

City of Albany

Annual Report 2003

Submitted by
The Government Law Center of Albany Law School
on behalf of the
City of Albany Citizens' Police Review Board



CITIZENS' POLICE REVIEW BOARD

Third Annual Report of the City of Albany
Citizens' Police Review Board

Submitted to:
The Mayor of the City of Albany
The Common Council of the City of Albany
The Police Chief of the City of Albany

BACKGROUND

In July 2000, legislation creating the City of Albany Citizens' Police Review Board (the "Board") was signed into law, adding a new part 33 to Chapter 42 (Departments and Commissions) of the Code of the City of Albany. The purpose of this legislation was to create an independent review body to review and comment on completed investigations of complaints made by citizens against officers of the City of Albany Police Department for alleged misconduct; and its goals were to improve communication between the Police Department and the community, to increase police accountability and credibility with the public, and to create a complaint review process that is free from bias and informed of actual police practices.

INTRODUCTION

In a unique arrangement, the Government Law Center of Albany Law School was retained by the City of Albany to provide a number of services to the Board, the City and the community with respect to the new Board. Among the services to be provided, Section 42-340 of the legislation requires that the Government Law Center "file annual reports with the Common Council and the Mayor which contain statistics and summaries of citizen complaints, including a comparison of the [Board's] findings with the final determinations of the [Police] Department" on behalf of the Board. This is the third annual report so submitted covering the Board's operations from November 1, 2002 to October 31, 2003.

ORGANIZATION OF THE BOARD

The Board is comprised of nine members, five appointed by the Common Council, and four appointed by the Mayor, for three-year staggered terms. In selecting the members to the Board, the legislation provides that the Common Council and the Mayor shall endeavor to reflect community diversity in their appointments and requires that members of the Board reside in the City of Albany; possess a reputation for fairness, integrity, and responsibility; have a demonstrated interest in public affairs and services; and neither be an officer or employee nor a relative of an officer or employee of the City of Albany.

In October 2000, the law took effect and nine residents of the City of Albany were sworn in as members of the Citizens' Police Review Board for the City of Albany. The following members constituted the Board during its third year of operation:

Dr. Manuel Alguero
Term Expires 2004

Herman Thomas
Term Expires 2005

Rev. Kenneth Cox
Term Expires 2004

Eleanor Thompson
Term Expires 2005

Barbara Gaige
Term Expires 2005

Paul Weafer, Esq.
Term Expires 2006

Marilyn Hammond
Term Expires 2006

Michael Whiteman, Esq.
Term Expires 2006

Judith Mazza
Term Expires 2006

Resignations/Appointments/Reappointments

In October 2002, the terms of Barbara Gaige, Eleanor Thompson and Herman Thomas expired.

Board member Barbara Gaige was reappointed by the Common Council to serve on the Board for a three-year term (Resolution No. 89.122.02), and Eleanor Thompson was reappointed by the Common Council to serve a second three-year term (Resolution No. 9.21.03R). The terms of Board Members Gaige and Thompson will expire in October 2005.

In a correspondence from Mayor Gerald Jennings dated February 6, 2003, Board Member Herman Thomas was reappointed to serve a second three-year term. The term of Board Member Thomas will expire in October 2005.

In October 2003, the terms of Marilyn Hammond, Judith Mazza, Paul Weafer, and Michael Whiteman expired.

At the Board's December 8, 2003 meeting, Albany Common Council President Helen DesFosses reported that Board Members Judith Mazza and Michael Whiteman were each reappointed by the Common Council to serve a second three-year term (Resolution Nos. 95.112.03R and 96.112.03R, respectively). The terms of Board Members Mazza and Whiteman will expire in October 2006.

In correspondence from Mayor Gerald Jennings dated January 8, 2004, Board Members Marilyn Hammond and Paul Weafer were reappointed to each serve a second three-year term. The terms of Board Members Hammond and Weafer will expire in October of 2006.

Officers

During its third year of operation, the Board's officers were:

Chair
Vice-Chair
Secretary

Kenneth Cox
Herman Thomas
Michael Whiteman

Committees

The following Committees were operational and active in the Board's third year of operation, with each Board member serving on at least one committee, for at least part of the time:

Complaint Form	Manuel Alguero Kenneth Cox Eleanor Thompson Paul Weafer
Complaint Review	Manuel Alguero Barbara Gaige Marilyn Hammond Judith Mazza Herman Thomas Eleanor Thompson Paul Weafer Michael Whiteman
Operating Procedures	Marilyn Hammond Judith Mazza Paul Weafer Michael Whiteman
Policy Review/ Recommendations	Barbara Gaige Judith Mazza Paul Weafer
Public Education/ Community Outreach	Kenneth Cox Judith Mazza Herman Thomas

At the conclusion of the Board's third year of operation, the Complaint Review and Public Education/Community Outreach Committees were operational and active. The Policy Review/Recommendations Committee was formed and became active during the fourth quarter.

COMPLAINT REVIEW

Barbara Gaige was appointed at the January 2003 Board meeting to serve as chair of the Committee on Complaint Review.

Pursuant to the Board's Operating Procedures (Section II. Review of Complaints, Subsection I), each of the appointed members of the Committee on Complaint Review, in addition to the chair of the committee, is responsible for presenting one complaint at each monthly meeting. During the Board's first quarter of operation, seventeen (17) complaints were reviewed by the committee. The following Board members served on the committee for the first quarter:

- | | |
|---------------|---|
| November 2002 | Manuel Alguero, Barbara Gaige, Marilyn Hammond, Herman Thomas, and Paul Weafer. |
| December 2002 | Manuel Alguero, Barbara Gaige, Eleanor Thompson, Paul Weafer, and Michael Whiteman. |
| January 2003 | Manuel Alguero, Marilyn Hammond, Herman Thomas, Paul Weafer, and Michael Whiteman. |

In the second quarter, seventeen (17) complaints were presented and reviewed by the committee. The following Board members served on the committee for the second quarter:

- | | |
|---------------|---|
| February 2003 | Manuel Alguero, Barbara Gaige, Judith Mazza, Paul Weafer, and Michael Whiteman. |
| March 2003 | Manuel Alguero, Barbara Gaige, Judith Mazza, Herman Thomas, and Michael Whiteman. |
| April 2003 | Barbara Gaige, Marilyn Hammond, Herman Thomas, Paul Weafer, and Michael Whiteman. |

In the third quarter, eleven (11) complaints were presented and reviewed by the committee. The following Board members served on the committee for the third quarter:

- | | |
|-----------|---|
| June 2003 | Barbara Gaige, Marilyn Hammond, Judith Mazza, Herman Thomas, Eleanor Thompson, Paul Weafer, and Michael Whiteman. |
| July 2003 | Barbara Gaige, Herman Thomas, and Paul Weafer. |

In the final quarter of the Board's third year of operation, ten (10) complaints were presented and reviewed by the committee. The following Board members served on the committee for the fourth quarter:

- | | |
|----------------|--|
| September 2003 | Barbara Gaige, Marilyn Hammond, Judith Mazza, Herman Thomas, and Michael Whiteman. |
|----------------|--|

POLICY REVIEW/RECOMMENDATIONS

In October 2003, Chairman Kenneth Cox formed the Policy Review/Recommendations Committee. The Committee was established for the purpose of addressing and following up on the Board's policy recommendations and requests for policy review. Chairman Cox appointed Board members Barbara Gaige, Judith Mazza, and Paul Weafer to serve on the Committee.

During the Board's fourth quarter, a new item, "Policy Review/Recommendations" was added to the monthly meeting agenda. This portion of the agenda was created, following a suggestion made during an outreach meeting with the Center for Law and Justice. The "Policy Review/Recommendations" agenda item will be devoted to discussion of Board policy recommendations and/or requests for policy review.

PUBLIC EDUCATION/COMMUNITY OUTREACH

The Public Education/Community Outreach Committee was active in the Board's third year of operation. During the first quarter, the committee participated in the following meetings and programs:

- On November 19, 2002, Chairman Cox, Vice Chairman Thomas, Ms. Thompson, and two members of the GLC staff participated in a liaison meeting with the Mayor, the Deputy Mayor, and the Commissioner. Among the items discussed were the Board's recent attendance at the National Association for Civilian Oversight of Law Enforcement (NACOLE) Conference; the preparation of a press release about the Board's attendance; the development of a one-page insert about the Board and the complaint review process to be disseminated in a city-wide mailing; and the reappointment of Herman Thomas.
- On December 9, 2002, Chairman Cox met with GLC Staff Attorney Justina Cintrón Perino to discuss the Board's outreach initiatives. Chairman Cox directed the GLC to schedule outreach meetings with the Police Union leadership; the Black Police Officers Association; the Common Council; and each of the community organizations and advocacy groups that the Board had met with during its first year of operation.
- On December 9, 2002, Chairman Cox and Commissioner John Nielsen met to discuss the Board's concerns about the outstanding cases referred to mediation. Commissioner Nielsen delegated authority to the Office of Professional Standards (OPS) to communicate with the Board through the Government Law Center about complaints referred to mediation.

On March 19, 2003, during the Board's second quarter, Manuel Alguero, Barbara Gaige, Marilyn Hammond, and Michael Whiteman attended and participated in an outreach meeting with the Executive Director and several members of the Board of the Capital District Chapter of the New York Civil Liberties Union (NYCLU). During the meeting, Dr. Alguero, Ms. Gaige, Ms. Hammond, and Mr. Whiteman had an opportunity to discuss the scope of the Board's power and authority under the legislation, including limitations that may impact, from the community's perspective, its effectiveness. Members of the NYCLU in attendance identified two key areas of concern: 1) racial profiling and 2) the lack of an early warning system, and suggested that the NYCLU appoint a liaison to the Board.

During the third quarter, the committee coordinated and participated in the following meetings and programs:

- On May 7, 2003, Marilyn Hammond and Judith Mazza attended and participated in an outreach meeting with the Capital District Gay and Lesbian Community Council. During the meeting, Ms. Hammond and Ms. Mazza had an opportunity to meet the Council's new Executive Director. The Council recommended that the Board prepare and submit an article for its newsletter about the Board, how to file a complaint and the complaint review process.
- On May 29, 2003, Chairman Cox, Ms. Mazza, Ms. Hammond, and Ms. Thompson attended and participated in an outreach meeting with members of the Executive Board of the Center for Law and Justice. During the meeting, members of the Review Board and members of the Center's Executive Board discussed the Board's authority to make recommendations regarding police policies and practices. Additionally, a suggestion was made, by the Center, to set aside time on each monthly meeting agenda to discuss recommendations regarding police policies and practices. It was also suggested that a report from the Commissioner of Public Safety be included at each monthly meeting.
- On July 12, 2003, Chairman Cox, Ms. Hammond, Ms. Thompson, and Mr. Whiteman met, and suggested coordinating a meeting with the Mayor's Office and the Common Council regarding modifications to the CPRB legislation, and to arrange for a meeting with the Commissioner of Public Safety to discuss concerns pertaining to the outstanding Board recommendations and requests.
- On July 28, 2003, the Board held a special meeting to allow an opportunity for the President of Council 82, James Teller, to comment on the Union's issues and concerns with respect to the Board's conduct during monthly meetings, the complaint review process, and the mediation program. Much of the discussion during the meeting centered around the Union's concerns regarding police officer participation in the mediation program.

During the fourth quarter, the committee participated in the following meetings and programs:

- On October 6, 2003, Chairman Kenneth Cox met with Complainant No. 22-02/OPS No. C02-215 to allow her an opportunity to express her concerns regarding the Board's findings as to the allegations contained in her complaint, and to explain the Board's process of review and deliberation of a complaint investigation.

The Board continues to update the Board's complaint review and mediation brochures, and community organizations outreach list. The Board is also in the process of creating a one-page flyer about the Board, the complaint review process, and the mediation program.

Throughout the third year of operation, the Public Education/Community Outreach Committee regularly distributed Citizen Complaint Forms and Board brochures to the public, community groups and organizations, and other interested parties who sought copies of these forms and materials. In addition, the committee updated the Board's Website, adding new information about Board meetings, reports, news and events. It also expanded its mailing list.

REPORTS

On June 2, 2003, the Board adopted its Second Annual Report drafted by the Government Law Center. A copy of the report was submitted to the Mayor, the Common Council and the Chief (Commissioner) of Police as required by Section 42-340(C) of the legislation. Additional copies were forwarded to members of the public, community groups and organizations and other interested parties on the Board's mailing list.

Four quarterly reports were submitted and adopted by the Board as required by Section 42-340 (C) of the legislation detailing the activities of the Board and the Government Law Center during each time period covered.

MEETINGS OF THE BOARD

The Board met as a whole three times for the conduct of business during the first quarter. All three meetings were held at the Albany Public Library on Washington Avenue. Meetings were held on November 11, 2002, December 9, 2002, and January 13, 2003.

During the second quarter, the Board met three times as a whole for the conduct of business. All three meetings were held at the Albany Public Library on Washington Avenue. Meetings were held on February 10, 2003, March 10, 2003, and April 14, 2003.

The Board met twice for the conduct of business during the third quarter. The Board was unable to meet to conduct business in May 2003 because a quorum of the members could not be obtained. Meetings were held on June 2, 2003 and July 1, 2003. The June meeting was held at the Albany Public Library on Washington Avenue, and the July meeting was held at the Albany Community Development Agency on Henry Johnson Boulevard.

During the fourth quarter, the Board met twice for the conduct of business. Although the Board met on August 19, 2003, September 8, 2003, and October 13, 2003, at the August meeting, held at the Albany Community Development Agency on Henry Johnson Boulevard, business was not conducted, because a quorum of the Board was not present. The September and October meetings were held at the Albany Public Library on Washington Avenue.

A public comment period was held at each meeting, and the meetings largely consisted of a discussion of committee work and the review of complaints.

TRAINING

Section 42-339 of the law creating the Board requires that “the Government Law Center . . . provide, to [Board] members, and the members shall undergo continuing education on issues related to the interaction between civilians and police officers . . .” During the first quarter, the Board attended and participated in the following training programs:

- From October 31 to November 3, 2002, seven members of the Board attended the NACOLE Conference in Cambridge, Massachusetts. The conference, entitled “The Value of Citizen Oversight: Dollars and Sense,” featured workshops, panel discussions, and a keynote address on conducting police oversight where political terrorism is part of the landscape.
- On November 18, 2002, the Board attended and participated in a Freedom of Information Law (FOIL)/Open Meetings Law (OML) refresher conducted by the Executive Director of the Committee on Open Government, Robert Freeman.
- On December 28, 2002, the Board attended a training session, entitled “Revisiting the Law,” where members participated in a facilitated discussion of the current CPRB legislation. The session was coordinated and facilitated by a member of the Government Law Center staff.
- On January 27, 2003, several members of the Board participated in a training session for the Board’s investigators/monitors designed to serve as an orientation program for the Board’s newest investigator/monitor, Joel Pierre-Louis, and a reorientation program for the Board’s existing monitors, Theresa Balfe, George Kleinmeier, Albert Lawrence, and Richard Lenihan. The training addressed the

CPRB's Operating Procedures; the CPRB's monitoring process; OPS's procedures for communicating with investigators/monitors; and excerpts from the CPRB legislation relating to the investigators/monitors.

During the second quarter, the Board attended and participated in a two-hour racial profiling training program conducted by Professor Lenese Herbert of Albany Law School. The session included a discussion of what racial profiling is, how to detect the occurrence of racial profiling and ways to prevent racial profiling as a police practice. The session also included a brief discussion of the 4th and 14th Amendments as they apply to racial profiling issues and racial profiling trends across the country.

At the Board's request, training was suspended during the third quarter for the months of June and July.

During the fourth quarter, the Board attended and participated in the Annual Conference of the National Association of Civilian Oversight of Law Enforcement (NACOLE) held in Los Angeles, California. From September 21-24, 2003, Board Members Barbara Gaige and Michael Whiteman attended the NACOLE conference, entitled "Civilian Oversight: Tools for Success-Tools for Justice." The conference featured workshops on force and excessive force; intelligence gathering, racial profiling, demonstrations and first amendment issues post 9/11; best practices and strategies to counter resistance to civilian oversight; basic tools for oversight of disciplinary cases; and interviewing witnesses and judging credibility. The conference also featured several panel presentations, including: mediation in oversight and insights on a serious police misconduct case - the Oakland "Riders."

At the Board's October 13, 2003 monthly meeting, Ms. Gaige and Mr. Whiteman provided a report to the full Board about their experiences at the conference. It was reported that the conference was excellent and offered vast amounts of useful information. Mr. Whiteman urged the City to send members of the Office of Professional Standards (OPS) as well as members of the Department's management to future conferences, and noted that it would also be valuable for members of the police officers union as well as the Corporation Counsel's Office to attend.

Number of Complaints Filed

During its third year of operation (November 1, 2002 to October 31, 2003), the Board received a total of thirty-four (34) complaints. (See Figure 1).

Except for the months of December 2002, and June, August, and October 2003, the Board received, at minimum, three (3) complaints per month from November 2002 to October 2003. These complaints included those filed with the Board directly (filed either in person or by regular U.S. mail) and those filed with the Board through the Office of Professional Standards.

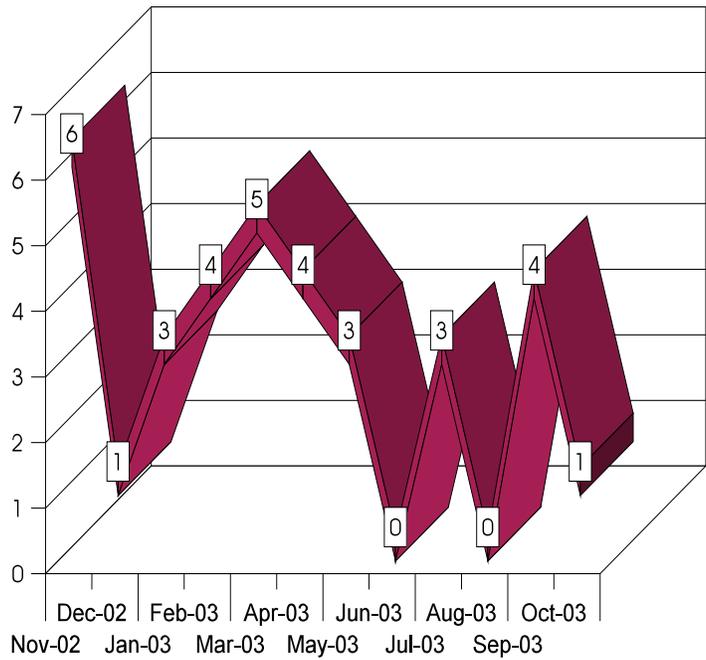


Figure 1: Monthly Breakdown of Complaints Filed- Total 34

Appointment of Monitors

Under Section 42-343 of the legislation, the Board is required to appoint an individual to observe and monitor the Office of Professional Standards' investigation of a complaint "in the event the complaint alleges use of force or a violation of civil rights." Of the thirty-four (34) complaints filed, the Board appointed a monitor to observe the OPS's investigation of twenty-four (24) complaints.

Allegations Contained in the Complaints

In the third year, nine (9) of the thirty-four (34) complaints filed with the Board contained a single allegation of misconduct against an officer or officers of the Police Department of the City of Albany. Twenty-five (25) complaints contained multiple allegations, with a majority of these complaints averaging two allegations. Figure 2 illustrates the types of allegations made in the thirty-four (34) complaints filed with the Board. Given that slightly more than two thirds (2/3) of these complaints contained more than one allegation, the total number of allegations received over the course of the third year is not equal to the number of complaints filed with the Board.

Seventy-one (71) allegations were made in the thirty-four (34) complaints filed with the Board in the third year. Of the seventy-one (71) allegations, the Board identified twenty-five (25) categories of allegations. In identifying these categories of allegations, the Board accounted for the complainant's classification of the allegations contained in his or her complaint.

Eighteen percent (18%) of the allegations identified in the complaints filed with the Board were classified as "use of force." Of the force allegations, approximately one half (1/2) were identified as "excessive force." The remaining force allegations were classified

as “unnecessary force” or as “force.” Unprofessional conduct and rudeness accounted for slightly less than one quarter (1/4) of the misconduct alleged. The use of offensive or derogatory language, including the use of profanity, racial slurs or comments interpreted as religious bigotry, accounted for approximately eight percent (8%) of the misconduct alleged.

Figure 2: Types of Allegations Contained in Complaints Filed - Total 71

Abuse of Authority	1
Illegal/False/Wrongful/Warrantless/Improper/Racially-Motivated Arrest	9
Aggressive Actions	2
Damaged Vehicle	1
Denied Right To Counsel	1
Denied Access To Records	1
Failure to Mirandize	2
Failure to Assess Intox. Driver	1
Failure to Document Damage to Vehicle	1
Fabrication of Polygraph Results	1
Improper/Unlawful Stop	4
Improper Issuance of a Citation/Ticket	3
Improper/Unlawful Search	7
Improper/Dangerous Vehicle Pursuit	1
Improper Questioning	1
Neglect of Official Duties	2
Racially-biased Behavior/Conduct	1
Rudeness	1
Threatened Physical Force	1
Threatening Gestures	1
Racially-Motivated/Unjustified Traffic Stop	1
Unlawful/Illegal/Improper Detention	1
Unprofessional Conduct	8
Use of Force	13
Use of Offensive/Derogatory Language	6

Approximately four percent (4%) of the allegations were classified as abuse of authority or neglect of official duties. Allegations involving an abuse of authority involved circumstances in which the officer(s) improperly/falsely arrested the complainant. Allegations involving the neglect of official duties included circumstances in which the

officer(s) failed to take statements at the scene of an accident and ignored a complaint.

Eighteen percent (18%) of the allegations made were classified as stops and arrests, and seven (7) of the seventy-one (71) allegations made were classified as searches. Stops included both alleged improper pedestrian stops and traffic stops that were allegedly either racially-motivated or unjustified. Arrests included illegal, false, wrongful, improper, warrantless and racially-motivated arrests. Searches included the vehicle and residence.

Many of the remaining allegations, while they could have fallen under broader categories, were reported as allegations of a specific type of conduct or behavior, which, more often than not, was narrowly tailored to the complaint in which it was contained. Therefore, several of the allegations identified were only made by one complainant in a single complaint.

Race/Ethnicity and Gender of the Complainant and Officer(s)

Of the thirty-four (34) complaints filed in the third year, twenty-seven (27) contained information regarding the complainant's race/ethnicity and gender. Those twenty-seven (27) complaints were comprised of: fourteen (14) African-American males; six (6) African-American females; four (4) Caucasian males; two (2) Caucasian females; and one (1) bi-racial female. (See Figure 3). The complainants that identified themselves as bi-racial and African-American/Indian were reported in Figure 3 as "Bi-racial."

While three (3) complainants provided information about their gender (1 male and 2 females), they did not provide any information about their race/ethnicity. Four (4) complainants chose not to submit this information.

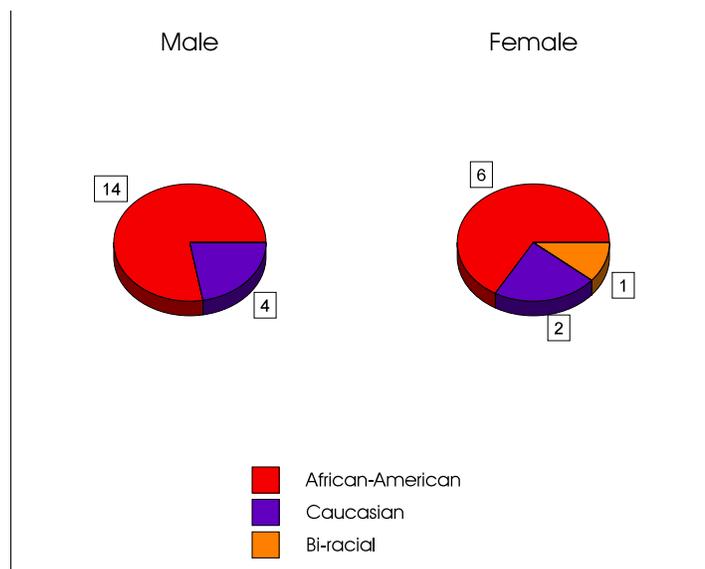


Figure 3: Race/Ethnicity and Gender of the Complainant

The Citizens' Complaint Form provides a section for a

complainant to enter descriptive information about the officer or officers who are the subject of his or her complaint. In this section, the complainant is to provide race/ethnicity and gender information about the officer(s), if known. Thirty (30) of the thirty-four (34) complaints received by the Board contained this information, but the information was redacted by the Office of Professional Standards (OPS). Four (4) additional complaints contained this information, but were un-redacted. Those four (4) complaints identified: two (2) Caucasian male officers; one (1) male officer and one (1) female officer. The remaining complaints either did not include this information or the information was unknown.

Board and Police Department Findings

Under Section 42-343 (D) of the legislation, after conclusion of the investigation by the OPS, the Police Department is required to make a preliminary report of its findings to the Board. Thereafter, Section 42-344 of the legislation, provides that “the [Board], after review and deliberation of an investigation, shall by majority vote, make . . . findings on the case.” In addition, Section 42-345 of the legislation requires the Chief of Police to “review the Department’s preliminary report in light of the [Board’s] finding and then make the Department’s final determination.”

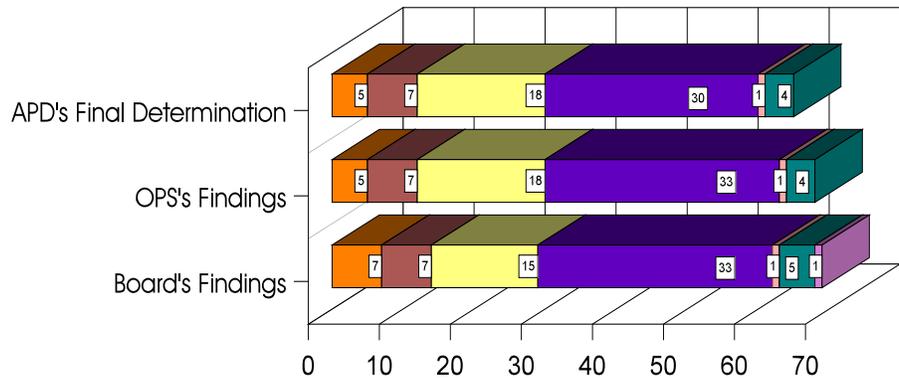
2000-2002

At the conclusion of the second year of operation, findings had not yet been made with respect to forty-six (46) complaints filed with the Board. Of these forty-six (46) complaints, one (1) was filed in the Board’s first year (2000-2001) and forty-five (45) were from the second year (2001-2002). These complaints were not reported in the Board’s Second Annual Report and were, therefore, carried forward into the third year.

In the third year, the Board reviewed and rendered findings for the allegations contained in thirty-eight (38) of the forty-six (46) complaints from the first two years. Of the thirty-eight (38) complaints, one (1) was from the first year (2000-2001) and thirty-seven (37) were from the second year (2001-2002).

Figure 4 illustrates a comparison of the findings made by the Board and the findings made by the Police Department, including the preliminary findings of the Office of Professional Standards (OPS) and the department’s final determination.

Figure 4: Comparison of Findings Made by the Board and the Police Department (2000-2002)



As to those complaints carried forward from the first two years and reviewed in the third

year, the Board made findings consistent with the various findings of the Office of Professional Standards (OPS) with respect to all but four (4) complaints. All four (4) complaints were from the second year (2001-2002). With respect to the first complaint, the Board made findings of “sustained,” “unfounded” and “ineffective policy/training” as to a civil rights violation, racially-motivated stop and failure to report reason for stop, respectively. The department, however, rendered findings of “exonerated,” “unfounded” and “not addressed,” respectively.

As to the second complaint, the Board made a finding “mediated” as to unprofessional conduct. The department rendered a finding of “ineffective policy/training.”

As to the third complaint, the Board made a finding of “sustained” as to the wrongful arrest. The department rendered a finding of “exonerated.”

As to the fourth complaint, the Board made a finding of “no finding” to the allegation of neglect of official duties. The department rendered a finding of “exonerated.”

2002-2003

In the Board’s third year of operation, the Board reviewed twenty (20) of its thirty-four (34) active complaints. Of the twenty (20) complaints reviewed, which included, in appropriate cases, review of monitor reports, presentations made by monitors, questioning of detectives from the OPS and review of transcripts and other information contained in the complaint file, the Board rendered findings for the allegations made in ten (10) complaints. As some of the complainants contained more than one allegation, however, the number of findings made on the allegations is not equal to the number of complaints reviewed and closed.

At the conclusion of the third year of operation, the Board had not yet made findings with respect to thirty-one (31) complaints. Of these thirty-one (31) complaints, seven (7) are carried over from the second year (2001-2002) and twenty-four (24) are from the third year (2002-03). These complaints are not reported in the Board’s Third Annual Report and, therefore, will be carried forward into the fourth year.

Figure 5 depicts a comparison of the findings made by the Board and the findings made by the Police Department, including the preliminary findings of the Office of Professional Standards (OPS) and the department’s final determinations.

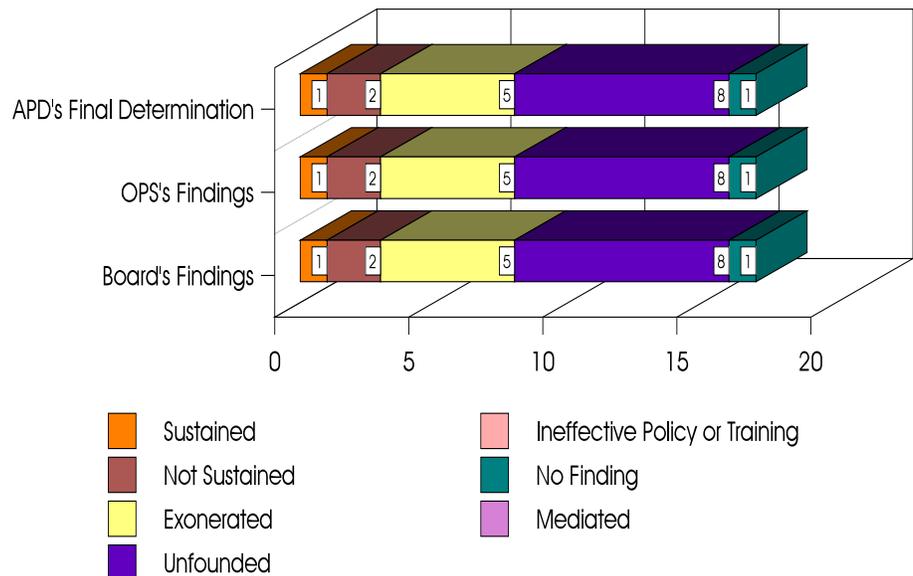


Figure 5: Comparison of Findings Made by the Board and the Police Department (2002-2003)

In the third year, the Board made findings consistent with the preliminary findings of OPS in all ten (10) complaints reviewed. Within those ten (10) complaints, the Board made findings of: “sustained - where the review discloses sufficient facts to prove the allegations made in the complaint”; “not sustained - where the review fails to disclose

sufficient facts to prove or disprove the allegation made in the complaint”; “exonerated - where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper”; and “unfounded - where the review shows that the act or acts complained of did not occur or were misconstrued.”

Complaints Reviewed and Closed

At the conclusion of its third year in October 2003, the Board had reviewed, made findings for, and closed, a total of forty-seven (47) complaints. Of the forty-seven (47) complaints reviewed and closed, ten (10) complaints were filed, reviewed and closed in the third year and thirty-seven (37) were filed in the first two years, but reviewed and closed as carry overs in the third year. Of the thirty-seven (37) filed in the first two years, one (1) was from 2000-2001 and thirty-six (36) were from 2001-2002.

Further Investigation

Under Section 42-343(F)(2), the Board may “request that Professional Standards conduct further investigation of the complaint” after its “review and deliberation of the preliminary report of the Department’s finding.” In the third year, the Board returned two (2) complaints to the Office of Professional Standards for further investigation. The request for further investigations included an investigation of allegations relating to: 1) whether or not the officer used a contact card or form to record the incident, and if a contact card or form was used, why was there a delay in entering the information into the Department’s database; and 2) what efforts were made to communicate with the complainant regarding the issuance of a citation and the withholding of the complainant’s driver’s license, and what caused the delay in issuing the accident report to the complainant.

Mediation

Section 42-346 of the legislation provides that “the complainant or officer may at any time in the review process utilize the [Board’s] mediation process . . . to resolve the complaint.” During the Board’s second year of operation, seven (7) complaints filed with the Board were referred to the Board’s mediation program.

During the Board’s second year, two (2) complaints were referred to the Board’s mediation program for “informal” mediations. In both cases, Commissioner Nielsen and/or Commander Anthony Bruno agreed to participate in the “informal” mediation. At the close of the second year, meetings had been held with respect to the first complaint referred to the “informal” mediation process, but not with respect to the second complaint. By the close of the second year, no agreements had been reached or findings made, indicating that the five (5) outstanding complaints had been “mediated.”

At the Board’s January 2003 monthly meeting, the Board’s Mediation Coordinator reported on the status of four complaints previously referred to mediation. The Board voted to refer three (3) of the complaints back to the formal review process for the Board to render findings. As to the fourth complaint, it was reported that there was an informal mediation along with several successful follow-up meetings, and the issues alleged in the complaint had been resolved.

In May of 2003, the Board's Mediation Coordinator met with Sergeant Kevin Connolly and James Teller, President of Council 82, to discuss the Board's mediation program and the participation of officers in the mediation process. The following issues were identified as obstacles and concerns needing to be resolved: 1) contractual issues; 2) questions about the role of mediation and the officers' rights; and 3) arranging a meeting with the Board's Mediation Coordinator and the police union to discuss the Board's mediation program. Union President Teller indicated that if the "right" case came along, it could be amenable to mediation, assuming all of the outstanding issues and concerns were resolved.

At a meeting held on July 28, 2003, Union President James Teller informed the Board that the police officers' union had concerns with respect to the mediation program established by the Board. It was reported that the union has a contract with the City of Albany, however, nothing in the contract required police officers to participate in mediation with complainants. On two (2) occasions, Union President Teller participated in meetings with the Board's Mediation Program Coordinator. An invitation was extended by Union President Teller for the Board's Mediation Coordinator to speak to the union about the mediation program so that some of their questions and concerns could be addressed.

OTHER BOARD ACTIONS/REQUESTS/RECOMMENDATIONS

Strip Search Policy

At the Board's February 2002 meeting and in a letter to Public Safety Commissioner John Nielsen in March 2002, the Board recommended that a firm policy be implemented by the police department regarding strip searches and requested that the Board be informed of such policy and notified of when it takes effect. This recommendation was made by the Board after reviewing a complaint in which the complainant alleged that he was strip searched after being arrested for petit larceny arising from a landlord/tenant dispute and a complaint in which the complainant alleged that he was strip searched in view of a video camera.

At the Board's July 2002 meeting, Commander Anthony Bruno of the Office of Professional Standards (OPS) reported that his office was in the process of researching the strip search policies of other jails in the area and had been in contact with the Commissioner of Corrections in an effort to review the Commissioner's recommendations for strip searches in City lockups. A draft of a strip search policy was expected to be completed and forwarded to John Nielsen, the Commissioner of Public Safety, in August 2002. A letter following up on this policy was forwarded to the Commissioner on July 8, 2003.¹

Non-Confidential Copy of the APD's Standard Operating Procedures (SOP)

¹ At the Board's February 2004 meeting, Public Safety Commissioner John Nielsen responded to the Board's request for the Albany Police Department's policy on strip searches. The Commissioner's response will be reported in the Board's Second Quarterly Report for 2004.

In April 2002, the Board received a request from a complainant for a non-confidential copy of the police department's Standard Operating Procedures (SOP). In July 2002, after consulting with OPS Commander Paula Breen, the Board recommended, in writing, that the complainant contact the City Clerk to obtain a non-confidential copy of the SOP. The Board agreed to forward the request to the department, asking that a non-confidential copy of the SOP be placed in the library at Albany Law School. A letter following up on this request was forwarded to Commissioner Nielsen on July 8, 2003.²

Handcuffing of Minors During the Execution of a Search Warrant

At the Board's February 2003 meeting, the Board recommended that the Commissioner review the police department's policies and procedures with respect to the handcuffing of minors during the execution of a search warrant. This issue was raised during the Board's review of a complaint where the Board learned that the complainant's 12 year-old daughter was detained and handcuffed during the execution of a search warrant in the complainant's home. The Board's written recommendation was forwarded to Commissioner Nielsen on July 8, 2003.³

Bias-Based Policing

The Board made a recommendation for the adoption and implementation of a Bias-Based Policing Policy. In response to a complaint filed with the Board in May 2001, Board members met with the Public Safety Commissioner, John Nielsen, in the first year to discuss its concerns about racial profiling and bias-based policing in the City of Albany. Pursuant to authority granted to it under the City Code, which provides that the Board "may make recommendations to the Common Council and the Mayor regarding police policies and practices..." the Board adopted Resolution 1 of 2001 recommending that steps be taken to limit, if not eliminate, the potential for bias-based policing and racial profiling in the City of Albany.

In May of 2002, the Commissioner, in correspondence to the Government Law Center, reported that Commander Paula Breen of the Albany Police Department had done extensive research and training on this issue, and had convened a series of working groups with interested community stakeholders and advocates to discuss the formation of such a policy.

In October of 2003, the Board approved correspondence, drafted on its behalf by the Government Law Center, to the Commissioner requesting that the Department

² At the Board's February 2004 meeting, Public Safety Commissioner John Nielsen responded to the Board's request for a non-confidential copy of the Albany Police Department's Standard Operating Procedures (SOP). The Commissioner's response will be reported in the Board's Second Quarterly Report for 2004.

³At the Board's February 2004 meeting, Public Safety Commissioner John Nielsen responded to the Board's recommendation regarding the handcuffing of minors during the execution of a search warrant. The Commissioner's response will be reported in the Board's Second Quarterly Report for 2004.

provide the Board with an update as to what the Albany Police Department has accomplished since the issuance of Resolution 1 of 2001 with respect to the adoption and implementation of a bias-based policing policy.⁴

GOVERNMENT LAW CENTER

Pursuant to the enactment of legislation creating the Board, in July 2000 the Government Law Center was retained by the City of Albany to provide a number of support services to the then newly created Citizens' Police Review Board. A team of three attorneys, three support staff and two law students worked collaboratively during this year to organize, and facilitate the Board's ongoing training program, coordinate the Board's public education/community outreach campaign and initiatives, provide staff support in preparation of, during and following each of the Board's monthly meetings, handle all administrative matters relating to the complaint review process and assist the Board in its day-to-day operations. These services are discussed in detail below.

First Quarter

The Government Law Center engaged in the following activities as directed by the local law and pursuant to its contractual obligations with the City of Albany during the first quarter:

- Coordinated and facilitated notice, scheduling and initial communications with complainants, police officers, Commander Stephen Reilly and Commissioner John Nielsen.
- Attended meetings and participated in ongoing discussions with the Board, Assistant Corporation Counsel, Todd Burnham, Commissioner Nielsen, Commander Anthony Bruno and Sergeant Kevin Connelly about outstanding complaints and cases referred to mediation. Discussions included suggestions for improving communication between the Board and the police department regarding complaints recommended for mediation; identifying complaints that are mediation appropriate when filed; including information about mediation appropriate complaints in OPS's preliminary reports; and providing a box on the complaint about willingness to participate in mediation.
- Interviewed and recommended for consideration the appointment of a new Board investigator/monitor.
- Submitted a proposal, in cooperation with the City of Albany and the Albany Police Department, to the NACOLE Board of Directors to host the 2004 NACOLE Conference in Albany.

⁴ At the Board's February 2004 meeting, Public Safety Commissioner John Nielsen responded to the Board's request for a bias-based policing policy. The Commissioner's response will be reported in the Board's Second Quarterly Report for 2004.

Second Quarter

The Government Law Center engaged in the following activities in the second quarter:

- Coordinated and facilitated notice, scheduling and initial communications with the complainant, police officer, Commander Anthony Bruno and Commissioner Nielsen for one (1) new complaint, in addition to the six (6) outstanding complaints, referred to the Board's Mediation Coordinator for mediation.
- Forwarded to the City a recommendation for the appointment of a new Board investigator/monitor.
- Prepared and submitted a press release to the City regarding the Board's participation in the NACOLE Conference and the Center's proposal to host the 2004 NACOLE Conference, in cooperation with the City of Albany and the Albany Police Department.
- Prepared and submitted a memorandum to the City requesting a clarification of approved billable expenses for Board investigators/monitors.
- After receiving approval of its proposal for funding a part-time graduate student to assist the Government Law Center in providing administrative support to the Board, the Center interviewed and hired a graduate student pursuing a master's degree in criminal justice at SUNY Albany, to provide certain support services to the Board. The student underwent training on the CPRB legislation, the complaint review process, the Board's mediation program, and received technical training with respect to the administrative aspects of the Board's day to day operations.
- Met with Lieutenant John Finn, Detective Sergeant Kevin Connolly and Detective Kathy Hendrick of the Albany Police Department to discuss enhancements to the Department's Early Warning system. There was a discussion regarding the categorizing of complaints to ensure that both the Department's records and the Board's records were consistent. The Center agreed to research how other citizen oversight entities categorize complaints and report its findings to the Department for consideration.
- Forwarded to the Board "Citizen Oversight of the Albany Police: Perceptions of Residents, Police Clients, and Complainants 2002," a report prepared by the School of Criminal Justice & the Hindelang Criminal Justice Research Center at the University at Albany.

Third Quarter

During the third quarter, the Government Law Center engaged in the following activities:

- Met with Detective Sergeant Kevin Connolly of the Office of Professional Standards and Officer James Teller, President of Council 82, to discuss the reluctance that

the Board is experiencing among police officers to agree to participate in mediation to resolve a complaint. Officer Teller was provided with materials compiled by the Center about mediation programs in other cities so that he could undertake his own independent research about mediation.

- Participated in conference call with Todd Burnham, Assistant Corporation Counsel, and the Commissioner of Public Safety, John Nielsen, in which the seven (7) outstanding complaints referred to the Board's Mediation Program were discussed. The Commissioner made a commitment to expedite the status of these complaints. The Commissioner also agreed to explain the benefits of mediation to the Union leadership and new OPS Commander, Stephen Reilly. The December officer-involved shooting was briefly discussed. The Commissioner agreed to provide a verbal report to the Board at its June meeting.
- Met with Officer James Teller and Detective Sergeant Kevin Connolly to discuss the Union's concerns with respect to the Board's mediation program and ways to improve the program.
- Drafted correspondence on the Board's behalf to the Corporation Counsel's Office seeking written opinions with respect to the following: 1) whether the Center was legally permitted to copy Council 82 President James Teller on all correspondence sent to police officers who are the subject of citizen complaints; 2) whether or not a member of the Board could serve on the Board while holding a City or County office; and 3) the process for appealing a Board determination.
- Updated the Board's complaint review and mediation brochures, and community organizations outreach list.
- Created a one-page flyer about the Board, the complaint review process and the mediation program.
- Drafted a meetings brochure, explaining what to expect during a monthly Board meeting.
- Drafted an article for submission to local newsletters.

Fourth Quarter

The Government Law Center engaged in the following activities during the fourth quarter:

- Drafted and forwarded correspondence to those complainants whose complaints had been referred to mediation, asking that they contact the Center to discuss the status of mediation.
- Drafted and forwarded correspondence to the Common Council and to the Mayor notifying them of the expiration of the terms of Board Members Marilyn Hammond, Judith Mazza, Paul Weafer, and Michael Whiteman.

- Drafted correspondence, for Board approval, to the Commissioner of Public Safety following up on Board Resolution No. 1 of 2001 and the Board's recommendation for the adoption and implementation of a bias-based policing policy by the Albany Police Department.
- Drafted correspondence, for Board approval, to Complainant 1-01 in response to the complainant's request for documents relating to his complaint.
- Responded to a Freedom of Information Law (FOIL) request from Council 82, which included preparing and forwarding a copy of the audio tape from the September 8, 2003 Board meeting to Council 82 President, Officer James Teller.
- Attended and participated in the Annual Conference of the National Association for Civilian Oversight of Law Enforcement.
- Met with Albany Law School's Computer Resources Department for a demonstration of software options to be used in the creation of a database for Board business.
- Updated the Board's Website to reflect additional links, the Board's fall/winter calendar of meetings, and most recent news articles.

Over the course of the Board's third year, the Government Law Center also performed the following administrative tasks:

- Arranged logistics for and coordinated regular monthly meetings, including: securing dates, times and locations for each meeting and providing notice to the affected parties and to the public;
- Prepared and assembled monthly meeting packets for Board members, including: photocopying complaints, reports and accompanying documents for review;
- Reported all activities related to Board business at each monthly meeting;
- Transcribed the minutes of each monthly meeting;
- Notified affected parties of Board findings, recommendations and requests following each monthly meeting;
- Arranged logistics for and coordinated outreach meetings and training sessions, including, securing dates, times and locations for each meeting and session, identifying and inviting meeting and session participants and preparing materials;
- Attended regular monthly meetings, outreach meetings and training sessions;
- Provided content for, updated and maintained the Board's website;

- Conducted a monthly accounting and inventory of complaints filed with the Board, including a summary of active and closed complaints, recommendations and pending requests submitted to the Commissioner of Public Safety and the Office of Professional Standards;
- Reported monthly complaint accounting and inventory to the Board at each of its regular monthly meetings;
- Assisted with typing and forwarding the Board's requests and recommendations to the Commissioner of Public Safety and the Office of Professional Standards;
- Conducted daily file accounting and inventory;
- Received and logged in new complaints;
- Opened and closed complaint files;
- Maintained regular communications with Board members; *and*
- Answered inquiries from the community about the CPRB and the complaint review process.

CONCLUSION

The Board was very active in its third year of operation. During the first quarter, the Board participated in a liaison meeting with the Mayor, Deputy Mayor, and the Commissioner; scheduled outreach meetings with various community organizations and advocacy groups; met with the Commissioner to discuss the Board's mediation program; and held its monthly meetings.

In the second quarter, the Board participated in an outreach meeting with members of the Capital District Chapter of the New York Civil Liberties Union (NYCLU); attended a training program on racial profiling conducted by Professor Lenese Herbert of Albany Law School; and held its monthly meetings.

In the third quarter, the Board attended and participated in outreach meetings with the Capital District Gay and Lesbian Community Council and the Center for Law and Justice; met to discuss the CPRB legislation; scheduled a special meeting to allow James Teller, the President of Council 82, to comment on the Union's issues with respect to Board conduct during monthly meetings, the complaint review process, and the Board's mediation program; sent correspondence to the Commissioner recommending that a firm policy be implemented by the police department regarding strip searches; requested that a non-confidential copy of the police department's Standard Operating Procedures (SOP) be placed in the library at Albany Law School; recommended that the Commissioner review the police department's policy on the handcuffing of minors during the execution of a search warrant; and held its monthly meetings.

In the fourth quarter, the Board added a new item, "Policy Review/Recommendations," to its monthly meeting agenda; formed the Policy

Review/Recommendations Committee for the purpose of following up on the Board's policy recommendations and requests for policy review; attended the Annual Conference of the National Association of Civilian Oversight of Law Enforcement (NACOLE) in Los Angeles, California; met with Commissioner Nielsen to discuss its concerns about racial profiling and bias-based policing in the City of Albany; and held its monthly meetings.

Respectfully submitted,
The Government Law Center of Albany Law School
Approved by and submitted on behalf of the
City of Albany Citizens' Police Review Board