

**City of Albany**  
**Citizens' Police Review Board**  
**Albany Public Library, Washington Avenue (HBH Room)**  
**January 12, 2004**  
**6:00 p.m. - 8:00 p.m.**

**Present:** Manuel Alguero, Kenneth E. Cox, Barbara Gaige, Marilyn Hammond, Judith Mazza, Herman Thomas, Eleanor Thompson, Paul Weafer, and Michael Whiteman.

**I. Call to Order & Roll Call**

Chairman Kenneth Cox called the meeting to order at 6:07 p.m. Chairman Cox noted that a quorum of the Board was present.

**II. Approval of the Agenda**

The agenda was reviewed. Chairman Cox moved to approve the agenda. Paul Weafer seconded the motion, and the motion carried unanimously.

**III. Approval of December 8, 2003 Meeting Minutes**

The minutes were reviewed. Chairman Cox made a motion to approve the December 2003 meeting minutes. Vice-Chairman Herman Thomas seconded the motion, and the motion carried unanimously.

**IV. Old Business**

A. *Complaints Referred to Mediation*

Chairman Cox noted that there were three (3) complaints previously referred to mediation on the agenda for review.

**CPRB No. 03-02/OPS No. C02-01 (Presented by Barbara Gaige)**

Barbara Gaige summarized the complaint. The complainant alleged that officers approached her son and two friends in Washington Park at the Tulip Festival on May 13, 2001. After an exchange, one of the teens threw a metal plate, hitting an officer on the foot. The youths ran and were pursued by the officers. According to the complainant, her son was grabbed by the shirt, which twisted and caused him to choke. The son's necklace was also torn from his neck. The youths were cuffed and escorted to the Lake House. The complainant alleged the officer made threatening remarks to her son. In November of 2001, the complainant alleged the same officer stopped the youths while they were sitting on a stoop on Dana Avenue, and repeated the threats to her son.

Ms. Gaige noted that during its investigation, the OPS interviewed the complainant, her son, other youths, vendors, and reviewed medical records, photos, and evidence provided by the complainant. The OPS made preliminary findings of “*exonerated*” as to the use of force allegation, and “*unfounded*” as to the allegation of unprofessional conduct. Ms. Gaige added that the initial recommendation of the Board was to refer the complaint to mediation. Attempts to mediate the complaint, however, were unsuccessful. On May 20, 2002,<sup>1</sup> Karleen Karlson, the Board’s Mediation Coordinator, spoke with Commissioner John Nielsen regarding this complaint. The Commissioner stated that he would contact the complainant personally, to reassure her as to the officer’s behavior in the future. In a follow-up conversation with the complainant in August of 2003,<sup>2</sup> Ms. Gaige was informed that the Commissioner had not yet contacted her. Ms. Gaige reported that on November 10, 2003, a letter was forwarded to Commissioner Nielsen requesting information regarding the outcome of his conversation with the complainant. She also reported that the Board has not yet received a response from the Commissioner.

Ms. Gaige made a motion, pursuant to § 42-343(G) of the City Code, for the Government Law Center to draft and send a letter, on the Board’s behalf, to Commissioner John Nielsen and Mayor Gerald Jennings requesting a follow-up and response to the complaint. Ms. Gaige stated that under the local law, the Commissioner and the Mayor have three weeks to respond to this request. Dr. Manuel Alguero seconded the motion. The motion carried unanimously.

**CPRB No. 57-02/OPS No. C02-428 (Presented by Barbara Gaige)**

Barbara Gaige summarized the complaint. The complainant alleged that on August 26, 2002, an officer questioned her son for no reason, the officer put his hand on his firearm, and the officer drew his weapon and threatened her son. In response to the officer’s actions, the complainant alleged that her son ran into their residence because he was scared. The complainant then went outside where an officer pointed his weapon at her and demanded she raise her hands. Witnesses to the incident reported that the officer did nothing wrong. One witness stated that he went to the South Station following the incident to speak about how professionally the officers’ handled the situation. Ms. Gaige reported that the

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<sup>1</sup> The date of the meeting between Karleen Karlson and Commissioner John Nielsen was incorrectly reported at the January 2004 Board meeting. The meeting occurred on May 23, 2002, not “May 20, 2002” as was reported.

<sup>2</sup> The date, “August of 2003,” was incorrectly reported at the meeting. The telephone conversation between the complainant and Barbara Gaige occurred on March 6, 2003.

officers involved in the incident initially stopped the son because during an earlier conversation, it appeared he was holding something in his pocket. As the officers chased the son, they observed him discard a loaded clip. After the son was placed under arrest, he took the officers back to the location where he threw the gun. According to the officers, their weapons were aimed at the complainant because she stepped in front of her son as he entered their home, thereby putting herself between him and the gun.

Ms. Gaige reported that initially, the Board recommended the complaint for mediation. However, attempts to mediate this complaint were unsuccessful. Ms. Gaige then made a motion to adopt the OPS's preliminary finding of "*unfounded*-where the review shows that the act or acts complained [of] did not occur or were misconstrued." Paul Weafer seconded the motion, and the motion carried unanimously.

**CPRB No. 67-02/OPS No. C02-553** (Presented by Barbara Gaige)

Barbara Gaige summarized the complaint. The complainant alleged that during the week of October 18, 2002, he went to the New Covenant Charter School to pick up his child. An officer was parked on the north side of Third Street. As a parent parked on the south side of the street to pick up her children, other vehicles had difficulty getting past the parked cars. The officer told the parent to move her vehicle. The complainant approached the officer and advised him that the cars parked on the south side of the street were legally parked and it was the officer's car that was causing the "tie-up." The officer indicated that he was allowed to park there because he was in a police car. After further verbal exchange between the complainant and the officer, the complainant left to go to the North Station to speak with the officer's supervisor.

Ms. Gaige reported that the OPS made a preliminary recommendation to refer the complaint to mediation. Initially, the Board had concurred with the OPS's preliminary recommendation. However, attempts to mediate this complaint were unsuccessful. Ms. Gaige then made a motion for a finding of "*sustained*." Marilyn Hammond seconded the motion, and the motion carried unanimously.

**V. New Business**

A. *New Complaints*

1. One (1) new complaint was received since 12/8/03 meeting

Barbara Gaige read the summary of the new complaint.

**CPRB No. 30-03** The complainant alleged that on Tuesday, September 16, 2003, he was falsely arrested by Albany City police officers, and an illegal search of his girlfriend's home was conducted by the Albany Police Department.

On September 16, 2003, the complainant left his girlfriend's apartment at approximately 11:20 a.m. to run an errand at a nearby gas station. The complainant alleged that he did not lock his girlfriend's door because he did not have a key to the apartment, and he knew that he would be returning to the apartment in less than ten minutes. At the corner near the gas station, the complainant ran into an individual who had been staying at the home of the complainant's girlfriend. The complainant alleged he and the individual "exchanged greetings and made a few seconds of small talk." The complainant informed the individual that the door to the home was open, and he would be returning shortly. After completing his errand, the complainant returned to his girlfriend's apartment to find his laptop computer missing. The complainant suspected the individual went to the apartment and stole the laptop while he was at the store. The complainant alleged that he searched commonly known drug locations where he suspected the individual may have gone.

At approximately 1:30 p.m. the complainant was stopped by Albany City police officers and told to put his hands on his head. The complainant informed the officers that he was looking for an individual who had stolen his laptop about "an hour ago." The officers proceeded to search the complainant and told him "in a very nasty manner that [he] had better get [his] story straight because the individual [he] described had been at the police station all morning and in fact had been at the police station 'a[n] hour ago.'" The complainant alleged that due to his panicked state, he stated the theft took place an hour ago, when it really occurred at approximately 11:30 a.m. The complainant alleged that he was taken to the police station, where he was brought by two officers into "some type of interrogation room." The complainant explained to the officers why he was there. One of the officers told the complainant that the individual alleged the laptop was his. The officer then began making statements about drugs and guns. The officer told the complainant that the individual alleged the complainant pulled a gun on him over some money that his girlfriend owed the complainant. The complainant alleged the individual had shown him a gun the previous Saturday night and claimed it belonged to a friend of his. The officers informed the complainant that they were preparing to search his girlfriend's home and if a handgun was found, he was "in big trouble." The complainant alleged that his ankle was then cuffed to the wall. The complainant asked the officers if he was being

subjected to custodial interrogation or was under arrest. The officers responded that he was not under arrest, but was being cuffed as part of an ongoing investigation. After waiting approximately twenty to thirty minutes, a supervising officer told the complainant that a handgun had been found in his girlfriend's apartment. At approximately 2:15 p.m., the complainant was arrested for menacing and criminal possession of a handgun. The complainant alleged that the officers had all of his personal possessions with them, including his wallet, identification, clothing, medications, and dirty laundry.

In the complaint, he alleged he never pulled a handgun on the individual, which the Albany Police Department used as probable cause to conduct a search of his girlfriend's home. He also alleged that police officers forged his girlfriend's name on the "search by consent waiver" because she did not give oral or written consent for the officers to search her home. At the time of his arrest, the complainant alleged that he filed a report with the Albany Police Department for his stolen laptop computer, but has yet to receive any information regarding this report. *A monitor was appointed.*

B. *Approval of Fourth Quarterly Report for 2003*

Chairman Cox moved to approve the Fourth Quarterly Report for 2003. Dr. Manuel Alguero seconded the motion, and the motion carried unanimously.

C. *Appointment of two new members to the Committee on Complaint Review for February 2004.*

The following Board members, appointed to serve on the Committee on Complaint Review for January 2004, were re-appointed to the Committee for February 2004: Manuel Alguero, Barbara Gaige, Marilyn Hammond, Judith Mazza, and Eleanor Thompson.

Paul Weafer stated that he would fulfill Ms. Gaige's obligations on the Committee for February 2004 if she is unavailable to do so.

D. *Report from the GLC*

Government Law Center Staff Attorney Justina Cintrón Perino gave the report.

Status of Complaints

It was reported that 122 complaints filed with the Board had been reviewed and closed. It was also reported that the Board has 17 active complaints and four (4)

complaints which remain suspended. The Board tabled rendering a final determination with respect to one (1) complaint, which had been referred to mediation at a previous meeting, pending further communication from the Mayor's Office. According to Ms. Cintrón Perino, 143 complaints had been filed with the Board since 2001.

It was reported that the GLC prepared and forwarded to the Board a status report of all complaints that are active and outstanding, including those complaints that were referred to mediation and suspended from review.

#### Communication with Complainants

It was reported that the GLC received a correspondence from the complainant (CPRB No. 22-03/OPS No. C03-355) whose complaint was reviewed and tabled at the December 8, 2003 Board meeting pending the development of written criteria.

#### Correspondence

It was reported that a letter was drafted, for Board approval, to Commissioner John Nielsen regarding department policies and procedures with respect to police officer behavior and the fostering of better police-community relations.

It was also reported that the GLC drafted correspondence, for Board approval, to Assistant Corporation Counsel Todd Burnham, seeking a report as to the status of the four (4) complaints suspended from Board review in 2001 and 2002.

Paul Weafer moved to approve the letters to Commissioner Nielsen and Mr. Burnham. Barbara Gaige seconded the motion, and the motion carried unanimously.

#### Minutes

It was noted that at its November 10, 2003 meeting, the Board approved the posting of its meeting minutes online. It was agreed upon by the Board that all meeting minutes, dating back to the establishment of the Board in 2000, would be posted online.

#### Training

It was reported that the Board members would be participating in ride-alongs as part of its ongoing training program. The months of February, March, April, and May of 2004 were identified for the scheduling of ride-alongs

It was also reported that training sessions were tentatively being scheduled for the third Monday in the months of February, April, and June of 2004.

#### Board Appointments/Re-appointments

It was reported that the GLC had received letters of re-appointment for Board members Marilyn Hammond and Paul Weafer. Both Ms. Hammond and Mr. Weafer were re-appointed for three-year terms.

#### E. *Report from the OPS*

Commander Stephen Reilly reported that he would provide the Board with the OPS's fourth quarterly report/statistics at the February 2004 Board meeting.

#### F. *Policy Review/Recommendations*

Chairman Cox reported that the Board's Policy Review and Recommendations Committee had compiled a list of requests. Chairman Cox then read the following Board requests for the record:

1. The Board is requesting that all individuals to whom the Board has directed policy requests/recommendations provide written responses, if they have not yet done so by the February 9, 2004 Board meeting. In addition to written responses, the Board also asks that those individuals appear before the Board at the February 2004 meeting so that they may explain their response or, if none is provided, that they explain why they were unable to respond.
2. The Board is reiterating its request for data/information regarding the total number of officers involved in all complaints filed with the CPRB since its establishment. With this statistical data, the Board would also like to be informed as to what discipline generally has been imposed on the officers identified in these complaints.
3. The Board would like to request assistance from the GLC with respect to collecting information regarding the Police Department policies on "hot pursuit" and "use of force." The Board has scheduled a public hearing on February 3, 2004 to discuss these topics.
4. The Board is requesting, from the Albany City Police Department, data on how many instances have been identified as "hot pursuits," and the number of situations in which an officer fired a gun.

Chairman Cox made a motion to approve the list of requests. Dr. Manuel Alguero seconded the motion, and the motion carried unanimously.

## **VI. Public Comment**

Chairman Cox opened the meeting for public comment.

Dr. Alice Green was recognized. Dr. Green stated that she attended a Board meeting approximately one year ago following the shooting death of Jason Mayo by an Albany City police officer. She noted that at the meeting last year, there was no one in attendance. Dr. Green requested the Board “play a role” in the investigation of the shooting of Mayo, and asked the Board to address the use of deadly force policy of the Albany City Police Department. Dr. Green stated that last year, the Board responded to her requests, saying it was unclear whether or not it could address these issues.

With respect to the shooting of David Scaringe, Dr. Green asked the Board to play a significant role in the investigation. She requested that they carefully review the use of deadly force policy of the police department, and if they do not believe they have the authority to do so, that they work with the Common Council to change the ordinance. Dr. Green stated that it is inconceivable that the Board, which has existed since 2000, does not think it has an important role to play when someone is killed. Dr. Green added that if the Board can address the issue of discourteous police behavior, they should be involved when a citizen is killed by a police officer.

Dr. Green stated that she filed a complaint with the Board for its review of the incident that occurred on New Year’s Eve. She also stated that she is making a plea that neither the Mayor nor the Commissioner stop the review of this complaint. She added, however, that she is aware that the Mayor has the power to stop a review when there is the possibility of a lawsuit. Dr. Green stated that the Board must protect the public, whether or not the victims are innocent, and that everyone should be treated the same.

Dr. Green asked the Board to take this complaint seriously and develop a policy to work with the families of victims. She stated that last year, Jason Mayo’s family was treated rudely by the Albany Police Department, and no one expressed sympathy to Mr. Mayo’s mother who had just lost her son. Dr. Green stated that with regard to the death of Mr. Mayo, she was the one who had to contact the media and provide them with the names of the Board members because they did not know of the existence of the Board.

Dr. Green concluded by asking the Board to take some leadership in this situation and address the problem in the community. She stated that the City can no longer afford for the Board to just sit and discuss discourteous police officers.

Paul Weafer stated that the Board may make recommendations to the Common Council

and the Mayor's office regarding police policy and practices relevant to the goals of community policing and the exercise of discretionary authority by the police officers. He added that the Board can address the police department's Standard Operating Procedures (SOP) that pertain to the issues of deadly use of force and the effectiveness of communications. Mr. Weafer stated that the Board will play an active role in this incident, but the police department, the OPS, and the District Attorney's office need a reasonable time to conduct their investigations.

Dr. Green stated that both she and Jason Mayo's mother attended Board meetings for several months following the death of Jason Mayo, and have yet to receive responses to the information they requested from the police department. She also stated that she understands the Board has had difficulty receiving information that it has requested from the police department. Dr. Green commented that it took a long time for the police department to give her the policy on profiling that she requested from them at several Board meetings.

Mr. Weafer stated that the Board had approved a letter sent to Commissioner Nielsen about the department's racial profiling/bias-based policing policy. With respect to the shooting of Jason Mayo, Mr. Weafer stated that the Commissioner Nielsen told the Board that he intends to address this topic. He added, however, that everyone must take notice of the Criminal Procedure Law, which keeps the records of the Grand Jury secretive, unless the court reveals certain aspects of the report. Dr. Green responded that she was aware of that fact.

Dr. Manuel Alguero stated that the Board has an outreach program to notify organizations, groups, and members of the community as to the Board's existence. He added that the Board also announces the date and location of their monthly meetings to the media and provides information about the Board on the Internet. Dr. Alguero stated that there are organizations in the community that provide assistance to individuals wishing to file a complaint with the Board.

Erin O'Brien was recognized. Ms. O'Brien stated that her comments were being made in memory of David Scaringe and other victims of the police force. She thanked Dr. Green for attending Board meetings and for representing the community. Ms. O'Brien commented that the shooting of David Scaringe on Lark Street has struck a chord in Albany. She added that this is an opportunity for citizens to come together as a community and recognize that a tragedy has occurred and an innocent man has been murdered at the hands of the police. While this incident may have been an accident, it still calls for a review by the Citizens' Police Review Board. Ms. O'Brien stated that her organization would be filing a complaint. Ms. O'Brien addressed some problems that she stated still exist with the Board. She commented that despite the Board's efforts, people in the community still do not know that the Board exists. In addition, she commented that she wants the Board to review complaints and do so in a timely manner. Ms.

O'Brien concluded by thanking Commissioner Nielsen and the Board for the public hearing to be held on February 3, 2004.

A community member, who did not wish to identify himself, was recognized by the Board. He commented that it is his understanding that someone at Public Safety said there were police transmissions issuing instructions to "slow down" and "use caution." He then inquired as to whether any members of the Board had listened to the transmissions from the officers on the day in question. The community member commented that the Board does not have subpoena power, so they cannot do anything. Mr. Weafer responded that the Board may exercise its right to subpoena power if it goes through the Common Council. Judith Mazza responded that the Board has not reviewed any material or documents at this time, and has not heard the transmissions of what happened the day of the incident. The community member stated that it is very significant that no one from the Board has looked at anything yet. He added that there were two officers involved with the incident, one of whom was also involved with the Jerome Henderson case.

Dr. Alguero stated that there does not seem to be a clear understanding of what the law permits the Board to do. The Board does not investigate the proceedings. The police department's Office of Professional Standards conducts an investigation of the incident and provides a report of its findings to the Board. The role of the Board is to look into the investigation conducted by the OPS. Mr. Weafer added that no complaint has yet been filed with the Board, therefore, the Board has no jurisdiction at this time to review the incident.

The unidentified community member stated that the officers put themselves and citizens in danger with their actions on New Year's Eve. He stated that the Board has to take this investigation seriously, and look into the issue of police misconduct and how to better protect the public. Dr. Alguero responded that a public hearing will be held on February 3, 2004 in which these topics may be addressed.

Commissioner John Nielsen was recognized. The Commissioner stated that with respect to the bias based policing policy, Dr. Green was invited to the police department to help write the policy. According to the Commissioner, the department has said repeatedly that the policy was a work in progress and that Dr. Green could continue to participate in writing it. When the policy was complete, Commander Paula Breen met with representatives from her organization. Commissioner Nielsen said that he did not know what more the department could do.

The Commissioner then addressed the issue regarding the families of victims of police shootings that had previously been discussed by Dr. Green. The Commissioner stated that after the death of Jason Mayo, which was a "world of difference" from the shooting of David Scaringe, top levels of the Albany Police Department and members of the clergy

went to the hospital and met with Jason Mayo's family. The department also sent members of its top levels and members of the clergy to see David Scaringe's family following his death.

Dr. Green commented that she had requested a report on racial profiling at two separate Board meetings a year ago. After receiving no response, Dr. Green stated that she asked someone from her office to contact the police department to get the policy. She added that the policy should be readily available.

Alexandra Jury was recognized. She commented that she had grown up in Albany and was unaware of the Board until recently. She stated that she regrets not knowing about many of the other incidents that have occurred in Albany, but that she appreciated the Board's involvement. As she is now aware of the Board's role in the community, she is motivated to attend meetings in the future. She added that there needs to be increased attention in the community about the existence of the Board and its function.

Chairman Cox stated that members of the community can assist the Board in spreading the word to other citizens. Chairman Cox stated that as a local pastor, he informs the community of the Board. However, until an incident has occurred, the Board generally does not see the members of the community at their meetings. He noted that the Board consists of nine volunteers who want to improve policing and community relations in the City of Albany. He added that the Board does significant outreach. Chairman Cox thanked the community for coming to the meeting, and commented that he hoped they are motivated to continue to attend. He also commented that, unfortunately, it took this tragic event to bring people together. The Board thanked Dr. Green and members of the police department who regularly attend the meetings.

Samuel Brown was recognized. Mr. Brown addressed the Board, stating that he was a concerned community member. He stated that there are reasons, especially in the black community, as to why citizens "don't come out." He commented that incidents such as what happened with David Scaringe have been happening to the black community for years. Mr. Brown stated that his heart goes out to the Mr. Scaringe and his family because he himself has children and grandchildren, and hopefully they are not hit by a stray bullet while standing on a street corner. He also commented that the police have a hard job, but the situation could have been handled differently. Mr. Brown stated that he would like the Board to do something so a situation like this does not occur again. He concluded by saying that the public needs to hear that the Board is going to take some action, not just speak about the incident.

Dr. Green commented that the Commissioner was incorrect in stating that there is a "world of difference" between the incidents involving Jason Mayo and David Scaringe. She stated that there is in fact no difference. They were both human beings and were both killed. She stated that we have to make sure no one else is killed.

Commissioner Nielsen stated that this is the first meeting of the Board for the new year. The Board has done great things. He added that the Board has done a lot of good work and the public should not lose sight of the fact that all of the members have done great work on their own time and at their own expense.

Ms. O'Brien stated that the Board should see this incident as an opportunity. The Board has an obligation to do something in response to this incident. She stated that the public is upset about an incident that has just occurred, and they are expressing their feelings to the Board. She added that she hopes, although the Board is made up of volunteers, the members do not take the comments personally. It is the Board's duty to hear the needs which are expressed, and to take action based upon those needs. Ms. O'Brien stated once again that her organization will file a complaint with the Board, and that Dr. Green has already filed one. Everyone must come together because people are being killed.

Marilyn Hammond commented that the Board will continue to do as it always has; to bridge the gap between the public and the Albany Police Department. The Board will also continue to alert the public as to what is going on. The role of the Board is to work for the public.

Mr. Weafer stated that he would like to send thoughts to the families of David Scaringe and Lieutenant Finn.

## **VII. Adjournment**

Chairman Cox moved to adjourn the meeting at 7:09 p.m. The motion was seconded by Dr. Manuel Alguero, and carried unanimously.

Respectfully Submitted,

Michael Whiteman  
Secretary