

City of Albany

CITIZENS' POLICE REVIEW BOARD

First Quarterly Report February 1, 2005

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



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

February 1, 2005

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 first quarterly report so submitted in the year 2005.

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 first quarter of 2005:

Jason Allen
Reverend Beresford Bailey
Ronald Flagg
Barbara Gaige
Marilyn Hammond
Judith Mazza
Herman Thomas
Paul Weafer, Esq.
Michael Whiteman, Esq.

During the first quarter, the Board's officers were:

Beginning November 1, 2004 and ending January 10, 2005

Acting Chair Herman Thomas
Secretary Michael Whiteman, Esq.

Beginning January 11, 2005

Chair Barbara Gaige
Vice-Chair Herman Thomas
Secretary Ronald Flagg

At the CPRB's December 13, 2004 meeting, the following Board members were nominated, pursuant to Article IV, Section 1 of the Board's By-Laws, for positions as Board officers: Barbara Gaige as Chair, Herman Thomas as Vice-Chair, and Ronald Flagg as Secretary.

At the CPRB's January 10, 2005 meeting, the Board held an election for new Board officers pursuant to Article IV, Section 1 of the Board's By-Laws. Barbara Gaige was elected

Chair, Herman Thomas was elected Vice-Chair, and Ronald Flagg was elected Secretary.

In November 2004, as part of the CPRB's organizational training session, a new committee structure was established, which included the creation of the Mediation Committee and the merger of the Police Department Liaison Committee with the Policy Review/Recommendations Committee to form the Police Department Policy Review/Recommendations Committee. During the session, committee membership and works in progress were identified. The following is the new CPRB committee structure. Each committee was operational during the first quarter of 2005:

By-Laws and Rules

Paul Weafer (Co-Chair)
Michael Whiteman (Co-Chair)

Works in Progress:

- ▶ Review the Common Council's proposed amendments to the CPRB legislation
- ▶ Draft procedures for Board monitors/investigators

Community Outreach

Judith Mazza (Chair)
Beresford Bailey
Ronald Flagg
Herman Thomas

Works in Progress:

- ▶ Update the CPRB's outreach materials
- ▶ Expand the CPRB's outreach program

Complaint Review

Judith Mazza (Chair)
Jason Allen
Beresford Bailey
Ronald Flagg
Barbara Gaige
Marilyn Hammond
Herman Thomas
Paul Weafer, Esq.
Michael Whiteman, Esq.

Mediation

Barbara Gaige (Chair)
Jason Allen
Paul Weafer
Michael Whiteman

Works in Progress:

- ▶ Review best practices in citizen-police oversight mediation from successful mediation programs across the country
- ▶ Develop a procedure, with the Police Department and the Union, for mediating complaints in the City of Albany

*Police Department Policy
Review/Recommendations*

Jason Allen (Chair)
Marilyn Hammond
Judith Mazza

Works in Progress:

- ▶ Identify categories of statistics that the CPRB would like to receive from the Albany Police Department
- ▶ Review APD policies regarding vehicle pursuits, the use of tasers, and the use of cameras in patrol cars

Public Official Liaison

Ronald Flagg (Chair)
Barbara Gaige
Marilyn Hammond

The following occurred during the first quarter of 2005:

BY-LAWS AND RULES

On January 19, 2005, Board members Jason Allen, Barbara Gaige, and Judith Mazza met to review the Common Council's proposed changes to the CPRB Legislation.

On January 25, 2005, five members of the Board and a member of the GLC staff attended a meeting of the Common Council's Public Safety Committee, where the Committee's proposals for changes to the Board's legislation were discussed.

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. Eleven (11) complaints were presented and reviewed in the first quarter of 2005.

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

- | | |
|-----------------|--|
| November 2004 - | Barbara Gaige, Marilyn Hammond, Herman Thomas, Paul Weafer, and Michael Whiteman |
| December 2004 - | Jason Allen, Ronald Flagg, Barbara Gaige, Marilyn Hammond, Judith Mazza, and Herman Thomas |
| January 2005 - | Jason Allen, Beresford Bailey, Ronald Flagg, Barbara Gaige, and Michael Whiteman. |

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 first quarter of 2005, the Board received three (3) new complaints in addition to its twenty (20) active complaints and five (5) suspended complaints. Monitors were appointed to two (2) of the three (3) new complaints. Of the twenty-three (23) active complaints before the Board, the Board presented eleven (11) complaints for review, and rendered findings for the allegation(s) contained in ten (10) complaints. The following is a summary of those complaints:

CPRB No. 29-02

Nature of the Allegation(s): May 3/2002 5:45 a.m. Knife.¹

CPRB Finding: **No Finding**

APD Final
Determination: **No Finding**²

CPRB No. 29-03/OPS No. C03-716

Nature of the Allegation(s): Unprofessional Conduct - Albany police officers knocked on the complainant's door, pushed him aside and entered his apartment without being invited and without a warrant, asked him for identification, and questioned him about a woman in the apartment.

OPS Preliminary
Finding: **Not Sustained**

CPRB Finding: **Not Sustained**³

APD Final
Determination: **Not Sustained**

¹A Citizen Complaint Form, including the above language, was received by the Government Law Center from the United State Post Office. The loose form was dropped in a postal box, later picked up by a postal carrier, and forwarded to the Board.

²In correspondence dated November 15, 2004, Chief Turley notified the Board that attempts by the OPS to obtain further information relating to this complaint were unsuccessful, and that the complainant failed to provide information to further an investigation conducted by the OPS. Therefore, the Chief recommended that the complaint be closed as “no finding.”

³At its March 8, 2004 meeting, the Board voted 6-1 to refer the complaint to mediation pursuant to its authority under Section 42-343(F)(4) of the City Code. When mediation did not occur, the complaint was reviewed by the Board at its November 15, 2004 meeting, and a finding of *not sustained* was rendered as to the complainant's allegation of unprofessional conduct.

CPRB No. 30-03/OPS No. C03-786 [monitor appointed]

Nature of the Allegation(s): 1) Arrest Authority and Procedures - the complainant was improperly/falsey arrested by Albany police officers “for a crime that was predicated on a lie” as part of a “ruse to effect probable cause to conduct an illegal[,] unconstitutional search at the home of [the complainant’s] girlfriend”; *and*

2) Conduct (Illegal/Improper Search of Residence) - the complainant’s girlfriend’s did not give oral or written consent to search her apartment, and the signature on the search by consent waiver form was forged and is the signature of the complainant’s girlfriend.

OPS Preliminary

Findings: 1) **Exonerated** as to the arrest authority and procedures allegation; *and*

2) **Unfounded** as to the conduct allegation.

CPRB Findings: 1) **Exonerated** as to the arrest authority and procedures allegation; *and*

2) **Unfounded** as to the conduct allegation.

APD Final

Determination: 1) **Exonerated** as to the arrest authority and procedures allegation; *and*

2) **Unfounded** as to the conduct allegation.

CPRB No. 05-04

Nature of the Allegation(s): Use of Force - following an incident at the Westgate Price Chopper in August 2002, the complainant was “kidnaped” by the Albany Police Department; he was handcuffed and forced to go to the hospital against his will.⁴

CPRB Finding: **Mediated**⁵

⁴This complaint, which was filed with the Board on March 4, 2004, alleges the same misconduct claimed by the complainant in a previous complaint filed with the Board on August 23, 2002 (CPRB No. 54-02/55-02/OPS No. C02-476).

⁵On February 10, 2003, the Board reviewed the OPS’s investigation of the complainant’s August 2002 complaint. Following its review and deliberation, the Board rendered a finding of **exonerated** as to the allegations contained in the complaint. Subsequent to the review, the complainant and former Commander of the OPS, Anthony Bruno, participated in an informal mediation on **April 8, 2003** coordinated by the Government Law Center and facilitated by a trained Board mediator.

APD Final
Determination: **Mediated**

CPRB No. 08-04/OPS No. C04-203 [monitor appointed]

Nature of the Allegation(s): Unprofessional Conduct - during the course of a traffic stop, the complainant was approached by an Albany police officer in “an overly aggressive manner.” The officer, whose “demeanor was aggressive, condescending, and threatening,” immediately accused the complainant of drinking; forced him to submit to field sobriety tests under threat of “immediate and implied arrest if he did not comply”; detained him for “a very long time” before issuing him two traffic summonses; and made a “code worded racist comment.”

OPS Preliminary
Finding: **Not Sustained**

CPRB Action: At its December 13, 2004 meeting, the Board voted unanimously, pursuant to its authority under § 42-343(F)(2) of Chapter 42, Part 33 of the Albany City Code, to return the complaint to the OPS and request that the OPS further investigate: 1) how many years the target officer (Officer A) has been on the force and how the complainant learned this information; 2) whether or not a second officer (Officer B) was present during the stop; *and* 3) the statement made by a third officer (Officer C).

CPRB No. 16-04/OPS No. C04-390 [monitor appointed]

Nature of the Allegation(s): Use of Force - Albany police officers, responding to a call for a domestic dispute at the complainant’s wife’s apartment, charged at the complainant; threw him to the floor; kicked, stomped, and beat him; and denied him medical attention.

OPS Preliminary
Finding: **Exonerated**

CPRB Finding: **Exonerated**

APD Final
Determination: **Exonerated**

CPRB No. 17-04/OPS No. C04-402 [monitor appointed]

Nature of the Allegation(s): Use of Force - the complainant was physically assaulted, and wrongfully and illegally arrested.

OPS Preliminary
Finding: **Exonerated**

CPRB Finding: **Exonerated**

APD Final
Determination: **Exonerated**

CPRB No. 18-04/OPS No. C04-450

Nature of the Allegation(s): Conduct (Improper Stop) - an Albany police officer stopped his patrol car abruptly, approached the complainant, told him to get against the wall, grabbed his hand, and placed him against a building.

OPS Preliminary
Finding: **Sustained**

CPRB Finding: **Sustained**

APD Final
Determination: **Sustained**

CPRB No. 19-04/OPS No. C04-389 [monitor appointed]

Nature of the Allegation(s): 1) Unprofessional Conduct - two Albany police officers harassed the complainant's son on three occasions;

2) Arrest Authority and Procedures - the complainant's son was wrongfully arrested for driving with a suspended license; *and*

3) Call Handling (Improper Detention and Search) - during the traffic stop, an officer handcuffed the complainant's son, pulled him out of the car, and proceeded to search the car without probable cause; and let the front seat passenger leave with an appearance ticket for littering, although there was an outstanding warrant for the passenger's arrest.

OPS Preliminary
Findings: 1) **Unfounded** as to the unprofessional conduct allegation;

2) **Exonerated** as to the arrest authority and procedures allegation; *and*

3) **Exonerated** as to the call handling allegation.

- CPRB Findings:
- 1) **Unfounded** as to the unprofessional conduct allegation;
 - 2) **Exonerated** as to the arrest authority and procedures allegation; *and*
 - 3) **Exonerated** as to the call handling allegation.

- APD Final Determination:
- 1) **Unfounded** as to the unprofessional conduct allegation;
 - 2) **Exonerated** as to the arrest authority and procedures allegation; *and*
 - 3) **Exonerated** as to the call handling allegation.

CPRB No. 22-04/OPS No. C04-437

Nature of the Allegation(s): Call Handling (Neglect of Duties) - an Albany police officer, responding to an auto accident that the complainant was involved in, “never asked [the complainant] what happened concerning the accident”; was rude in speaking to her; “was not concerned about how and who was injured” in the complainant’s car; did not give the complainant “a chance to speak on [her] behalf about what happened”; and later argued with her and refused to amend the report to reflect both sides.

OPS Preliminary Finding: **Unfounded**

CPRB Finding: **Unfounded**

APD Final Determination: **Unfounded**

CPRB No. 23-04/OPS No. C04-454 [monitor appointed]

Nature of the Allegation(s):

- 1) Call Handling (Neglect of Duties) - Albany police detectives ignored the complainant’s criminal complaint against her mother for identity theft; *and*
- 2) Call Handling (Neglect of Duties) - when the complainant attempted to file a complaint against the detective assigned to her criminal complaint, the OPS would not allow her to do so and referred her to her mother’s attorney.

OPS Preliminary Findings: **Unfounded** as to both call handling allegations.

CPRB Findings: **Unfounded** as to both call handling allegations.

APD Final Determination: **Unfounded** as to both call handling allegations.

MEETINGS

The Board met as a whole three times for the conduct of business during the first quarter. Meetings were held on November 15, 2004; December 13, 2004; and January 10, 2005. Two of the three meetings were held at the Albany Public Library, 161 Washington Avenue, in the Large Auditorium. The third meeting was held at Albany Law School, 80 New Scotland Avenue, in the Dean Alexander Moot Courtroom (Room 421). There was a public comment period at each meeting.

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 response to the CPRB's recommendation for additional training of the officer identified in CPRB No. 12-04/OPS No. C04-317, Police Chief James E. Turley reported, in his letter of October 27, 2004, that he has taken the Board's recommendation under advisement and agreed to discuss the Board's recommendation with his command staff to review training methods for all officers of the Albany Police Department (APD).

Standing Monthly Meeting with the APD

During the first quarter of 2005, the Police Department Policy Review/Recommendations Committee coordinated a standing monthly meeting with Chief Turley and Assistant Chief Paula Breen, scheduled to take place one-hour prior to the start of the Board's regular monthly meetings, from 5:00 p.m. to 6:00 p.m. at the Albany Public Library. These meetings will provide an opportunity for the CPRB and the APD to review, and discuss the development of, Department practices, policies and procedures.

On January 24, 2005, the first meeting of the policy committee, Chief Turley, and Assistant Chief Breen was held. Committee Chair Jason Allen and Committee member Judith Mazza were in attendance. There was a brief discussion about the current policies and procedures in development and/or in the process of being reviewed by the APD.

TRAINING

Section 42-339 of Chapter 42, Part 33 of the Albany City Code requires that “the Government Law Center . . . provide, to CPRB members, and the members . . . undergo continuing education . . .”

New Member Orientation

In November and December of 2004, new Board members Jason Allen, Ronald Flagg, and Reverend Beresford Bailey and Board members Barbara Gaige, Marilyn Hammond, Judith Mazza, Herman Thomas, and Paul Weafer attended and participated in the Board’s orientation program, comprising two three-hour training sessions. The first three-hour session included training on the CPRB Legislation, By-Laws, and Rules of Procedure; the complaint review process; the Board’s public education and community outreach program; and the role of the Government Law Center as administrative staff. In the second three-hour session, new members received training on the Open Meetings Law, the Freedom of Information Law, and Section 50-a of the New York Civil Rights Law; the Albany Police Department’s internal affairs function - the duties and responsibilities of the Office of Professional Standards; and the role of the Board’s monitors/investigators in the process of complaint review.

The orientation program was coordinated and facilitated by the Government Law Center to educate the three new members about the Board’s organization and operation and included training on the goals, powers, and procedures of the Board as required by Section 42-339 of Chapter 42, Part 33 of the Albany City Code. Orientation trainers included members of the GLC staff; members of the Board; Robert Freeman, Esq., Executive Director of the New York State Committee on Open Government; Detectives Arthur Shade and Kathy Hendrick of the Office of Professional Standards; and Board monitors/investigators Richard Lenihan and Albert Lawrence, Esq.

New Member Citizen Police Academy

On January 24, 2005, new Board members Jason Allen, Reverend Beresford Bailey, and Ronald Flagg attended the first of four three-hour citizen police academy training sessions. The session included **an overview of the Albany Police Department, including its command structure**. A special session of the citizen police academy was coordinated by Assistant Chief Paula Breen to assist these new members in complying with the requirements of Section 42-339 of Chapter 42, Part 33 of the Albany City Code. The remaining three special sessions of the Academy are scheduled for February 7th, April 4th, and April 25th of 2005.

Organizational Training

On November 29, 2004, Board members participated in a two-hour organizational training session, at which the Board received a training update on the CPRB Legislation, By-Laws, and Operating Procedures; discussed national examples of successful citizen-police oversight mediation programs and methods for building upon and improving public education and outreach initiatives; and addressed categories of information that could be used to track officers who are the subject of multiple complaints. During the session, a new committee structure was

established, and committee membership and works in progress were identified.

REPORTS

The Board received a copy of Professor Robert Worden's most recent report, "Citizen Oversight of the Albany Police Department: Perceptions of Police Clients and Complainants, 2003."

The Board voted unanimously to approve its Fourth Quarterly Report for 2004 prepared by the Government Law Center.

GOVERNMENT LAW CENTER

During the first quarter of 2005, 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:

- Met with Acting Chairman, Herman Thomas, and Barbara Gaige, Chair of the Committee on Complaint Review, to discuss outstanding and active complaints requiring guidance and/or input from the Corporation Counsel's office and the OPS; new Board member orientation; Board organization; outstanding policy review/recommendations/requests; public education/community outreach initiatives; and training.
- Updated the Board's orientation program, and coordinated and conducted orientation training of the Board's three new members, which included preparing the orientation agenda; scheduling the sessions; compiling and creating material for a 565 page updated training manual (*see appended Orientation Program Table of Contents*); securing orientation trainers; and serving as the orientation facilitator.
- Coordinated new member citizen police academy training sessions and forwarded the training schedule to the Board, Assistant Chief Breen, and Assistant Corporation Counsel Patrick Jordan.
- At the Board's request, drafted a request for further investigation of CPRB No. 8-04/OPS No. C04-203 for Board review and approval.
- At the Board's request, drafted correspondence to Assistant Chief Breen and Assistant Corporation Counsel Patrick Jordan, with a copy to Chief Turley, regarding the Police Department's redaction/exclusion of officer race/ethnicity and gender information from complaint forms and complaint-related documents, for Board review and approval.
- At the Board's request, compiled materials on best practices in citizen-police oversight mediation for forwarding to the APD and Union representatives.

- At the request of the Acting Chair, drafted a “Report from the Acting Chair” for the December 13, 2004 meeting. The report was a summary of the Board’s new committee structure, and included committee membership and works in progress.
- Drafted correspondence, on behalf of the Board’s Chair, in response to complaint against a member of the Watervliet Police Department, explaining that the Board does not have jurisdiction to review complaints of misconduct against members of departments outside of the City of Albany.
- Forwarded, to the Board, correspondence from Chief Turley in response to the Board’s recommendation for additional training of the officer identified in CPRB No. 12-04/OPS No. C04-317.
- Forwarded, to the Board, correspondence from Chief Turley regarding CPRB No. 29-02 and CPRB No. 5-04.
- Forwarded, to the Board, an invitation from the Executive Director of the Capital Region Chapter of the New York Civil Liberties Union (NYCLU), Melanie Trimble, inviting the Board to attend a policy meeting of the Police Department, the Center for Law and Justice, and the Capital Region NYCLU to discuss issues involved in establishing policies for the Department with regard to the use of cameras in patrol cars.
- Forwarded, to the Board, correspondence from Ms. Trimble, notifying the Board that the Capital Region NYCLU is preparing a study of how the Albany Police Department and the Board deal with mentally ill individuals.
- Forwarded, to the Board, updated contact information for members of the Board and the Board’s monitors/investigators.
- Responded to two requests made to GLC staff for legal assistance.

In addition, the Center performed the following administrative tasks:

- Arranged logistics for and coordinated the first meeting and standing monthly meetings of the Police Department Policy Review/Recommendations Committee, including securing dates, times, and locations for each meeting, and providing notice to committee members, Chief Turley, and Assistant Chief Breen;
- 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 and **one committee meeting**;
- 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, suspended, 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 first 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 a very active first quarter, which included electing new Board officers; reviewing the Common Council's proposed amendments to the CPRB Legislation; attending the

Public Safety Committee's meeting where the proposals were discussed; reviewing one-half of its active complaints; holding three regular monthly meetings; establishing a new committee structure; assisting the GLC in updating the CPRB orientation program and materials; attending and participating in new member orientation training sessions; and coordinating regular monthly meetings with Chief Turley, Assistant Chief Breen, and the **Police Department Policy Review/Recommendations Committee**.

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: February 1, 2005