

City of Albany

CITIZENS' POLICE REVIEW BOARD

Fourth Quarterly Report October 31, 2008

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

October 31, 2008

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 2008.

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 2008:

Jason Allen**

Daniel Fitzgerald

Ronald Flagg

Hon. Fowler Riddick**

John Paneto

Andrew Phelan, Jr.

Anthony Potenza**

Reverend Edward Smart

***term expired in October 2008*

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

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

Appointments, Re-appointments, and Resignations

In October 2008, the Albany Common Council re-appointed Chairman Jason Allen and Anthony Potenza in October to serve three-year terms, which will expire on October 26, 2011. Mayoral appointee Fowler Riddick decided that he would not seek another term.

Committees and Task Force

The following committees and task force were operational in the fourth quarter of 2008:

<i>By-Laws and Rules</i>	Jason Allen (Chair) Hon. Fowler Riddick
<i>Community Outreach</i>	John Paneto (Chair) Reverend Edward Smart (Co-chair) Jason Allen (<i>ex-officio</i>) Hon. Fowler Riddick
<i>Complaint Review</i>	Andrew Phelan, Jr. (Chair) Jason Allen Daniel Fitzgerald Ronald Flagg Hon. Fowler Riddick John Paneto Anthony Potenza Reverend Edward Smart
<i>Mediation</i>	Jason Allen (Chair)
<i>Police Department Liaison- Policy Review/ Recommendations</i>	Daniel Fitzgerald (Chair) Jason Allen (<i>ex-officio</i>) Anthony Potenza
<i>Public Official Liaison</i>	Ronald Flagg (Co-Chair) Jason Allen (Co-Chair) Anthony Potenza Andrew Phelan, Jr.
<i>Monitors</i>	Jason Allen (<i>ex-officio</i>)

The following occurred during the fourth quarter of 2008:

BY-LAWS AND RULES/MEDIATION

During the fourth quarter of 2008, the Board agreed to follow-up with Police Chief James Tuffey regarding the status of the mediation program.

COMMUNITY OUTREACH

In October 2008, the Community Outreach Committee met. At that meeting, the committee agreed to post pictures of its Board onto the CPRB website. The committee also agreed to schedule additional community outreach meetings to continue educating the community on the complaint review process.

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. Ten (10) complaints were presented and reviewed in the fourth quarter of 2008.

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

August 2008	Ronald Flagg, John Paneto, Andrew Phelan, Jr., Anthony Potenza, and Hon. Fowler Riddick.
September 2008	Ronald Flagg, John Paneto, Andrew Phelan, Jr., Anthony Potenza, and Hon. Fowler Riddick.
October 2008	Daniel Fitzgerald, John Paneto, Andrew Phelan, Jr., Anthony Potenza, and Reverend Edward Smart.

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 2008, the Board received twenty (20) new complaints in addition to its fifty-five (55) active complaints. Monitors were appointed to investigate three (3) of the twenty (20) new complaints. In the beginning of the fourth quarter of 2008, eleven (11) complaints were suspended from review. During the fourth quarter of 2008, the Mayor lifted the suspension of five (5) of those eleven (11) suspended complaints. Those five (5) suspended

complaints were carried over from previous quarters. At the end of the fourth quarter of 2008, six (6) complaints remained suspended from review. Of the seventy-five (75) complaints before the Board, the Board presented ten (10) complaints for review and rendered findings for the allegation(s) contained in all ten (10) complaints. These ten (10) complaints contained a total of twenty-nine (29) allegations of misconduct.

As to the ten (10) complaints reviewed, the Board made a finding that was consistent with the preliminary findings of the Office of Professional Standards in all cases. The findings of the Albany Police Department for these ten (10) complaints were consistent with the Board's findings in all cases.

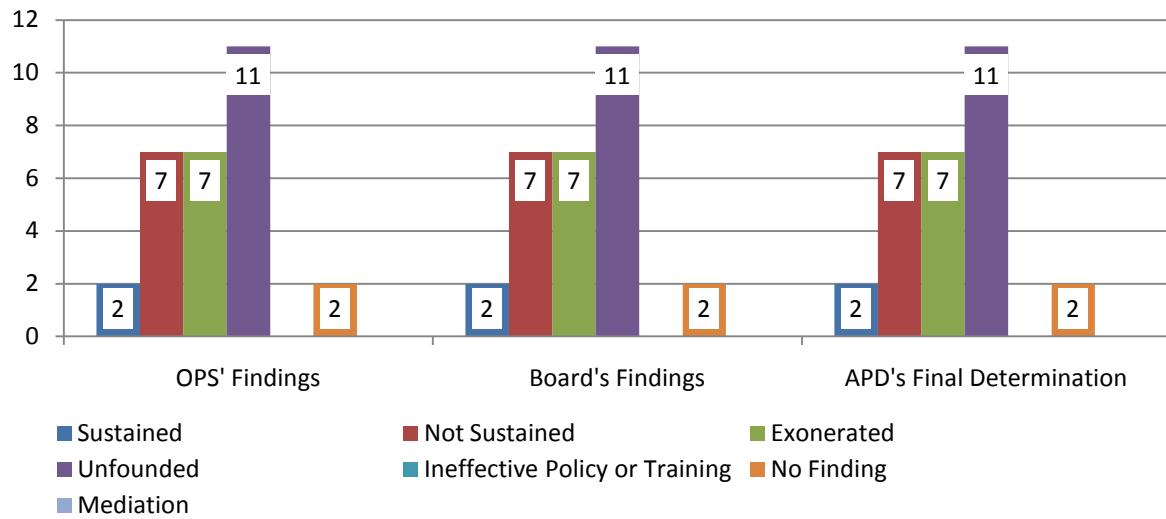


Figure 1: Comparison of Findings Made by the OPS, the Board, and the Albany Police Department during the Fourth Quarter of 2008.

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. The following is a summary of those complaints:

CPRB No. 28-07/OPS No. C07-678 [monitor appointed]

Nature of the Allegation(s): 1) Conduct Standards - complainant was racially profiled when the complainant passed a drug house;

2) Call Handling – officers violated complainant's civil rights when the officers searched the complainant;

- 3) Conduct Standards – one of the officers pulled the complainant’s hat down over the complainant’s eyes and then squeezed the complainant’s face; *and*
- 4) Conduct Standards – when the officer removed the complainant from the police car, the officer pulled on the complainant’s shirt and broke the complainant’s chain.

OPS Preliminary Finding(s): 1) **Not Sustained** as to the first conduct standards allegation;

2) **Not Sustained** as to the call handling allegation;

3) **Not Sustained** as to the second conduct standards allegation; *and*

4) **Sustained** as to the third conduct standards allegation.

CPRB Finding(s):

- 1) **Not Sustained** as to the first conduct standards allegation;
- 2) **Not Sustained** as to the call handling allegation;
- 3) **Not Sustained** as to the second conduct standards allegation; *and*
- 4) **Sustained** as to the third conduct standards allegation.

APD Final Determination(s): 1) **Not Sustained** as to the first conduct standards allegation;

2) **Not Sustained** as to the call handling allegation;

3) **Not Sustained** as to the second conduct standards allegation; *and*

4) **Sustained** as to the third conduct standards allegation.

CPRB No. 29-07/OPS No. C07-700 [monitor appointed]

Nature of the Allegation(s):

- 1) Arrest Authorities & Procedures – officers wrongfully stopped, searched, and arrested the complainant;
- 2) Conduct Standards – an officer reached inside of the complainant’s pants. Rather than the officer doing a pat-down search, the officer searched inside the complainant’s clothing; *and*
- 3) Use of Force – officers threw the complainant to the ground and handcuffed him so tightly that he had abrasions on his wrists.

OPS Preliminary Finding(s): 1) **Exonerated** as to the arrest authorities & procedures allegation;
2) **Unfounded** as to the conduct standards allegation; *and*
3) **Unfounded** as to the use of force allegation.

CPRB Finding(s): 1) **Exonerated** as to the arrest authorities & procedures allegation;
2) **Unfounded** as to the conduct standards allegation; *and*
3) **Unfounded** as to the use of force allegation.

APD Final Determination(s): 1) **Exonerated** as to the arrest authorities & procedures allegation;
2) **Unfounded** as to the conduct standards allegation; *and*
3) **Unfounded** as to the use of force allegation.

CPRB No. 5-08/OPS No. C08-83 [monitor appointed]

Nature of the Allegation(s): 1) Conduct Standards – officers, without reasonable suspicion, jumped out of their vehicles and approached the complainant;
2) Conduct Standards – the officers harassed the complainant;
3) Conduct Standards – the officers patted down the complainant and did not find any drugs on the complainant; *and*
4) Use of Force – one of the officers physically pushed the complainant to the ground for no reason.

OPS Preliminary Finding(s): 1) **Exonerated** as to the first conduct standards allegation;
2) **Exonerated** as to the second conduct standards allegation;
3) **Exonerated** as to the third conduct standards allegation; *and*
4) **Unfounded** as to the use of force allegation.

CPRB Finding(s): 1) **Exonerated** as to the first conduct standards allegation;
2) **Exonerated** as to the second conduct standards allegation;
3) **Exonerated** as to the third conduct standards allegation; *and*

4) **Unfounded** as to the use of force allegation.

APD Final Determination(s): 1) **Exonerated** as to the first conduct standards allegation;
2) **Exonerated** as to the second conduct standards allegation;
3) **Exonerated** as to the third conduct standards allegation; *and*
4) **Unfounded** as to the use of force allegation.

CPRB No. 6-08/OPS No. C08-139 [monitor appointed]

Nature of the Allegation(s): 1) Conduct Standards – officers illegally stopped, questioned, and accused the complainant of breaking into cars;
2) Conduct Standards – officers harassed and illegally searched the complainant; *and*
3) Conduct Standards – an officer continued to harass the complainant for no reason.

OPS Preliminary Finding(s): 1) **Unfounded** as to the first conduct standards allegation;
2) **Unfounded** as to the second conduct standards allegation; *and*
3) **Unfounded** as to the third conduct standards allegation.

CPRB Finding(s): 1) **Unfounded** as to the first conduct standards allegation;
2) **Unfounded** as to the second conduct standards allegation; *and*
3) **Unfounded** as to the third conduct standards allegation.

APD Final Determination(s): 1) **Unfounded** as to the first conduct standards allegation;
2) **Unfounded** as to the second conduct standards allegation; *and*
3) **Unfounded** as to the third conduct standards allegation.

CPRB No. 24-08/OPS No. C08-270 [monitor appointed]

Nature of the Allegation(s): 1) Conduct Standards – an officer tried to provoke a fight with the complainant by yelling in the complainant's face; *and*
2) Use of Force – the officer pushed the complainant in the chest.

OPS Preliminary Finding(s): 1) **Not Sustained** as to the conduct standards allegation; *and*
2) **Not Sustained** as to the use of force allegation.

CPRB Finding(s): 1) **Not Sustained** as to the conduct standards allegation; *and*
2) **Not Sustained** as to the use of force allegation.

APD Final Determination(s): 1) **Not Sustained** as to the conduct standards allegation; *and*
2) **Not Sustained** as to the use of force allegation.

CPRB No. 27-08/OPS No. C08-289 [monitor appointed]

Nature of the Allegation(s): Conduct Standards – an officer ignored the complainant's brother while the brother was badly injured and being chased by three men.

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

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

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

CPRB No. 28-08/OPS No. C08-297 [monitor appointed]

Nature of the Allegation(s): 1) Conduct Standards – officers were unprofessional by scolding a witness;
2) Call Handling – officers refused to file charges against the other person for assaulting the complainant; *and*
3) Conduct Standards – officers were rude to the complainant when they told the complainant to go back to Amsterdam, or the complainant will be arrested for starting a fight.

OPS Preliminary Finding(s): 1) **Unfounded** as to the first conduct standards allegation;
2) **Unfounded** as to the call handling allegation; *and*
3) **Unfounded** as to the second conduct standards allegation.

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

3) **Unfounded** 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 call handling allegation; *and*

3) **Unfounded** as to the second conduct standards allegation.

CPRB No. 35-08/OPS No. C08-311 [monitor appointed]

Nature of the Allegation(s): 1) Call Handling – officers pulled the complainant over even though the complainant and her car did not fit the description the officers had; *and*

2) Conduct Standards – an officer was rude to the complainant when he said, “So, you can follow instructions.”

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

2) **Sustained** as to the conduct standards allegation.

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

2) **Sustained** as to the conduct standards allegation.

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

2) **Sustained** as to the conduct standards allegation.

CPRB No. 37-08/OPS No. C08-329 [monitor appointed]

Nature of the Allegation(s): 1) Call Handling – an officer wrongfully gave the complainant a ticket;

2) Call Handling – the officer did not ticket the other cars that were parked in a similar fashion;

3) Conduct Standards – officer made the complainant move his car which was blocking his driveway even though the complainant’s neighbors could have moved their vehicle to the other end of the driveway;

4) Call Handling – the officer did not listen to the complainant’s explanation of what had occurred and ticketed him anyway; *and*

5) Conduct Standards – the officer was racially biased against the complainant.

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

CPRB Finding(s): 1) **Exonerated** as to the first call handling allegation;
2) **Unfounded** as to the second call handling allegation;
3) **Unfounded** as to the first conduct standards allegation;
4) **Exonerated** as to the third call handling allegation; *and*
5) **Not Sustained** as to the second conduct standards allegation.

APD Final Determination(s): 1) **Exonerated** as to the first call handling allegation;
2) **Unfounded** as to the second call handling allegation;
3) **Unfounded** as to the first conduct standards allegation;
4) **Exonerated** as to the third call handling allegation; *and*
5) **Not Sustained** as to the second conduct standards allegation.

CPRB No. 38-08/OPS No. C08-343 [no monitor appointed]

Nature of the Allegation(s): 1) Prisoner Property – detectives took away the complainant's cell phone and did not return it to the complainant when he was released from custody; *and*
2) Prisoner Property – the complainant's friends have been receiving calls from the complainant's phone from an unknown male.

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

2) **No Finding** as to the second prisoner property allegation.

CPRB Finding(s): 1) **Not Sustained** as to the first prisoner property allegation; *and*
2) **No Finding** as to the second prisoner property allegation.

APD Final Determination(s): 1) **Not Sustained** as to the first prisoner property allegation; *and*
2) **No Finding** as to the second prisoner property allegation.

DEFINITION OF CPRB FINDINGS

Section 42-344A of Chapter 42, Part 33 of the Albany City Code charges that the Board, 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.

POLICE DEPARTMENT LIAISON - POLICY REVIEW/RECOMMENDATIONS

During the fourth quarter of 2008, members of the Policy Review Committee continued working closely with the Albany Police Department (APD) in planning for installing cameras in

police vehicles. The funding for the cameras was not completely in place which slowed down the purchase of the cameras. The Policy Review Committee also continued discussions with the APD's Office of Professional Standards in establishing an Early Warning System. The APD purchased newer software for its Early Warning System that they believe would work better than the older software.

PUBLIC OFFICIAL LIAISON

The Public Official Liaison Committee scheduled a meeting with Deputy Mayor Phil Calderone to update him on the Board's initiatives. This meeting is scheduled to take place in November.

TASK FORCE ON MONITORS

During the fourth quarter of 2008, the Board agreed that they needed to appoint a new Task Force Chair to replace James Malatras who was the former Task Force Chair. Mr. Malatras resigned from the Board during the Third Quarter of 2008.

MEETINGS

The Board met as a whole two times for the conduct of business during the fourth quarter of 2008. Meetings were held on September 18, 2008 and October 16, 2008. 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. At its July 8, 2008 meeting, the Board voted not to meet in the month of August due to conflicting vacation schedules.

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 . . ."

On September 18, 2008, the Board participated in a training session on the Freedom of Information Law (FOIL). This session was conducted by the Board's Counsel Patrick Jordan.

The 14th Annual Conference of the National Association for Civilian Oversight of Law Enforcement (NACOLE) was held in Cincinnati, Ohio from October 26 - 30, 2008. The conference, entitled "Impacting Policy and Practice," featured workshops on: essentials of oversight; auditing complaint investigations; history of civilian oversight; police perpetuated domestic violence; stop and frisk; successful strategies for combating racial profiling; tasers; and dealing with dishonesty. Board members John Paneto and Andrew Phelan, Jr., and Board coordinator Sharmaine Moseley were in attendance at the conference. APD Deputy Chief Stephen Reilly also attended the conference. Mr. Phelan was appointed the voting member for the conference.

REPORTS

At its September 18, 2008 meeting, the Board voted unanimously to approve its Annual Report for 2007 and First Quarterly Report for 2008, prepared and submitted by the Government Law Center.

GOVERNMENT LAW CENTER

During the fourth quarter of 2008, 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 a meeting with Deputy Mayor Philip Calderone, Police Chief James Tuffey, and City Corporation Counsel John Reilly regarding the Board's initiatives.
- Attended the 14th Annual NACOLE Conference in October 2008.
- 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 correspondence to Chief Tuffey commending him on the Grievance Form Proposal.
- Arranged to obtain business cards for the CPRB.
- Drafted and forwarded correspondence to Chief Tuffey requesting that the Board provide assistance in any way to the APD and Mayor's office with high profile cases.
- Drafted and forwarded correspondence to Chief Tuffey regarding CPRB No. 60-08 and CPRB No. 61-08.
- Drafted and forwarded correspondence to Chief Tuffey requesting the APD's final determinations for complaints reviewed by the Board.
- Drafted and forwarded to the Board for review its Annual Report for 2007 and First Quarterly Report for 2008.
- Forwarded the Board's 2007 Annual Report and 2008 First Quarterly Report to its members, City of Albany public officials, and residents.
- Forwarded to the Board, a Times Union article regarding the vacancies on the Board.

- Forwarded correspondence to the Board from Chief Tuffey on the APD's final determinations for complaints reviewed by the Board.
- Arranged logistics for and coordinated a Freedom of Information Law (FOIL) training for Board members.
- Drafted and forwarded correspondence to the City regarding Freedom of Information Law (FOIL) requests.
- Drafted press release regarding the complaint grievance process.
- Forwarded the updated database scorecard to the OPS and members of the Board.
- Forwarded to the Board press clippings regarding the Albany CPRB.
- Continued the development of the CPRB electronic database.

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 one (1) committee/task force meeting, including: securing dates, times, locations, and preparing meeting materials;
- Prepared and assembled regular monthly meeting packets for Board members, including: photocopying complaints, reports, and accompanying documents for review;
- Prepared press release announcing the vacancies available on the Board;
- 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;
- 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;

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- 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 the Corporation Counsel's Office;
- Received and logged in complaints;
- Opened and closed complaint files;
- Forwarded complainant related correspondence to Board members;
- Forwarded complaint forms to complainants as requested;
- Updated and maintained the Board's website to include new meeting minutes, new Board members, photographs of the Board, and the new meeting schedule;
- Maintained regular communications with Board members, the Police Department, and the Corporation Counsel's Office;
- Answered inquiries from the community and the media about the Board and the complaint review process;
- 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 one (1) committee/task force meeting;
- Reported all activities related to Board business at each monthly meeting; *and*
- Recorded and transcribed the minutes of each monthly meeting.

CONCLUSION

The Board had an active fourth quarter, which included; participating in one (1) committee meetings; continuing its efforts on the development of the CPRB Mediation Program, Early Warning System, and installing cameras in police vehicles; 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: October 31, 2008