

# City of Albany

## CITIZENS' POLICE REVIEW BOARD

### **Fourth Quarterly Report November 1, 2007**

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



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

November 1, 2007

**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 2007.

## **DEFINITIONS**

For purposes of this report, the following words and phrases shall have the meaning described in this report:

**COMPLAINT** – A written statement concerning police conduct which is either submitted to the Citizens' Police Review Board for filing with the Albany Police Department or filed directly with the Albany Police Department.

**CPRB or BOARD** – The Citizens' Police Review Board.

**GOVERNMENT LAW CENTER** – The Government Law Center of Albany Law School.

**MEDIATION** – A structured dispute resolution process in which a neutral third party assists the disputants to reach a negotiated settlement of their differences.

**OFFICER** – Any sworn police officer of the City of Albany Police Department affected by a citizen complaint.

**OFFICE OF PROFESSIONAL STANDARDS** – The Professional Standards Unit of the City of Albany Police Department.

## **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 2007:

Jason Allen	James Malatras	Hon. Fowler Riddick
Mauri Davis Lewis	John Paneto	
Daniel Fitzgerald	Andrew Phelan, Jr.	
Ronald Flagg	Anthony Potenza	

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

Chair	Jason Allen
Vice-Chair	Hon. Fowler Riddick
Secretary	Ronald Flagg

*Appointments, Reappointments, and Resignations*

In correspondence dated August 21, 2007, City of Albany Mayor Gerald D. Jennings reappointed Daniel Fitzgerald to serve a three-year term, which will expire on October 26, 2010. Daniel Fitzgerald was appointed on October 10, 2006 as a member of the Board by Mayor Jennings to fulfill the remainder of former member Reverend Beresford Bailey's term which expired on October 26, 2007.

In correspondence dated September 24, 2007 to City of Albany Mayor Gerald D. Jennings, Board member Mauri Davis Lewis announced her resignation from the Board effective immediately.

*Committees and Task Forces*

The following committees and task forces were operational in the fourth quarter of 2007:

<i>By-Laws and Rules</i>	Jason Allen (Chair) James Malatras Hon. Fowler Riddick
<i>Community Outreach</i>	James Malatras (Chair) Jason Allen ( <i>ex-officio</i> ) Mauri Davis Lewis John Paneto Hon. Fowler Riddick
<i>Complaint Review</i>	Andrew Phelan, Jr. (Chair) Jason Allen Daniel Fitzgerald Ronald Flagg James Malatras John Paneto Anthony Potenza Hon. Fowler Riddick
<i>Mediation</i>	Jason Allen (Chair)
<i>Police Department Liaison-</i>	Daniel Fitzgerald (Chair)

<i>Policy Review/ Recommendations</i>	Jason Allen ( <i>ex-officio</i> ) James Malatras Anthony Potenza
<i>Public Official Liaison</i>	Ronald Flagg (Co-Chair) Jason Allen (Co-Chair) Andrew Phelan, Jr. Anthony Potenza
<i>Monitors</i>	James Malatras (Chair) Jason Allen ( <i>ex-officio</i> )

The following occurred during the fourth quarter of 2007:

### **COMMUNITY OUTREACH**

On August 29, 2007, the committee met to discuss its outreach initiatives, its brochure, and its website. At that meeting, the committee agreed to implement a new program to enable the Board to work closely with each and every neighborhood association in the City of Albany. The purpose of this program is to identify an interested community member from each neighborhood association who would serve as the liaison between the Board and the neighborhood association.

### **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, will be responsible for the presentation of a particular complaint to the Board at its monthly meetings as assigned by the Chair of the Committee. Eight (8) complaints were presented and reviewed in the fourth quarter of 2007.

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

September 2007	Daniel Fitzgerald, Mauri Davis Lewis, Andrew Phelan, Jr., and Anthony Potenza.
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October 2007	Jason Allen, James Malatras, John Paneto, and Andrew Phelan, Jr.
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### **COMPLAINT SUMMARIES AND STATISTICS**

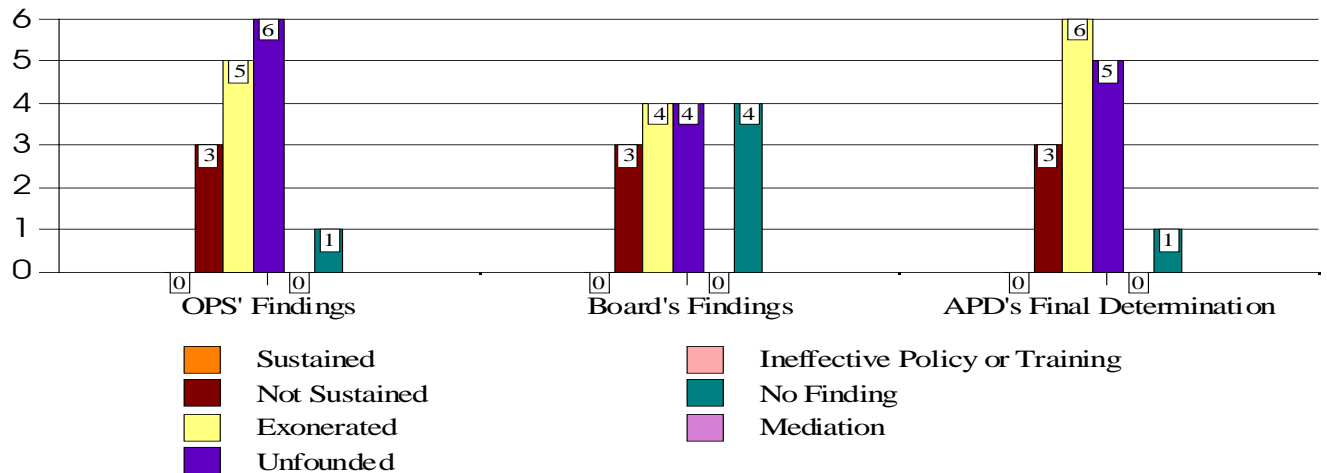
Section 42-340C of Chapter 42, Part 33 of the Albany City Code charges the Board with providing “statistics and summaries of citizen complaints, including a comparison of [its] findings with the final determinations of the [Police] Department.”

During the fourth quarter of 2007, the Board received nine (9) new complaints in addition to its twenty-six (26) active complaints and seven (7) suspended complaints. Monitors were

appointed to investigate two (2) of the nine (9) new complaints. Of the thirty-five (35) complaints before the Board, the Board presented eight (8) complaints for review and rendered findings for the allegation(s) contained in six (6) complaints. These eight (8) complaints contained a total of twenty-one (21) allegations of misconduct. Of the eight (8) complaints reviewed, Board action was taken on two (2) complaints. These actions included the Board voting unanimously to table rendering its findings and forwarding the complaint to the Chief for review; requesting that the OPS conduct a more thorough and complete investigation of the complaint; and referring a complaint to mediation.

As to the six (6) complaints where findings were rendered, the Board made findings consistent with the preliminary findings of the Office of Professional Standards and the Albany Police Department in five (5) of the six (6) cases. These six (6) complaints contained a total of fifteen (15) allegations of misconduct.

Figure 1 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 and the Albany Police Department's final determinations.



**Figure 1:** Comparison of Findings Made by the OPS, the Board, and the Albany Police Department during the Fourth Quarter of 2007.

The following is a summary of all eight (8) complaints reviewed by the Board:

**CPRB No. 4-05/OPS No. C05-63** [no monitor appointed]

Nature of the Allegation(s): Call Handling (Improper Stop, Detention, & Questioning) - while walking back to her house after meeting "her significant other," the complainant was improperly stopped, detained, and questioned by Albany police officers.

OPS Preliminary Finding(s): **Exonerated**

CPRB Action(s): At its May 9, 2005 meeting, the Board voted unanimously, pursuant to its authority under § 42-323(F)(4) of the City Code, to refer the complaint to the Chief for review and consideration of whether the case would be appropriate for mediation and whether or not the officer(s) would be willing to mediate the complaint. Correspondence was sent to Chief James Turley on May 31, 2005, referring the complaint to mediation and requesting the Chief's review and consideration.

At its April 10, 2007 meeting, the Board tabled the review of this complaint to provide the Government Law Center with an opportunity to locate the complainant and see if she would be interested in mediation.

At its June 12, 2007 meeting, the Board tabled the review of this complaint pending the outcome of the mediation program.

At its September 11, 2007 meeting, the Board tabled the review of this complaint until the mediation program begins in January 2008.

**CPRB No. 35-06/OPS No. C06-572** [monitor appointed]

Nature of Allegation(s):

- 1) Property Handling - during a traffic stop, an officer asked the complainant for her driver's license, so she gave him her ID wallet and checkbook and it was not returned to her;
- 2) Firearms Use - the officer had his gun out as he approached the complainant's vehicle; *and*
- 3) Conduct Standards - the officer caused the car door to hit the complainant's leg, threatened to arrest the complainant if she got out of the car, and was rude and swore at the complainant.

OPS Preliminary Finding(s): 1) **Not Sustained** as to the property handling allegation;

2) **Not Sustained** as to the firearms use allegation; *and*

3) **Exonerated** as to the conduct standards allegation.

CPRB Finding(s): 1) **Not Sustained** as to the property handling allegation;

2) **Not Sustained** as to the firearms use allegation; *and*

3) **Exonerated** as to the conduct standards allegation.

APD Final Determination(s): 1) **Not Sustained** as to the property handling allegation;

2) **Not Sustained** as to the firearms use allegation; *and*

3) **Exonerated** as to the conduct standards allegation.

**CPRB No. 37-06/OPS No. C06-683** [monitor appointed]

Nature of Allegation(s):

1) Excessive Use of Force - during an arrest by the Albany police, the complainant sustained injuries and was tortured by the officers who put their fingers two inches into his throat; drove his face to the concrete with a foot; kned him in his lower back; and rubbed his face in someone else's vomit;

2) Call Handling - the complainant was denied medical attention; *and*

3) Call Handling - when taken into custody, the complainant was never read his rights or told that he was being arrested.

OPS Preliminary Finding(s): 1) **Unfounded** as to the excessive use of force allegation;

2) **Exonerated** as to the first call handling allegation; *and*

3) **Unfounded** as to the second call handling allegation.

CPRB Finding(s): 1) **No Finding** as to the excessive use of force allegation;

2) **No Finding** as to the first call handling allegation; *and*

3) **No Finding** as to the second call handling allegation.

APD Final Determination(s): 1) **Unfounded** as to the excessive use of force allegation;



2) **Exonerated** as to the first call handling allegation; *and*

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

**CPRB No. 38-06/OPS No. C06-709** [monitor appointed]

Nature of the Allegation(s): 1) Conduct Standards - while at the complainant's parole hearing the officers were untruthful in their testimony;

2) Use of Force - the officers assaulted the complainant by punching and kicking him;

3) Arrest Authorities and Procedures - the complainant was charged with a bogus case; *and*

4) Conduct Standards - the officers stated "this if for Frank" and "his other family members are going down."

OPS Preliminary Finding(s): 1) **Unfounded** as to the first conduct standards allegation;

2) **Unfounded** as to the use of force allegation;

3) **Exonerated** as to the arrest authorities and procedures allegation; *and*

4) **Not Sustained** as to the second conduct standards allegation.

CPRB Finding(s): 1) **Unfounded** as to the first conduct standards allegation;

2) **Unfounded** as to the use of force allegation;

3) **Exonerated** as to the arrest authorities and procedures allegation; *and*

4) **Not Sustained** as to the second conduct standards allegation.

APD Final Determination(s): 1) **Unfounded** as to the first conduct standards allegation;

2) **Unfounded** as to the use of force allegation;

3) **Exonerated** as to the arrest authorities and procedures allegation; *and*

4) **Not Sustained** as to the second conduct standards allegation.

**CPRB No. 6-07/OPS No. C07-127** [monitor appointed]

Nature of the Allegation(s): 1) Call Handling - while the complainant was working at two rental properties, officers asked the complainant for his ID and handcuffed him;

2) Use of Force - officers grabbed the complainant, jammed the complainant's left shoulder into the garage wall and shoved the complainant's right hand into the rose bushes; *and*

3) Arrest Authorities and Procedures - detained the complainant in handcuffs for an hour and a half.

OPS Preliminary Finding(s): 1) **Exonerated** as to the call handling allegation;

2) **Exonerated** as to the use of force allegation; *and*

3) **Unfounded** as to the arrest authorities and procedures allegation.

CPRB Finding(s): 1) **Exonerated** as to the call handling allegation;

2) **Exonerated** as to the use of force allegation; *and*

3) **Unfounded** as to the arrest authorities and procedures allegation.

APD Final Determination(s): 1) **Exonerated** as to the call handling allegation;

2) **Exonerated** as to the use of force allegation; *and*

3) **Unfounded** as to the arrest authorities and procedures allegation.

**CPRB No. 9-07/OPS No. C07-272** [no monitor appointed]

Nature of the Allegation(s): 1) Conduct Standards - the officer presented a false statement to the Grand Jury resulting in an indictment against the complainant;

2) Conduct Standards - the officer used his power to oppress and harass him;

3) Conduct Standards - the officer "set the complainant up" after the complainant refused to set up another person for the officer;

4) Conduct Standards - a supervisor conspired with an officer to manipulate a woman to lie about the complainant, in exchange for letting her go; *and*

5) Conduct Standards - the supervisor admitted to two other individuals that they set the complainant up for a sale.

OPS Preliminary Finding(s): 1) **Unfounded** as to the first conduct standards allegation;  
2) **Unfounded** as to the second conduct standards allegation;  
3) **Not Sustained** as to the third conduct standards allegation;  
4) **Unfounded** as to the fourth conduct standards allegation; *and*  
5) **Unfounded** as to the fifth conduct standards allegation.

CPRB Action(s): At its September 11, 2007 meeting, the Board decided not to render a finding pursuant to Section 42-344(A) of the law, until the complainant's court proceedings are concluded.

**CPRB No. 13-07/OPS No. C07-282** [monitor appointed]

Nature of Allegation(s): Use of Force - during complainant's arrest, a State trooper punched and kicked the complainant, and other officers joined the trooper and continued to beat the complainant.

OPS Preliminary Finding(s): **Unfounded**

CPRB Finding(s): At its October 9, 2007 meeting, the Board voted unanimously to close the complaint as "**Unfounded**" and to send a letter to the State Police regarding its concerns about the complainant's allegations against the State trooper.

APD Final Determination(s): **Unfounded**

**CPRB No. 14-07/OPS No. C07-320** [no monitor appointed]

Nature of Allegation(s): Conduct Standards - while standing on a corner with some friends, APD detectives took the complainant's mother's Schwinn bike and put it in the trunk of their car.

OPS Preliminary Finding(s): **No Finding**

CPRB Finding(s): **No Finding**

APD Final Determination(s): **No Finding**

## **DEFINITION OF CPRB FINDINGS**

Section 42-344A of Chapter 42, Part 33 of the Albany City Code charges the Board with, after review and deliberation of an investigation, shall, by majority vote, make one of the following findings on the case:

(1) *Sustained* – where the review discloses sufficient facts to prove the allegations made in the complaint.

(2) *Not Sustained* – where the review fails to disclose sufficient facts to prove or disprove the allegation made in the complaint.

(3) *Exonerated* – where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper.

(4) *Unfounded* – where the review shows that the act or acts complained [of] did not occur or were misconstrued.

(5) *Ineffective Policy or Training* – where the matter does not involve guilt or lack thereof, but rather ineffective departmental policy or training to address the situation.

(6) *No Finding* – where, for example, the complaint failed to produce information to further the investigation; or where the investigation revealed that another agency was responsible and the complaint or complainant has been referred to that agency; or where the complainant withdrew the complaint; or where the complainant is unavailable to clarify the complaint; or where the officer is no longer employed by the City.

(7) *Mediation* – where the complaint is resolved by mediation.

## **MEDIATION**

During the fourth quarter of 2007, several Board members attended meetings with Executive Director of Mediation Matters Peter Glassman, the APD's command staff, Chief James Tuffey, and APD union representatives to discuss expectations for the CPRB's mediation program.

## **TASK FORCE ON MONITORS**

At its September 11, 2007 meeting, Board member James Malatras agreed to serve as Chair of the Task Force on Monitors. Mr. Malatras continued his review of the monitors protocol which included feedback and suggestions from the monitors.

## **MEETINGS**

The Board met as a whole two times for the conduct of business during the fourth quarter. Meetings were held on September 11, 2007 and October 9, 2007. The meetings were held at the Albany Public Library, 161 Washington Avenue, in the Large Auditorium. There was a public comment period at each meeting.

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

## **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 . . .”

The 13<sup>th</sup> Annual Conference of the National Association for Civilian Oversight of Law Enforcement (NACOLE) was held in San Jose, California from September 24-28, 2007. The conference, entitled “Transparency, Accountability, Integrity,” featured workshops on: examining the credibility of witnesses; police performance auditing; use of force investigations; oversight of prisons and law enforcement; awareness of transgender issues; investigative journalism; oversight of agency statistical reports; conducting police misconduct hearings & appeals; mediation of citizen complaints against the police; police reform & public confidence; and dealing with police corruption. Board members John Paneto and Andrew Phelan, Jr., and Board coordinator Sharmaine Moseley were in attendance at the conference.

## **REPORTS**

At its September 11, 2007 meeting, the Board voted unanimously to approve its Annual Report for 2006, prepared and submitted by the Government Law Center.

## **GOVERNMENT LAW CENTER**

During the fourth quarter of 2007, 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:

- Arranged logistics for and attended meetings with Board, Mediation Matter’s Executive Director Peter Glassman, and APD staff regarding the CPRB mediation program.
- Received and forwarded to the Board the resignation letter of Board member Mauri Davis Lewis.

- Received and forwarded certificates of achievement to the Board members who graduated from the APD Citizen Police Academy during the third quarter of 2007.
- Drafted and forwarded correspondence to Chief James Tuffey requesting the APD's final determinations for complaints reviewed by the Board.
- Forwarded correspondence to the Board from Chief James Tuffey on the APD's final determinations for complaints reviewed by the Board.
- Forwarded draft of CPRB brochure to the Board for review.
- Attended the 13<sup>th</sup> Annual NACOLE Conference in September 2007.
- Forwarded correspondence to the Board from NACOLE regarding designating a CPRB member to exercise the Board's vote at the NACOLE annual conference.
- Drafted and forwarded correspondence to NACOLE regarding the Board member designated to exercise the CPRB's vote at its annual conference.
- Drafted and forwarded to the Board for its approval, the Board's 2006 Annual Report.
- Forwarded the Board's 2006 Annual Report to its members, City of Albany public officials, and residents.
- Drafted and forwarded correspondence to the City of Albany Neighborhood Associations regarding the Board's new program.
- Forwarded correspondence received from the City of Albany Neighborhood Associations to the Board.
- Participated in continued training by Albany Law School's Computer Resources staff on using Microsoft Access for tracking complaints.
- Updated and forwarded to the Board and the OPS, a complaint status report chart which included: the CPRB number; the OPS number; the complainant's name; the date the complaint was filed; the Board member assigned to review the complaint; a summary of the complaint; information regarding the appointment of a monitor; and the status of the complaints.

In addition, the Center performed the following administrative tasks:

- Arranged logistics for and coordinated two (2) regular monthly meetings, including: securing dates, times, and locations for each meeting, and providing notice to the affected parties and to the public;
- Arranged logistics for and coordinated four (4) mediation committee meetings, including: securing date, time, location, and preparing meeting materials;
- Arranged logistics for one (1) community outreach committee meeting, including: securing date, time, location, providing notice to the members, and preparing meeting materials;
- 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 two (2) regular monthly meetings and five (5) committee 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, 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 second 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;
- Forwarded complainant related correspondence to Board members;
- Updated and maintained the Board's website to include new meeting minutes and annual report for 2006;
- Maintained regular communications with Board members, the Police Department, and the Corporation Counsel's Office; *and*
- Answered inquiries from the community and the media about the Board and the complaint review process.

## CONCLUSION

The Board had a very active third quarter, which included; participating in five (5) committee meetings; continuing its efforts on the development of the CPRB Mediation Program and community outreach program; holding two (2) regular monthly meetings; attending the annual NACOLE Conference; and reviewing complaints.

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, 2007