

City of Albany

Fourth Quarterly Report November 1, 2004

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

Fourth Quarterly Report of the City of Albany
Citizens' Police Review Board

November 1, 2004

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

Section 42-340 of Chapter 42, Part 33 of the Albany City Code requires the Government Law Center of Albany Law School to file, on behalf of the Albany Citizens' Police Review Board (CPRB), quarterly reports containing "statistics and summaries of citizen complaints, including a comparison of the CPRB's findings with the final determinations of the [Police] Department." This is the fourth quarterly report so submitted in the year 2004.

INTRODUCTION

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. Many of these services are discussed, as appropriate, below.

ORGANIZATION OF THE BOARD

The following members constituted the Board during the fourth quarter of 2004:

Dr. Manuel Alguero
Reverend Kenneth E. Cox
Barbara Gaige
Marilyn Hammond
Judith Mazza
Herman Thomas
Eleanor Thompson
Paul Weafer, Esq.
Michael Whiteman, Esq.

In correspondence dated August 5, 2004 to Mayor Gerald Jennings, Board Member Manuel Alguero requested that he not be considered for an additional term beyond the expiration of his term on October 26, 2004.

On October 18, 2004, the Albany Common Council appointed Jason Allen and Ronald Flagg as members of the Board. Board member Allen has been appointed to serve a two-year term, which will expire on October 26, 2006. Board member Flagg has been appointed to serve a three-year term, which will expire on October 26, 2007.

On October 22, 2004, Reverend Beresford Bailey was appointed as a member of the Board by Mayor Jennings. Reverend Bailey has been appointed to serve a three-year term, which will expire on October 26, 2007.

The orientation program for the new members has been scheduled for early November.

During the fourth quarter, the Board's elected officers were:

Chair	Reverend Kenneth E. Cox
Vice-Chair	Herman Thomas
Secretary	Michael Whiteman, Esq.

At the Board's October 11, 2004 meeting, Vice-Chairman Herman Thomas became the Board's Acting Chairman pursuant Section 3 of the Board's By-Laws. Acting Chairman Thomas will serve through the completion of Chairman Cox's term, and until a new Chairman is elected In January 2005 pursuant to Section 1 of the By-Laws.

The following committees were operational during the fourth quarter of 2004:

Complaint Review	Dr. Manuel Alguero Barbara Gaige Marilyn Hammond Judith Mazza Herman Thomas Eleanor Thompson Paul Weafer, Esq. Michael Whiteman, Esq.
Outreach/Education	Reverend Kenneth E. Cox Judith Mazza Herman Thomas
Policy Review/ Recommendations	Barbara Gaige Judith Mazza Paul Weafer, Esq.

The following occurred during the fourth quarter of 2004:

COMPLAINT REVIEW

Pursuant to Section II, Subsection I of the Board's Operating Procedures, each of the four (4) appointed members of the Committee on Complaint Review, in addition to the Chair of the Committee, shall be responsible for the presentation of a particular complaint to the Board at its monthly meetings as assigned by the Chair of the Committee. Ten (10) complaints were presented and reviewed in the fourth quarter of 2004.

The following Board members were appointed to serve on the Committee on Complaint Review:

- August 2004 - Manuel Alguero, Barbara Gaige, Marilyn Hammond, Eleanor Thompson, Paul Weafer, and Michael Whiteman.
- September 2004 - Manuel Alguero, Barbara Gaige, Marilyn Hammond, Herman Thomas, and Eleanor Thompson.
- October 2004 - Barbara Gaige, Judith Mazza, Marilyn Hammond, Herman Thomas, and Paul Weafer.

COMPLAINT SUMMARIES AND STATISTICS

Section 42-340(C) of Chapter 42, Part 33 of the Albany City Code charges the Board with providing "statistics and summaries of citizen complaints, including a comparison of [its] findings with the final determinations of the [Police] Department."

During the fourth quarter of 2004, the Board received 11 new complaints in addition to its 19 active complaints and five (5) suspended complaints. Monitors were appointed to nine (9) of the 11 new complaints. Of the 30 active complaints before the Board, the Board presented 10 complaints for review, and rendered a finding/findings for the allegation(s) contained in each complaint. The following is a summary of those complaints:

CPRB No. 6-04/OPS No. C04-156 [monitor appointed]

Nature of the Allegation(s): 1) Use of Force - an Albany police officer grabbed the complainant's son by the back of his neck and forcefully pushed him across the street; *and*

2) Unprofessional Conduct - the officer told the complainant's son "to take his a*s across the street before [the officer] takes him to juvenile."

OPS Preliminary Findings:

- 1) "Exonerated" as to the use of force allegation; *and*
- 2) "Sustained" as to the unprofessional conduct allegation.

CPRB Findings:

- 1) "Exonerated" as to the use of force allegation; *and*
- 2) "Sustained" as to the unprofessional conduct allegation.

APD Final

Determination: 1) "Exonerated" as to the use of force allegation; *and*
2) "Sustained" as to the unprofessional conduct allegation.

CPRB No. 7-04/OPS No. C04-178 [monitor appointed]

Nature of the Allegation(s): 1) Arrest Authority and Procedures - the complainant, was stopped by an Albany police officer for "no apparent reason" and "with no articulated response from the officer";
2) Call Handling (Unlawful Search) - the complainant was unreasonably pat-frisked, handcuffed, and shackled, and the complainant's vehicle, which was legally parked blocks away, was searched by police dogs; *and*
3) Conduct (Unlawful Search and Seizure) - the officer placed the complainant on the ground, pulled down the complainant's pants, searched his rectum, and seized a plastic bag containing crack/cocaine.

OPS Preliminary Findings:

1) "Exonerated" as to the arrest authority and procedures allegation;
2) "Exonerated" as to the call handling allegation; *and*
3) "Not Sustained" as to the conduct allegation.

CPRB Findings:

1) "Exonerated" as to the arrest authority and procedures allegation;
2) "Exonerated" as to the call handling allegation; *and*
3) "Not Sustained" as to the conduct allegation.

APD Final

Determination: 1) "Exonerated" as to the arrest authority and procedures allegation;
2) "Exonerated" as to the call handling allegation; *and*
3) "Not Sustained" as to the conduct allegation.

CPRB No. 9-04/OPS No. C04-244

Nature of the Allegation(s): Forced Entry - Albany police officers improperly forced entry into the complainant's apartment and seized his dog.

OPS Preliminary Finding: "Exonerated."

CPRB Finding: "Exonerated."

APD Final Determination: "Exonerated."

CPRB No. 10-04/OPS No. C04-250

Nature of the Allegation(s): Unprofessional Conduct - an Albany police officer acted unprofessionally, and improperly issued the complainant a ticket because the complainant called the officer "a f*cking a*shole."

OPS Preliminary Finding: "Exonerated."

CPRB Finding: "Exonerated."

APD Final Determination: "Exonerated."

CPRB No. 11-04/OPS No. C04-307 [monitor appointed]

Nature of the Allegation(s): Arrest Authority and Procedures - during the course of a traffic stop, Albany police officers demanded that the complainant get out of the vehicle; searched his pockets and mouth; seized a bag of marijuana from the vehicle and told the complainant "your [sic] going down for this"; started to strip search him at the scene; subsequently strip searched him at the station; and arrested him for unlawful possession.

OPS Preliminary Finding: "Exonerated."

CPRB Finding: "Exonerated."

APD Final
Determination: "Exonerated."

CPRB No. 12-04/OPS No. C04-317 [monitor appointed]

Nature of the Allegation(s): Call Handling (Neglect of Duties/Improper Ticketing) - an Albany police officer improperly ticketed the complainant for inattentiveness although she was hit from behind while stopped at a red light, and failed to ticket the driver of the vehicle with whom the complainant had the accident although the driver left the accident scene.

OPS Preliminary
Finding: "Exonerated."

CPRB Finding: "Ineffective Policy or Training."

APD Final
Determination: "Exonerated."

CPRB No. 13-04/OPS No. C04-321

Nature of the Allegation(s): Unprofessional Conduct - as the complainant attempted to move his vehicle around an accident scene, an Albany police officer "jumped out of his vehicle and ordered [the complainant] to back up"; "yelled out what in the f*ck are you doing"; when the complainant attempted to explain, the officer "yelled out again if you don't back up and get the f*ck out of the way and open your f*cken eyes[,] I will pull you out of your vehicle and lock you the f*ck up."

OPS Preliminary
Finding: "Not Sustained."

CPRB Finding: "Not Sustained."

APD Final
Determination: "Not Sustained."

CPRB No. 14-04/OPS No. C04-357 [monitor appointed]

Nature of the Allegation(s): Arrest Authority - the complainant was stopped by police officers; pulled out of the vehicle by the officers

“with guns out”; placed on the ground and searched; placed in an “unmarked cruiser”; and was not provided with an arrest warrant although he asked for a warrant three times. Officers subsequently kicked in an apartment door not belonging to the complainant and searched and seized what was inside without a search warrant. Many of the complainant’s “personal belongings were stolen.”

OPS Preliminary Finding: “No Finding.”¹

CPRB Finding: “No Finding.”

APD Final Determination: “No Finding.”

CPRB No. 15-04/OPS No. C04-362

Nature of the Allegation(s): 1) Call Handling - Albany police officers “flash[ed] lights inside [the complainant’s window],” told the complainant they had received a 911 and asked her if she was “holding a hostage.” The complainant told the officers that she “never made any calls” because her phone was broken; *and*

2) Call Handling (Abuse of Authority/Unlawful Search) - the officers threatened to arrest the complainant because she told them to “get a warrant.” The officers then entered her apartment and looked around.

OPS Preliminary Findings: “Exonerated” as to both allegations.

CPRB Findings: “Exonerated” as to both allegations.

APD Final Determination: “Exonerated” as to both allegations.

¹The OPS’s preliminary investigation revealed that another agency was responsible and the complaint has been referred to that agency.

CPRB No. 20-04/OPS No. C04-308 [monitor appointed]

Nature of the Allegation(s): Unprofessional Conduct - an Albany police officer "continued to question [the complainant] using an intimidating tone" and threatened to arrest her for filing a false police report after she complained of injuries following a car accident in which the officer stated "there is nothing wrong with the car."

OPS Preliminary Finding: "Exonerated."

CPRB Finding: "Exonerated."

APD Final Determination: "Exonerated."

MEETINGS

On September 8, 2004, Vice-Chairman Herman Thomas and Board Members Barbara Gaige and Marilyn Hammond met with the Mayor, the Deputy Mayor, and the President of the Common Council to discuss the appointment of three new members to serve on the Board, following the resignations of Chairman Kenneth Cox and Board Member Eleanor Thompson, and the vacancy to be left by Dr. Manuel Alguero. Also discussed was the proposed amendment to the quorum provision (Section 42-337) of the CPRB legislation, reducing the quorum requirement from seven (7) members to five (5) members.

The Board met as a whole three times for the conduct of business during the fourth quarter. Meetings were held on August 23, 2004; September 13, 2004; and October 11, 2004. All three meetings were held at the Albany Public Library, 161 Washington Avenue, in the Large Auditorium (formerly the HBH Room). There was a public comment period at each meeting, and the meetings were devoted primarily to complaint review.

The Board meets on the second Monday of every month so as not to conflict with the monthly meetings of the Common Council, and to encourage media and public participation at its meetings.

POLICY REVIEW/REQUESTS/RECOMMENDATIONS

Recommendation for Additional Training

In correspondence to Police Chief James E. Turley, the Board recommended that the officer identified in CPRB No. 12-04/OPS No. C04-317 receive additional

training. The Board's recommendation was made following its review of the complaint at its August 23, 2004 meeting.

The Board in its discussion and subsequent findings, disagreed with the Office of Professional Standards' preliminary finding of "Exonerated," and made a finding of "Ineffective Policy or Training" as to the complainant's allegations that an Albany police officer failed to ticket the driver of the vehicle with whom the complainant had an accident although the driver left the scene of the accident, and improperly issued the complainant a ticket for inattentiveness although she was hit from behind while stopped at a red light.

At the meeting, the Board expressed its concerns about the officer's decision not to ticket the driver for leaving the scene of the accident. The Board discussed the several factors in making its finding, including the fact that: there is a presumption in the law that a driver involved in an accident should stay at the scene until the police arrive; and, according to the monitor's report, the other driver was heard by the dispatcher trying to talk the complainant out of reporting the accident. Upon consideration of these factors, the Board believed that the other driver should have remained at the accident scene until the police arrived, and that the decision not to ticket the driver was improper; the result of either inadequate policy or inadequate training.

REPORTS

The Office of Professional Standards forwarded its 2004 Second Quarter Report to the Board.

The Board voted unanimously to approve its Second and Third Quarterly Reports for 2004 prepared by the Government Law Center.

TRAINING

Section 42-339 of the legislation requires that "the Government Law Center . . . provide, to CPRB members, and the members . . . undergo continuing education . . ."

Acting Chairman Herman Thomas and Board Members, Barbara Gaige, Marilyn Hammond, and Judith Mazza attended the Annual Conference of the National Association of Civilian Oversight of Law Enforcement (NACOLE) held in Chicago, Illinois October 17-20. The Conference, entitled "Civilian Oversight of Policing: Respect & Serve," featured workshops on: officer-involved shootings; search and seizure, police spying, and intelligence gathering; use of force policies in critical incidents; investigative practices; wrongful convictions; claims of false arrest and harassment; dealing with the cold case; federal intervention; crowd control; police ethics; politics of unions and communities; support and development for successful oversight; and civilian oversight as a risk management tool. Vice-Chairman Thomas and Board Members Gaige and Mazza will receive certificates for attending and completing five

of seven sessions of the Investigative Best Practices training track.

GOVERNMENT LAW CENTER

During the fourth quarter of 2004, 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:

- Drafted and forwarded correspondence, approved by the Board, to the Mayor and the President of the Common Council, requesting that appointments be made to fill the seats of three Board Members, who were resigning and/or whose terms were expiring in October 2004.
- Forwarded correspondence, approved by the Board, to the Mayor and the President of the Common Council, proposing that the Common Council amend the CPRB legislation to reduce the Board's quorum requirement from seven (7) members to five (5) members.
- Attended and participated in a meeting with the Mayor, the Deputy Mayor, the President of the Common Council, and members of the Board.
- Compiled and forwarded documents, identified by Daniel Salvin, Esq. of the Center for Law and Justice in his Freedom of Information Law (FOIL) request, to Patrick Jordan, Assistant Corporation Counsel, for review and forwarding to the City Clerk.
- At the Board's request, drafted and forwarded correspondence to the Office of Professional Standards, requesting additional information related to CPRB No. 30-03/OPS No. C03-786.
- Forwarded correspondence, approved by the Board, to Chief Turley, recommending additional training for the officer identified in CPRB No. 12-04/OPS No. C04-317.
- Forwarded, to the Board a copy of Local Law 8 of 2004, amending the Board's legislation by lowering the quorum requirement from seven (7) to five (5) members.
- Forwarded, to the Board and to the OPS, correspondence from a gentleman seeking assistance with retrieving personal property from a former girlfriend.
- Forwarded, to the Board and to the OPS, correspondence from a former complainant regarding abuse and mistreatment that he witnessed and

was subject to during his incarceration.

- Hired a law student intern to assist in providing staff support services to the Board.
- Updated the Board's website to include the Board's Second and Third Quarterly Reports for 2004, current meeting schedule, new meeting minutes, and an updated roster of Board members.

In addition, the Center performed the following administrative tasks:

- Arranged for Board member attendance at the 2004 NACOLE Conference, including: registering members for the conference and making hotel and flight reservations;
- 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 regular monthly meeting packets for Board members, including: photocopying complaints, reports, and accompanying documents for review;
- Prepared a summary of new complaints filed with the Board for presentation by the Chair of the Committee on Complaint Review at each monthly meeting;
- Prepared findings forms for the recording of Board determinations by members of the Committee on Complaint Review at each monthly meeting;
- Attended regular monthly meetings;
- Reported all activities related to Board business at each monthly meeting;
- Recorded and transcribed the minutes of each monthly meeting;
- Notified affected parties of Board findings, recommendations, and requests following each monthly meeting;
- 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 Chief of Police, the Office of Professional Standards, and the Corporation Counsel's Office;

- Reported monthly complaint accounting and inventory to the Board at each of its fourth quarter meetings;
- Assisted with typing and forwarding the Board's requests and recommendations to the Chief of Police, the Office of Professional Standards, and/or the Corporation Counsel's Office;
- Received and logged in complaints;
- Opened and closed complaint files;
- Maintained regular communications with Board members; *and*
- Answered inquiries from the community and the media about the Board and the complaint review process.

CONCLUSION

The Board had an active fourth quarter, which included reviewing one-third of its active complaints; holding three regular monthly meetings; meeting with the Mayor, the Deputy Mayor, and the President of the Common Council; and attending the 2004 NACOLE Conference.

Respectfully Submitted,

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

Dated: November 1, 2004