafer was not at the last meeting, but he understands that there was an issue raised about whether or not any one of the Board committees and task forces, which have three or four members or less than a quorum of five, is in violation of the Open Meetings Law.

Chairman Weafer reported that the Task Force has met on four different occasions. Michael Whiteman, Ronald Flagg, Barbara Gaige and Mr. Weafer met on one occasion. Mr. Whiteman has been absent the past three meetings. Mr. Flagg, Ms. Gaige and Mr. Weafer came with up a consensus on about six different items and Mr. Weafer believes that Barbara Gaige had a preliminary conversation with Jim Scalzo, who is the chair of the Common Council's Public Safety Committee. Mr. Weafer noted that she presented some of the thoughts the task force had and agreed to present later on to the full Board. Mr. Weafer also noted that he had two meetings with Chief James Tuffey.

It was reported that Chairman Allen had also met with the Chief. It was noted again that a letter was sent with his signature to Patrick Jordan, the Board's counsel, regarding whether the Board's subcommittee meetings held with members less than quorum were in fact in violation of the Open Meetings Law. The Board aired on the side of caution based on that legitimate concern pending the results of the letter and have put most of the Board's activities on hold. He received a response from Mr. Jordan yesterday and read it to the Board verbatim.

Mr. Weafer mentioned that attached to the letter were various advisory opinions issued by Robert "Bob" Freeman, Executive Director of the Open Committee on State Government. Mr. Weafer asked if it would be advisable to ask Bob Freeman for his opinion, since he is the nationally recognized expert, to confirm this legal judgment. Chairman Allen stated that the Board has an opinion and Mr. Jordan's recommendations are quite clear. Mr. Weafer thinks that Mr. Jordan does outstanding legal work, the letter and opinions are sound. If everyone is comfortable with Mr. Jordan's opinion then so be it; not further action is required.

Judith Mazza noted issue with including members of the public in the process of developing policy or positions, or in the process as it goes along. If the Board is developing a process for mediation, or talking about coming up with a definition of who a complainant is, etc. then when it gets to a certain point she thinks that even opening up the subcommittee to include input from members of the community, the stakeholders, is an important piece of the process. She added that it has nothing to do with open meeting laws, it is not about law. It has to do with including stakeholders in the processes that are being developed. Ms. Mazza agreed with Mr. Jordan's position and sees no need to go to Mr. Freeman. She commented, however, that the Board needs to think about how to include the stakeholders in the process. It is not about open meeting laws, it is about

including people. It is a lot easier to have a couple of people join the group and have a conversation than to have a huge public hearing. If there are people who are interested in this particular issue, we are having a meeting, come, we can put issues on the table and then obviously it comes back to us that we make the decision to move things forward. At least the Board would have had the input from other people at some point in time so that there is a beginning, middle, and end to the process. In that middle process we need to engage other people.

Mr. Weafer said that one of tentative things agreed upon was to have something called a "Statement of Concern," where the public could sign a petition asking the Board to look into the behavior of police officers or a particular policy of the standard operating procedure policy guidelines. This would open up the process for people in the community to come to the Board with what they want to do. It also wouldn't be bad to accept this idea of having people sit down at the table with the Board, especially those individuals who are constantly coming to the meetings, and have some input.

Ms. Mazza asked when the Board will have a draft or copy of the draft. Mr. Weafer replied that everything has been placed on hold as a result of the concern over the Open Meetings Law. He added that he hopes that it can be done in time to be reviewed at the next meeting. Mr. Weafer has a rough draft which needs to be polished up and will be given two weeks before the next meeting.

Chairman Allen asked if the Chief has had a chance to comment. Ms. Mazza added that what the Board approves goes to the Common Council for approval, but in reality the Board cannot comment on something they have not seen. She suggested that letting the Board see the draft does not mean that they are voting on it or that it is final. Chairman Allen thinks that they can't discuss something that is opposed strongly by the police department because they would be discussing it for nothing. When the Board called together the four members of the task force they agreed that it would be counterproductive if they didn't at least have a conversation with the Common Council, the public safety committee and with the police department because if something proposed was completely objectionable to either party, then what would be the sense in going through with the exercise. Chairperson Barbara Gaige met briefly with Jim Scalzo and he said he would like the opportunity for the Board to also meet with the Chief of Police, get the Board's agreement and then if the police, Mayor and Common Council are on board, the recommendation would be for the Common Council to adopt something that was left out of the original legislation.

Ms. Mazza commented that she is not suggesting that there is an either/or in the process, she is suggesting it is a both/and, and while she totally agrees that if the police department disagrees and/or the Common Council disagrees then, where are we. It is getting all of the comments at the same time, to put something together and come up with something that then goes back to everyone, saying that these were the comments. Mr. Weafer replied that there are two ways of looking at this. The Board could actually help the Common Council and Corporation Counsel's office by drafting some preliminary

language or say to the Common Council that they didn't define the term "complainant" and it needs to draft the term. Why is it incumbent upon this Board, who is not an elected Board, to draft the term complainant. If the Board doesn't agree then it will go back to the Common Council where it belongs. Chairman Allen pointed out that there is the risk that the Board could reject it, but that risk is mitigated by the fact that it is a Board task force of four Board members that understand what the Board would approve.

Mr. Flagg commented that he is comfortable with the process. He added that there wasn't agreement at all of the meetings and at times it was pretty intense with how the issues were discussed. He is not sure whether it is being implied that the committee is trying to maneuver or manipulate something to satisfy the Common Council or Police Department. He stated that he will not be part of a Board or task force that is going to do something that is going to fade. According to Mr. Flagg, the task force discussed, very thoroughly, the different positions, as well as researched what is going on nationally, and tried to make something that they thought would be in the best interest of the citizens of Albany. He added that he did not always agree with Mr. Weafer or Ms. Gaige and he made a decision to vote on how a citizen of Albany would like to be comfortable with how to make a complaint. They initially didn't agree on things. It is important during this process to collect information from the Common Council and the police department. If they disagree, they will not influence him, but he would really like to have their input.

Chairperson Allen concluded the discussion.

E. *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 32 active complaints before the Board for review, eight (8) of which were in the process of being closed. Ten (10) complaints are suspended from review, and a total of 231 complaints have been filed with the Board to date.

Correspondence

It was reported that the Center had responded to a number of requests from complainants, received copy on correspondence to the OPS, and responded to a request from the Common Council regarding the Board's meeting attendance records.

Research Tasks

Number of Complaints filed by Witnesses – it was reported that a chart detailing the Center's research was included as part of the Board's meeting materials. The Board was encouraged to review the chart, which identified the type of complainant (e.g., third party

non-witness, third-party direct witness, or third-party parent); a brief synopsis of the allegations contained in the complaint; and the status of the complaint.

Outreach

It was reported that three additional letters were prepared and forwarded with copies of the complaint form to churches who had expressed a willingness to serve as a location for obtaining complaints.

Training

It was reported the Board's Ethics training would not be held on May 22nd, but would be reschedule in June.

F. *Report from the Office of Professional Standards*

Assistant Chief Anthony Bruno gave the report. Assistant Chief Bruno requested additional copies of the Board's complaint brochure because the office is in the practice of stapling them to the complaint forms. Also, he reported that the OPS' quarterly report would be made available at the next meeting.

G. *Report from the Chair*

Acting Chairman Allen thanked everyone for attending and adjusting their schedules to accommodate the unusual time for the meeting.

He reported that Chairperson Barbara Gaige submitted a letter to the Mayor, Common Council and the Board shortly after the April meeting, indicating that she will be taking a leave of absence from the Board and will return as soon as possible. Until then, as Vice-Chair, Chairman Allen noted that he will assume chairman duties until Chairperson Gaige returns. Per the Bylaws the Vice-Chair assumes the Chair's duties in the absence of the Chair until she returns or the next elections, whichever will occur early next year. He reported that Chairperson Gaige has expressed every intention of returning to Board sooner rather than later. She remains in the loop on Board correspondence and remains involved in mediation. For that he thanks her, for preserving continuity and progress on this important Board initiative. Chairman Allen wishes her a well and speedy return.

Chairman Allen then offered the following comments, explaining how he looks at the world and how he thinks. Chairman Allen is here because he wants to serve the community. He doesn't harbor political ambitions nor does he come here with an agenda, he is simply a concerned citizen. He appreciates the fact that the vast majority of the population of this country follows the rule of law and has no problem doing so. He also appreciates the fact that our streets nationwide are the safest they have been in the past 50 years. The ongoing debate in regarding the means to this end is quite complex

but this is not the forum to discuss. Police work is an occupation that fulfills a core responsibility of government to provide security and allow our society to exist within the laws of the land enacted by representatives of we the people. It is also fraught with responsibility and split second decision-making unparalleled to the jobs that we, in this room, hold. The proper use of force can take a rapist off the street, while improper use of force can alienate an individual towards not only this police institution for a lifetime but the government and society that stands behind it. Chairman Allen appreciates those who sit on this Board and those who attend the meetings as concerned and rational people who take precious time out of their busy lives to make this city better. As long as we maintain a dignified and rational approach towards each other, our cases, and issues, we can work together to find common ground and reasonable recommendations. But remember, if everyone agreed on everything the world would be a boring place. Whether it is for one month or one year Chairman Allen looks forward to working as chair.

Chairman Allen added that Professor Nathan Meehan from SUNY Albany, who teaches a course called “Introduction to Policing,” has invited members of the Board to guest lecture about the CPRB. In the past, Chairperson Gaige visited the class to talk about the CPRB. Chairman Allen asked if any Board members were interested in attending this class and giving a fifteen minute discussion. Ms. Perino agreed to send an email to Board members with the specific date and details about the lecture.

Chairman Allen reminded the Board about the training requirements, such as the ride along. He wants the Board to work with Ms. Perino to get up to date on training.

Chairman Allen reported that Board Monitor Albert Lawrence is taking a sabbatical from June to November. He commented that he would like to form another task force to evaluate the monitor situation. He noted that the Board started out with nine monitors and now there are only five active monitors. He added that he envisions that this task force will come with a job description, advertising, qualifications, soliciting, deciding who approves the candidate and if it will go to the Common Council. Chairman Allen commented that the legislation is vague as to how this process is done and the Board hasn't exercised its power since the Board was founded. Chairman Allen stated his willingness to serve on the task force and requested volunteers. Paul Weafer and Marilyn Hammond agreed to serve.

Chairman Allen concluded by reporting that the Board had been copied on correspondence to the OPS from Attorney Aretakis, requesting an internal affairs investigation be conducted. Chairman Allen noted that no complaint has been made and that Mr. Aretakis is not asking for a response from the Board. He simply wanted to make the Board aware of the letter.

VI. Public Comment

The floor was opened for public comment.

Dr. Alice Green was recognized. She followed up on two issues that she raised a few months ago regarding the Police Chief being willing to make a public statement about the Albany Police Department's policy on racial profiling, as well as, the demographic composition of the police force. She asked the Board if there was any follow through from this discussion.

Chairman Allen replied that the Board didn't have its meeting with Chief as it usually does. Chairman Allen discussed the statistical analysis earlier. His opinion is that if there is a best practice available he would do that. He is concerned that this will result in being back in the same place. The Board has the data and different people are interpreting it differently. He is concerned that if the Board takes numbers and make graphs out of it, it will be the same question, what does it mean? What will it mean \$25,000 later? His intent of bringing it up without a meeting with the Chief was to say what his conundrum and personal research were. He stated that Ms. Perino is going to do some research using her resources at the Government Law Center.

Regarding the data, Dr. Green doesn't know why SUNY hired Worden to design this data if we are not going to use it or put it in a format that is useful. Chairman Allen replied that the data presented is just raw data collected independently and he doesn't know if Dr. Worden has actually been hired. Mrs. Perino added that Dr. Worden was hired for another project. Chairman Allen's history on this is that it started in December 2005 when former Chief Turley presented the data. Since then, Chief Tuffey has said that he started talking to Dr. Worden, whether contracts were signed and scope of work spec's were agreed upon is unknown. What he proposes is that before the Board goes down that path, the Board questions itself to determine whether or not it understands what it would be asking this gentleman to do. Chairman Allen said that he is not sure, he wants to see if there is a best practice out there where someone was successful.

As to the public statement, Chairman Allen added that the last statement that the Chief said to him was that it is a policy that is for public review, and that it is available at the Law Center. At this point, the Chief does not see a need to make a public statement about an existing policy much like every other policy. If people want to take this and photo copy it, it is at the Government Law Center.

As to the composition of the police department, Chairman Allen reported that the Chief's statement to the last subcommittee meeting was that they are having a lot of problems with recruitment.

Dr. Green said that the former police chief made an agreement with some community members that since they were involved in giving input in developing policy regarding profiling, the department would make a public statement declaring the department's position regarding racial profiling. Also, Dr. Green asked the Chief to make a statement indicating that the city was committed to changing the composition of the police department to reflect the population of the city. That would be a very forcible and public statement that the community would understand about the commitment on the part of the city and the police chief on those two issues. Dr. Green

asked is if this new chief is prepared to follow through with the commitments of the last chief. Chairman Allen replied that it was never communicated to the Board that the old chief made an agreement. Dr. Green commented that from what the Chief is saying, he is not committed to profiling.

Chairman Allen addressed the composition of the police force issue and looked for suggestions from other Board members. He doesn't know how to effectively change the composition if qualified applicants come and are hired. Ms. Mazza added that the Board needs to ask what is the composition, what strategies are they using, and if there are set goals. Do they have a plan or effective strategies to recruit and to reflect gender, race, and ethnicity changes in the police force? Chairman Allen asked if the Board is the appropriate body to ask these questions and if the Board is overstepping its bounds. Mr. Weafer pointed out that one of the core principles of the legislation is to improve community relations and that falls within the parameters of a policy recommendation.

Dr. Green commented that, with all due respect to Mr. Riddick because she doesn't know him, she is curious about Mr. Weafer's comment about having to accommodate the Mayor with the Board's meeting date. It is very difficult to get people to come to the meeting and she wants to know if the date will change every time there is a conflict. She doesn't understand why it has to change. Chairman Allen replied that change isn't necessarily a bad thing.

Dr. Green stated that the only reason that she knows that the Board has changed its meeting date is because she gets a letter. Mr. Weafer replied that this is only the second change in five and a half years. The first change was to accommodate attendance by the Common Council. He added that in over the last five and a half years, there have probably only been four occasions when one or more members of the Common Council have come to a meeting. He then asked if the Board wants to recruit members and the Mayor of Albany has the authority to appoint a member, is Dr. Green saying that the Board shouldn't try to accommodate that appointment. Dr. Green replied that the Mayor certainly has the authority to appoint, but if the Board has a meeting time set, does that mean that every time that a Board member is appointed by the Mayor, the date will change? Chairman Allen added that if Mr. Riddick had been appointed by the Common Council, then the Board would have afforded the same due diligence. The fact that this was the Mayor's appointee never came up in dialogue, this is about accommodating a member of the Board. Mr. Weafer stated that since the Board accommodated a member of the Common Council, why can't it accommodate his requirements as a member of the county legislature? Dr. Green said that is the Board's decision.

Jose Lopez was recognized. Mr. Lopez wanted the new complaint form back that he had turned in and asked if he could get a new one. He stated that he wanted to make a complaint to the Guilderland Police Department. Chairman Allen replied that Mr. Lopez would need to make a complaint with Guilderland and if he is complaining about the Albany Police Department, he could do so with the Board.

Ms. Perino explained, for the benefit of Mr. Lopez, that the Guilderland Police Department does not have a citizen police review board. She suggested he contact the Guilderland Police Department's internal affairs bureau to file his complaint.

Barbara Smith was recognized. She said that a few weeks ago at the Arbor Hill Neighborhood Association meeting, a member of the fire department brought applications and handed them out. She noted that this particular fireman comes to every meeting and was not solely there for recruitment. Her impression was that they were really looking for applicants from Arbor Hill and from the colored communities. Ms. Smith also wrote a note to Ms. Perino saying that she would really like people to attend the Board meetings and she has a standing meeting every fourth Monday, the Arbor Hill Neighborhood Association meeting. Ms. Smith also asked if a copy of the detailed minutes could be sent to her.

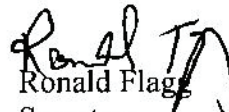
Chairman Allen proposed taking two months off this summer, and added that the Board would take this issue up and vote on it at the next meeting.

Jason Allen thanked the public for being present and encouraged them to come back.

VII. Adjournment

Fowler Riddick moved to adjourn the meeting. The motion was seconded by Jason Allen. The meeting was adjourned at 8:17 p.m.

Respectfully Submitted,


Ronald Flagg
Secretary