

**City of Albany  
Citizens' Police Review Board  
Albany Public Library  
161 Washington Avenue – Large Auditorium  
February 13, 2007  
6:00 p.m. – 8:00 p.m.**

**Present:** Jason Allen, Mauri Davis Lewis, Daniel Fitzgerald, James Malatras, John Paneto and Anthony Potenza.

**Absent:** Ronald Flagg, Andrew Phelan and Hon. Fowler Riddick.

**I. Call to Order and Roll Call**

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

**II. Approval of the Agenda**

The agenda was reviewed. Chairman Allen noted that CPRB No.19-06 and CPRB No. 43-02 will be moved to the March meeting. Anthony Potenza motioned to approve the agenda. James Malatras seconded the motion. The motion carried unanimously.

**III. Approval of the January 16, 2006 Meeting Minutes**

The January 16, 2007 meeting minutes were not ready for review. Chairman Allen noted that it will be approved at next month's meeting.

**IV. Old Business**

**CPRB No. 2-05/OPS No. C05-35** (Presented by Jason Allen)

Chairman Allen summarized the complaint. This complaint was initially reviewed at the Board's meeting on May 9, 2005. At that meeting the Board agreed to table review of the case pending review of a letter received from the complainant dated May 3, 2005. The case was scheduled to be reviewed at the Board's meeting on June 13, 2005 but was again tabled pending the complainant's release from jail. The Board received correspondence from the complainant dated November 27, 2005, indicating that he was in the process of filing a notice of claim against the Albany Police Department (APD). Corporation Counsel's office informed the Government Law Center (GLC) that this case is resolved and ready for review. The complainant's attorney informed the GLC staff that the complainant is still in jail for an unrelated charge.

The police were called to a Stewart's Shop on Washington Avenue. When they arrived they found the store manager on top of the complainant. The store manager accused the complainant

of stealing a case of beer and he also said that the day before the complainant stole a case of beer. A customer, who was in the store, assisted the manager by holding the complainant down. The APD detained the complainant, took him in for booking, and questioned him. He was brought to the Albany County Correctional Facility where he complained of pain, was x-rayed, examined and sent to Albany Medical Center where he spent six (6) days in the hospital. The complainant stated that while at the Stewart's Shop and at the booking facility he complained that he needed medical assistance. The APD refused his request and proceeded to book and process him. It was only when he reached the county facility that his request was met.

A monitor was appointed to this case. When the Office of Professional Standards conducted its investigation, a tape of the booking was observed. The taped showed the complainant functioning normally. Even though there is no sound on the tape, the complainant was walking around unassisted. The store manager and several police officers are maintaining that the complainant didn't ask for medical assistance. It was only when he arrived at the Albany County Correctional Facility that a request was made for assistance.

The monitor, Richard Lenihan, was acknowledged. Richard Lenihan stated that the police did attempt to interview the person who assisted the store manager. This person lives in a homeless shelter and his whereabouts are unknown.

Chairman Allen added that there were two (2) allegations. The first allegation was for an illegal/improper arrest because the complainant stated that he did not leave the premises and did not intend to steal the beer. The second allegation was refusal to give him medical assistance. The complainant did not allege that the APD injured him. His case went to a Grand Jury, the charges were dropped and he was not prosecuted for stealing the beer. The complainant then filed a civil case against Stewart's Shop and the APD which was later dropped. Chairman Allen stated that the investigation was thorough and there were several witnesses that included the store manager, a customer, and many police officers. Chairman Allen noted his surprise that a person with a diagnosed 80% collapsed lung went unnoticed and his pleas for help were not met. The complainant was ultimately sent by officials to the hospital where his needs were met.

Per the complaint, the store manager called and said the complainant was stealing beer and they arrested him. Chairman Allen agreed with the OPS findings and the report of the monitor that the charge of call handling be *exonerated*. In regards to the second charge of call handling, where he should have been sent to the hospital rather than booking be *not sustained*.

Chairman Allen clarified that the complainant was tackled by the store manager because he had assaulted the store manager and hit him in the face. Dan Fitzgerald asked if the tapes from the Stewart's Shop were obtained. Chairman Allen replied that was not a part of the investigation. Detective Hendrick added that she was not sure as to the tapes.

Chairman Allen motioned to accept the OPS findings. James Malatras seconded this motion. The motion carried unanimously.

## V. New Business

A. *New Complaints*

1. New Complaints Received Since January 16, 2007 Meeting

Chairman Allen reported that there was one (1) new complaint received by the Board since its January 16, 2007 meeting. Chairman Allen summarized the new complaint CPRB No. 1-07. The complainant alleged that after work he went home, stopped and talked to his son for a few minutes, went inside his house, and left a message for his girlfriend. The complainant said that ten minutes later he called his girlfriend and they talked until 11:30pm. He told his girlfriend that he would be over. The complainant claimed that after shaving, as he came out of the bathroom, there was a loud knock on the window. When the complainant asked “who is it?” the complainant stated that no one responded, so he went to the door and a police officer was there. According to the complainant, the officer said that they received a call at the complainant’s address that a lady was yelling and screaming in the basement apartment. The officer asked the complainant who was in the house and the complainant said no one because he was the only one in the apartment. The complainant stated when the officer said that he had to enter the house the complainant responded with “what for...no one was in the house but him.” The complainant claims that when the officer asked him if he wanted to see the call on his computer in the car, he said “yes” and as he walked out of the house, he closed the door and then the officer attacked him. The complainant further claimed that another officer then came over, grabbed him, threw him on the ground and handcuffed him.

According to the complainant, the officers said they were going in the house even if they had to kick the door in. The officers put the complainant in the car and then went into the house. When exiting the house, the complainant stated that the officers said no one was in the house, and then they began with accusations. The complainant alleged that after telling the officers that he was on the phone talking to his girlfriend and her number was the last call on his cell phone, the officers took his cell phone, checked it and gave it back to him with numbers erased. The officers asked the complainant to come out of the car and took off the handcuffs. The complainant asked the officers for their badge numbers and then went into his house. Chairman Allen noted that a monitor was appointed to this complaint.

2. New Complaint(s) For Review

It was reported that there was one (1) new complaint on the agenda for review by the Board.

**CPRB No. 35-06/OPS No. C06- 572 (Presented by John Paneto)**

John Paneto summarized the complaint. The complainant alleged that on December 2, 2006 at approximately 12:15am, she was stopped on Henry Johnson Boulevard by a police officer. She alleged that she was not informed of the nature of the stop; that the

police officer was rude and used explicatives to her and her passenger; the police officer had his weapon drawn when he approached the vehicle; and subsequently he yelled at her to get back in her car and he closed the door on her leg as she was attempting to exit the vehicle. Prior to departing the police officer did not return her wallet, causing her additional grief since her credit cards and personal checkbook were now missing. The complainant then claimed that her driver side window was inoperative and did not want to communicate via the rear driver window, and thus the reason for her getting out the car. The passenger was asked to step out of the car and was searched for weapons. No ticket was issued. No arrest was made. Due to another police call, the complainant was abruptly told to leave the scene.

On December 3, 2006, the complainant alleged that she received little assistance at Division Two regarding her missing wallet and checkbook. The complainant claimed that no citizen complaint form was made available to her upon her request on this day.

John Paneto summarized her general complaint of unnecessary stop, drawn weapon, the officer closed the car door on her leg, the officer was rude and said several explicatives to the complainant and her passenger, the officer took the wallet and did not return it, and that no police complaint form was available at the station.

John Paneto stated that the OPS investigation found three issues dealing with APD procedures. The first issue addressed was the handling of property. The officer claimed that he never had possession of the complainant's wallet or checkbook. The wallet was found by the same police officer, who initiated the initial stop, 150 feet from the original site five (5) days later on December 8, 2006. The officer also claimed that due to rain and the number of days out in the street the wallet was found wet and soggy. Consequently, a police property inventory was conducted to record that the wallet was returned to the complainant. John Paneto said that it was surmised that maybe the complainant dropped the wallet while attempting to exit the car. On the firearm use, the officer claimed that he merely had his hand on his holster but not the weapon and the weapon was never drawn. On the conduct standard, the officer claimed that the complainant was upset over the stop and did not follow his instructions, he did threaten to arrest the individual, but the use of explicative language can not be proved or disproved. There was additional commotion when another police call occurred during this stop. The complainant was not satisfied regarding the officer's quick dismissal of the complainant due to the second call. By this time, John Paneto surmises that there were 3-5 cops on the scene. The monitor reports no unusual information. John Paneto noted that he spoke with Detective Romano when reviewing the OPS report and told the detective that the timeline in the report was not clear and the monitor report does not clarify the timeline issue. Notwithstanding, the timeline issue does not affect the allegations made or the outcome of this review.

The property handling allegation was *not sustained*, the firearm use allegation is *not sustained*, and the conduct standard allegation is *exonerated* in the OPS report. John Paneto reported that he did have one concern. In addition to the timeline issue, he did not

see that all of the allegations were addressed. The OPS report stated three (3) allegations and the complainant alleged several more.

The monitor, Theresa Balfe, was recognized. Theresa Balfe added that in her report she addressed a timeline. There were only three (3) officers on the scene. Detective Romano listed three (3) allegations while Theresa Balfe addressed four (4). Many of the allegations fell under unprofessional conduct. Theresa Balfe suggested some other things to Detective Romano, such as, going to her bank and finding out if the credit cards were cancelled, and checking the Albany climate data, to show that it was raining when the stop occurred which would show if the damage could have occurred to the wallet from the rain. Theresa Balfe noted that nothing was reported missing from the wallet. According to Detective Romano's findings, none of the credit cards were cancelled as reported and the checkbook wasn't cancelled. Theresa Balfe noted that it is standard operating procedure, if a person gets pulled over and is asked to present his/her license or identification, it should be taken out of the wallet. According to the complainant's witness, who was the passenger, the license was placed on top of the wallet. After the stop, the officer drove away and the complainant and her witness went back to the site to look for the wallet.

The complainant was acknowledged. She noted that the license was not on top of the wallet, it was inside the clear window of the wallet. Before the officer drove away the complainant asked the officer several times to return the wallet. The complainant stated that she went to the police station and asked for her wallet back or if they could call the officer to return the wallet.

Theresa Balfe stated that the complainant reported that she returned to the actual scene where she was pulled over. The complainant responded that didn't happen, because the Sergeant on-duty at that time called the officer. The officer said he gave her back the wallet and maybe she dropped it. Then she went back to the scene to look for it. The complainant stated that she went to Division Two several times. In the meantime, she began cancelling her credit cards without knowing that they had found the wallet. She called everyday before they told her they found it. The complainant stated the officer took her whole wallet and when she asked him several times to give it back to her, he took off with it. The complainant stated that the target officer told the other officers not to give her their badge numbers or names. She didn't get the complaint form until a couple of days later on a holiday weekend, from the Northern Boulevard station. Every other station told her that they didn't have them. The only person who was nice to her was the officer in Traffic Safety on Central Avenue. She also added that she had to pay for a new driver's license and get a new social security card. She never got a ticket or was told why she was stopped. She doesn't understand why she was treated this way.

Chairman Allen asked if there was a reason for the stop. John Paneto replied that it was an initial stop of a narcotic investigation based on a prior call that the principal officer was following. Apparently the vehicle was stopped in front of a store, suspicious

behavior was noted, and that is when he saw the vehicle the second time and made the stop.

The complainant added that she reported that while she was in the store that same police car circled around three times. The complainant questioned that if there was something going on or wrong why didn't he stop her then? Why did he wait to pull her over when she was almost home?

Chairman Allen asked John Paneto if the reason for the stop was for a narcotics investigation what was the other call that had them break off this call. John Paneto replied that the reason was not known by the report. Theresa Balfe added that there was an accident on the bridge and many other police cars responded as well.

The complainant added that while at the scene the other officer asked her nephew to get out of the car and they checked him. She then asked for their badge numbers and names and they covered them. The officer told them that they did not need this information.

John Paneto added that the investigation into this conduct stopped. James Malatras stated that there was a sufficient amount of unanswered questions that the case should be sent back to OPS. Chairman Allen questioned how many days passed from when the wallet was found to when she got it back. John Paneto replied that the wallet was found within 48 hours but the complainant didn't get it back until seven (7) days later. Theresa Balfe added that the officer didn't go back to the scene until his next scheduled shift. The officer worked the night shift and had the K-9 unit so he had to wait until daylight to look for the wallet. Theresa Balfe added that she wanted to see a time record.

The complainant said she finds it funny that he came back during his next shift and found her wallet. It was pouring out and he still found it. There was nothing missing. Theresa Balfe didn't understand why no one was sent out to look for the missing wallet. The wallet was found in the gutter 150-feet from the stop, not on the street.

Chairman Allen recapped by stating that the complainant's issue was the officer's approach to her; whether or not the officer's gun was drawn; the difficulties she had going without her wallet; she was never told why she was stopped; and that she wasn't able to get a complaint form. James Malatras added that it should be noted that the officer was unwilling to give his badge or name.

Chairman Allen summarized John Paneto's motion as being referred back to OPS for further review. The motion referred to the timeline; why the wallet was found but wasn't returned to the complainant until six (6) days later; why the complainant had problems obtaining the form and filing the complaint; and why the reason for the stop was not communicated to her.

John Paneto motioned to refer this matter back to the OPS for further review. James Malatras seconded this motion. The motion carried unanimously.

B. *Appointment of New Members to the Committee on Complaint Review for March 2007*

The following Board members were appointed to the Committee on Complaint Review for March 2007: Jason Allen, Mauri Davis Lewis, Daniel Fitzgerald, James Malatras, John Paneto, and Anthony Potenza.

C. *Committee Task Force Reports*

By-Laws Committee

Chairman Jason Allen reported that the Standing Protocol that was approved by the Board has been presented to the City Clerk and Patrick Jordan is working to get this before the City Common Council. Corporation Counsel Patrick Jordan was recognized. He reported that the letter was given to the clerk for the leadership of the Common Council.

Community Outreach

Committee Chairperson James Malatras reported that the committee met last month. They discussed reinventing and reinvigorating the community outreach efforts. The committee also agreed to two messages. One is to create a consistent message to the public, including designing a new brochure, creating a template for presentations and updating and modernizing the Board's website. The second item that the committee agreed on was to implement a once a month program, where they actively look for groups in the community that would like them to present information about the Board, what it does, to get the mission and its work out to the community. The next meeting of the Committee is to be determined.

Mediation

Committee Chairperson Jason Allen gave the report. Chairman Allen reported that a meeting with the Chief to discuss the next steps is being scheduled for Friday.

Policy Review/Recommendations

Committee Chairman, Dan Fitzgerald, reported that the committee will be meeting the following week to review any issues that w raised in the last few weeks.

Public Official Liaison

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

Monitors Task-Force

Chairman Allen noted that the Board has done a lot of hard work providing their input on the monitor protocol. This is also on the agenda for the meeting with the Chief on Friday.

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

Government Law Center Coordinator of the Board Sharmaine Moseley gave the report.

Complaint Inventory

It was reported that as of the date of the meeting, there were currently 18 active complaints before the Board for review. Of those 18 active cases, 5 have been reviewed and are pending further action – 1 referred to mediation, 1 referred for further investigation, 2 tabled at the request of complainant and/or Board, and 1 sent to the Chief and/or Mayor for review.

Two hundred twenty-one (221) complaints have been closed and 10 complaints are suspended from review. The total number of complaints filed to date is 249.

Training

It was reported that this year's NACOLE conference is being held from September 25<sup>th</sup>-September 28<sup>th</sup> in San Jose, CA. As soon as more information is available, the Center will forward the information to the Board as well as submit a proposal for expenses to the City so it can decide how many members will be able to attend.

It was reported that the CPRB Legislation requires new members to complete the Albany Police Department Ride-Along within 6 months of their appointments. Enclosed in the Board's meeting packets is a copy of the ride along request form. The Board was encouraged to fill out the form and return it to Sharmaine Moseley at the end of this meeting and she will fax it to the APD. Sharmaine Moseley also reported that she will participate in a ride-along.

Correspondence

It was reported that copies of correspondence received at the GLC as well as correspondence drafted in response to those letters were included in meeting packets for the Board.

It was also reported that the Center has been in communication with Corp Counsel's office and Chief Tuffey's office regarding scheduling an upcoming meeting regarding the monitor's and mediation protocols.



## FOIL

It was reported that the Board has one FOIL request that is outstanding with the City. The Center has been in contact with Corp Counsel's office regarding that request and is awaiting their review of the complaint file. The Center is also helping to facilitate a FOIL request for a complainant whose complainant was heard at the December meeting.

## Reports

It was reported that the 2005 annual report has been completed and a draft will be forwarded to the Board by the end of this week for its review. The Center is continuing its work on drafting the quarterly reports.

### E. *Report from the Office of Professional Standards*

Commander Beattie was recognized. Commander Beattie reported that the 2006 Fourth Quarterly Report has been completed. One of the complaints had no findings, the second complaint was unfounded, and three are still open. Of those, two were for conduct standards and one was for use of force. Also, for the fourth quarter the department handled 39,682 calls for service; 2,291 arrests were made; and 0.01% of complaints were generated from those arrests.

### F. *Report from the Chair*

Chairman Allen reported that the Board is working on a case scorecard. This will be a visual representation of what cases are in queue, what the status is and the case's age. This is an important tool for the Board to understand the flow, as well as to communicate with the OPS. So, when a case goes 120-180 days the Board can ask the right questions and not have to wait for letters. This will be a more proactive approach.

Chairman Allen noted that included in the Board's packets are two letters from an attorney representing two different complainants. Chairman Allen's response to the letters is also attached. The first letter concerned a complaint that was originally before the old Board. Chairman Allen noted that the Board expected a response by now and was hoping to have this case before the Board this month. The case is in a very advanced stage with a very high likelihood that it will be on next month's agenda. The second letter concerned a case that the Board has not yet seen. The attorney asked the Board to inform him who the monitor is and Chairman Allen understands from a 5-0 vote the Board elected not to put a monitor on this case. This was noted in his response to the attorney.

Chairman Allen is trying to set up a meeting this Friday with the Chief to get his input on the monitor protocol since it relies heavily on how the monitors interact with the OPS and on the mediation document. There are a few other things on the agenda that Chairman

Allen hasn't published yet, and that he would like the public policy and community outreach chairs to attend the meeting as well.

## **VI. Public Comment**

The floor was opened for public comment.

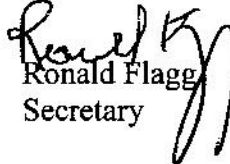
Jose Lopez was recognized. He stated that he made a complaint in the past which went nowhere. He doesn't think that the Board is doing its job. He said that the police are harassing and profiling him. He said many of the communities in Albany are keeping things quiet instead of speaking about what is happening because if they speak up it will just get worse. He said that the Chief of Police and the Albany Police Department are keeping things quiet especially with what happened with his case that he started almost four years ago. He understands how the system works but he does not understand why.

Melanie Trimble of the NYCLU was recognized. She stated that the Board voted on the definition of standing, and it has now gone to the attorney who then sent the draft changes to the Common Council. The Common Council will now decide on the new definition of standing. Chairman Allen added that there is a protocol which defines it. Melanie Trimble asked when is public input appropriate for the definition of standing. If the Common Council approves what was drafted, is this the definition of standing? Or, does it come back to the Board and the Board has final approval of whatever changes the Common Council makes? Chairman Allen responded that if the Common Council makes changes it should come back to the Board for discussion. Melanie Trimble would like a draft of what they have approved so that her agency can take a look at it because they are very interested in this definition. Melanie Trimble stated that she works very closely with Michael Whiteman and this is a serious concern. She asked Ms. Moseley for a copy of the annual report. Melanie Trimble noted that her agency will be inviting the Board in writing to attend her agency's meeting to address the concerns they have about what the Board is able to do under the legislation and what their suggestions are for the Board to be more effective.

## **VII. Adjournment**

Chairman Jason Allen motioned to adjourn the meeting. James Malatras seconded the motion. The meeting was adjourned at 7:10 p.m.

Respectfully submitted,

  
Ronald Flagg  
Secretary