

**City of Albany**  
**Citizens' Police Review Board**  
**Albany Law School, Dean Alexander Moot Courtroom**  
**May 24, 2004**  
**6:00 p.m. - 8:00 p.m.**

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

**Absent:** Manuel Alguero and Michael Whiteman.

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

Chairman Kenneth Cox called the meeting to order at 6:08 p.m. Chairman Cox noted that a quorum of the Board was not yet present, but a seventh member of the Board would be arriving shortly.

**II. Approval of the Agenda**

The agenda was reviewed. Chairman Cox moved to approve the agenda. Vice-Chairman Herman Thomas seconded the motion, and the motion carried unanimously.

**III. Approval of April 12, 2004 Meeting Minutes**

The minutes were reviewed. Chairman Cox made a motion to approve the April 2004 meeting minutes. Paul Weafer seconded the motion, and the motion carried unanimously.

**IV. New Business**

A. *New Complaints*

1. Three (3) new complaints were received since 4/12/04 meeting

Barbara Gaige read the summaries of the new complaints.

**CPRB No. 8-04.** The complainant alleged that he was pulled over by an officer as he crossed Washington Avenue near Albany High School. He alleged the officer approached his vehicle in an overly aggressive manner, had his hand on his weapon, and accused the complainant of drinking alcohol. The complainant stated that he complied with the officers requests in a non-threatening and non-profane manner. He added that he had left a class he was teaching at St. Rose College approximately four minutes before he was stopped. The officer pulled the complainant from

his car, placed his hands on the complainant's arm, and escorted him to the rear of the vehicle. The complainant alleged that the officer demanded he take a field sobriety and Breathalyzer test. The complainant stated that he initially refused to take the tests, however, the officer threatened to arrest the complainant if he did not comply. After the tests were administered to the complainant, he asked for the results, and was told that it was negative for any traces of alcohol. The officer then instructed the complainant to return to his vehicle and wait for him. The complainant stated that he was given two summonses. *A monitor was appointed.*

**CPRB No. 9-04.** The complainant alleged that on Saturday, April 24, 2004 his dog bit an individual, who stated that he was not injured by the dog bite. The complainant stated that after the incident, he brought his dog in the house, and left to drive his brother home. He returned to his residence at approximately 3:45 am, and found a note stating that his dog had been seized until further notice. The complainant stated that he did not give anyone permission to enter his residence, and does not know how they got in. *A monitor was not appointed.*

**CPRB No. 10-04.** On April 22, 2004, the complainant was following a police car while on his way to pick up his daughter from daycare. The complainant alleged that as they approached a traffic light on Morton Avenue, the police car was far left in the lane, alongside the yellow line, apparently intending to continue eastbound on Morton Avenue. The complainant pulled his van to the right of the lane in anticipation of turning right onto Elizabeth Street. When the light turned green, the officer made a right hand turn onto Elizabeth Street without turning on his signal. The complainant alleged that he stopped on Delaware Avenue and waived the officer over to where he was. The complainant told the officer that he had to obey traffic laws and use his signal when turning. The officer instructed the complainant to get back in his vehicle, and that he was being ticketed for "going around him when he was signaling to make a right turn." The complainant alleged that he asked the officer to call for a supervisor, but the officer did not comply. The complainant, therefore, called a friend in the police department and requested that he send a supervisor to the scene. The supervisor arrived in less than five minutes, and the complainant was ticketed for "following too close" at Morton Avenue and Elizabeth Street. *A monitor was not appointed.*

2. Three (3) new complaints for review

**CPRB No. 19-03/OPS No. C03-296** (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint. On May 6, 2003, the complainant alleged that he went to the Albany Police Department to make a Freedom of Information Law (FOIL) request. Although the complainant was given most of the information that he requested, he was unhappy with the results. Ms. Hammond stated that she spoke with a detective from the OPS who informed her that the complainant is a resident of the state of Maryland. According to the detective, the Albany Police Department collected the information as requested by the complainant, and informed him that it was available to be picked up. The complainant, however, went to the police department to get the information. Ms. Hammond stated that she went to the OPS and reviewed the complaint. She added that it was her opinion that the complainant did not pick up the documents because he did not want to pay the fees for the FOIL request.

Ms. Hammond moved to concur with the OPS's preliminary finding of "*unfounded*," because the complainant did not pick up his FOIL request although he was notified that it was complete. Paul Weafer seconded the motion and the motion carried unanimously.

**CPRB No. 28-03/OPS No. C03-715** (Presented by Paul Weafer)

Paul Weafer stated that this complaint involves a complicated matter. He added that although the Board had reached out to the complainant and notified him of its review, the complainant was not in attendance at the meeting.

Mr. Weafer requested that Chairman Cox postpone review of the complaint until the following monthly CPRB meeting, so that he could discuss the complaint further with the OPS. Chairman Cox tabled review of the complaint until the June 14, 2004 CPRB meeting.

**CPRB No. 3-04/OPS No. C04-64** (Presented by Barbara Gaige)

Barbara Gaige read the complaint. "On Sunday morning, February 1<sup>st</sup> at approximately 1:15 am my brother, [ ], a multiple handicap individual, and myself were in a party of six people entering Jillian's restaurant. After being denied access into the restaurant because of being wrongfully accused of being intoxicated, my brother and I exited the entrance of Jillian's, and stood outside for approximately 2-3 minutes. At this time I

was approached by a police officer. The entire time that I was outside Jillian's I had my left hand in my pocket, the right hand holding my brother's hand. The police officer asked me what I had in my hand, and I replied "nothing" and told him since we were denied entrance into Jillian's, I've just been standing on the sidewalk with my brother waiting to touch base with our friends that were inside. He told me with an unprofessional attitude to put my hands up. I asked him if I was under arrest. He had no reply and searched me. He went into my pockets and checked my waste band. As I was being searched, the second officer knocked my brother down, where he fell straight back injuring his right hand. The police officers left him down on the ground. After completing the search and believing that my brother and I were no longer a threat, they said they were doing their jobs and that we should be on our way."

Ms. Gaige noted that George Kleinmeier, the monitor appointed to the complaint, was present. Ms. Gaige stated that she went to the OPS and reviewed the statements of two witnesses to the incident, as well as the statements of the two officers involved in the incident. According to the officers' statements, they were on a special detail at Jillian's restaurant. They added that their usual detail is to walk a beat. The officers stated that they noticed the complainant holding something silver in his hand, and watched him put it in his pocket. The officers stated that they thought this behavior was suspicious, so they approached the complainant and asked him what was in his pocket. The complainant was informed that he was going to be searched, and was asked to place his hands on his head. Ms. Gaige stated that because the complainant's brother was disabled, he was holding on to the complainant's arm. As one of the officers lifted the brother's hand off of the complainant, the brother fell to the ground. Ms. Gaige stated that Officer A immediately assisted the brother, and was extremely apologetic. Ms. Gaige stated that according to one of the witnesses statements, it was obvious that the complainant's brother was disabled. The second officer moved the brother and witness aside. When the complainant was patted down, he was found to have a harmonica in his pocket and a legal knife in a sheath attached to his belt. Mr. Kleinmeier stated that the officers asked the disabled brother if he needed the EMS, but he refused.

Ms. Gaige stated that the complainant and his brother were denied access to Jillian's because they were intoxicated. One of the witnesses was denied access because he was wearing baggy pants. Ms. Gaige stated that the disabled brother would have appeared intoxicated because of his disabilities. She added, however, that the individuals at Jillian's allegedly knew the brother, and stated that he was in fact intoxicated.

Ms. Gaige stated that the OPS made a preliminary finding of “*exonerated*” as to the call handling allegation in the complaint because the officer saw something silver in the complainant’s possession, and was concerned that it may be a weapon. She added that with respect to the conduct allegation, the OPS made a preliminary finding of “*unfounded.*” Although the officer did remove the brother’s hand from the complainant, he was apologetic and assisted him to his feet.

Ms. Gaige moved to concur with the OPS’s preliminary findings of “*exonerated*” as to the call handling allegation, and “*unfounded*” as to the conduct allegation. Paul Weafer seconded the motion, and the motion carried unanimously.

B. *Appointment of two new members to the Committee on Complaint Review for June 2004.*

The following Board members were appointed to serve on the Committee on Complaint Review for June 2004: Manuel Alguero, Barbara Gaige, Eleanor Thompson, Paul Weafer, and Michael Whiteman.

C. *Policy Review/Recommendations*

Chairman Cox stated that there would be a meeting of the CPRB’s Policy Review Committee at 8:00 pm, Monday, May 24, 2004 following the conclusion of the Board’s monthly meeting. Chairman Cox stated that the deliberations the Board engages in at the Policy Review Committee meeting will be shared with the public at its June 2004 monthly meeting.

D. *Reports*

Chairman Cox moved to approve the Board’s Third Annual Report. Paul Weafer seconded the motion, and the motion carried unanimously.

E. *Report from the GLC*

Government Law Center Staff Attorney Renee Hebert gave the report.

Status of Complaints

It was reported that the Board has 17 active complaints. The Board also has five complaints which remain suspended, three (3) from 2001, one (1) from 2002, and one (1) from 2004. To date, the Board has closed 130 complaints, and has received a total of 152 complaints.

## Reports

It is anticipated that a draft of the Second Quarterly Report for 2004 would be provided to the Board for review and approval at the June 14, 2004 CPRB monthly meeting.

## Outreach

It was noted that on April 22, 2004, the Board participated in an outreach program at the School of Criminal Justice at SUNY Albany. James Fyfe, a retired New York City police officer, conducted a longitudinal study of more than 1,000 NYC police officers who were dismissed or forced to resign during the 22 years from 1975 through 1996. These officers were compared to a stratified random sample of their colleagues in order to determine whether they differed on a variety of individual, organizational, and community characteristics.

## CPRB Meeting Schedule

It was reported that Dr. Manuel Alguero would not be able to attend CPRB monthly meetings held on the second Monday of every month due to a scheduling conflict. The Board was asked whether or not they would like to continue to hold meetings on the second Monday of the month, or if they would prefer to work out a summer schedule. Chairman Cox stated that since the meeting schedule was convenient for most members of the Board, the CPRB should continue to hold its meetings on the second Monday of the month. He added that the complaint's assigned to Dr. Alguero for review should be reassigned to other members of the Complaint Review Committee.

## Appointments

Paul Weafer stated that in October 2004, two or three Board members will be resigning at the end of their terms. He added that since there is a two-month training period before new members can serve on the Board, reappointments should be made as soon as possible.

It was noted that the Government Law Center can recommend to the Common Council and Mayor of Albany to make early reappointments. However, the appointment process cannot be changed without altering the legislation.

Judith Mazza stated that the Board has identified areas of concern with respect to CPRB legislation, and now needs to bring the issues to the Common Council. She added that a memorandum was disseminated to members of the CPRB regarding proposed changes to the legislation, particularly with respect to the

quorum requirement. Ms. Mazza stated that many Common Council members have stated that they would support changes to the CPRB legislation.

Patricia Salkin, Director of the Government Law Center, stated that the Center would draft correspondence to Mayor Gerald Jennings on behalf of Chairman Cox, regarding the appointment of new Board members and the training requirements for these new members. Chairman Cox added that both he and Dr. Manuel Alguero would be resigning from the Board at the end of their terms in October 2004.

Mr. Weafer asked Ms. Mazza if she would lead the Policy Review Committee in working on the proposed changes to the legislation, including changing the quorum requirements of the Board. Ms. Mazza stated that the Board needs to draft a resolution regarding the quorum changes. Barbara Gaige stated that each change to the legislation the Board intends to recommend should be drafted in its own resolution. Chairman Cox stated that drafting each resolution separately would likely yield better results. Mr. Weafer stated that all proposed changes to the legislation should be provided to the Common Council, including those that are passed and defeated in Board votes.

E. *Report from the OPS*

Commander Steven Krokoff gave the report. He stated that the OPS spent the last month processing applications for the Albany Police Department. He added that the OPS has been “stepping up” its inspections. Commander Krokoff stated that the quality of service provided by the department is being addressed by the OPS as well.

Commander Krokoff presented the Board with the OPS’s First Quarterly Report for 2004.

Commander Krokoff introduced Sergeant Cook as the new sergeant assigned to the OPS.

**V. Public Comment**

Chairman Kenneth Cox opened the meeting for public comment.

Melanie Trimble, executive director of the New York Civil Liberties Union (NYCLU), was recognized. Ms. Trimble asked the Board to consider making the following amendments to its legislation:

- Amend the local law to grant the Board the power to conduct independent investigations and improve the Board’s procedures.

- Amend the local law to allow the funding for the Board to hire staff to assist the Board members that are volunteers.
- Amend the local law with regard to the “findings” of the Review Board by changing “sustained, exonerated, etc.” to “approve, disapprove, approve with recommendation of discipline, approval with reservations, mediated,” to make determinations less difficult and more accurate.

Ms. Trimble stated that she had the NYCLU’s First Year Assessment to distribute to the Board. Ms. Trimble read the following from a letter she prepared and distributed to members of the Board: “We call upon the board itself to improve its effectiveness by:

- Calling upon the Albany Police Department to develop and implement an “early warning system” to track repeat complaints against individual officers, as the local law requires.
- Calling upon the Albany Police Department to report its “final determination” after receiving the board’s recommendations, as the local law requires.
- Calling upon the Albany Police Department to adopt and implement a policy prohibiting racial profiling.
- Calling upon the investigators assigned by the board to actively and contemporaneously monitor OPS’s investigation.
- Continue to become familiar with the APD’s policies and procedures and the range of discipline available for violating a policy.
- Encourage lowering the standard of proof required to sustain a misconduct complaint.
- Increase the openness and information available to the public on the review board procedures and dealings with the APD.”

Ms. Trimble stated that the Board is only as effective as its bylaws and legislation permits it to be, and added that the citizens of the city of Albany deserve more from their review board.

Paul Weafer asked Ms. Trimble why she believes the Board needs subpoena power when the Mayor, the Chief of the APD, and the Common Council all have the power, but the Board has not had reason to exercise subpoena power. Ms. Trimble responded that the citizens of Albany want the Board to have subpoena power, and that the Board should have independent authority to subpoena records. Mr. Weafer then questioned how an

investigation would be conducted if the Board had subpoena power. Ms. Trimble responded that it would be useful to look at the bylaws of other review boards around the country to determine how they effectively use subpoena power. Chairman Cox stated that the issue of subpoena power should be addressed with respect to boards that pay the members, versus boards who have volunteers serving as the members. Ms. Trimble stated that the Board may never have a need to use the subpoena power, but that does not mean they do not need to have it. Ms. Mazza stated that she agrees that some of the issues raised by Ms. Trimble do need to be addressed by the Board.

Ms. Trimble stated that the concerns raised by the NYCLU does not address the quorum issue as discussed by the Board. She added that the Board does a good job, but would like to see more investigative assistance in reviewing complaints. Mr. Weafer asked Ms. Trimble her opinion on the Board receiving compensation from the City for the work they do on the CPRB. Ms. Trimble responded that compensation is an issue that the Board would need to review. She added that while the Common Council receives compensation, there is a balance there because the government officials are elected, and not appointed to the Council as members of the CPRB are. Mr. Weafer asked Ms. Trimble if the Board received a minimal compensation, would that compromise the work of the Board. Chairman Cox stated that the Board members do more work than some of the elected public officials. Mr. Weafer questioned why the Board would request to have subpoena power, if it has no reason to use it. Barbara Gaige questioned what would happen if the Board requested that the Mayor or Common Council use the subpoena power, but they refuse to do so. Ms. Trimble responded that the Board could amend its legislation so that the Board must go to the Mayor or Common Council when they want to implement subpoena power. If both the Mayor and Common Council refuse to use the subpoena power, however, the Board may then use its own subpoena power. She added that the Board should have the authority to independently go and review any information it deems necessary. Ms. Trimble concluded by stating that there does not appear to be any reason why the Board members should not receive compensation.

## **VII. Adjournment**

Chairman Cox moved to adjourn the meeting at 7:03 p.m. The motion carried unanimously.

Respectfully Submitted,

Michael Whiteman  
Secretary