City of Albany

Second Quarterly Report May 1, 2007

Submitted by:

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



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

May 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 Second 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 second quarter of 2007:

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

James Malatras

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

Chair Jason Allen

Vice-Chair Hon. Fowler Riddick

Secretary Ronald Flagg

Committees and Task Force

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

By-Laws and Rules Jason Allen (Chair)

James Malatras Hon. Fowler Riddick

Community Outreach James Malatras (Chair)

Jason Allen (*ex-officio*) Mauri Davis Lewis

John Paneto

Hon. Fowler Riddick

Complaint Review Andrew Phelan, Jr. (Chair)

Jason Allen

Mauri Davis Lewis Daniel Fitzgerald Ronald Flagg James Malatras John Paneto Anthony Potenza Hon. Fowler Riddick

Mediation Jason Allen (Chair)

Police Department Liaison- Daniel Fitzgerald (Chair)

Policy Review/ Jason Allen (ex-officio)

Recommendations James Malatras

Anthony Potenza

Public Official Liaison Ronald Flagg (Co-Chair)

Jason Allen (Co-Chair)

Anthony Potenza Andrew Phelan, Jr.

Monitors Jason Allen (Chair)

The following occurred during the second quarter of 2007:

By-Laws And Rules

The complainant/standing document that was approved by the Board at its October 2006 meeting was submitted by the City Clerk to the Albany Common Council.

COMMUNITY OUTREACH

After reaching out to the community, the Board received several requests from neighborhood associations inviting the CPRB members to their meetings. The Community Outreach Committee created a power point presentation for members to use at community outreach meetings. On February 26, 2007, Chairman Allen and Committee Chair James Malatras gave a presentation to an undergraduate course on, "Introduction to Policing," at the State University of New York at Albany. It was an opportunity for the Board members to educate students about the mission and purpose of the CPRB and the process of complaint review in the City of Albany.

On April 23, 2007, the committee attended and participated in an outreach meeting with the West End Neighborhood Association. At that meeting, the Association provided the committee with suggestions on increasing the Board's visibility in the community. The first suggestion was to submit a letter on what the Board does to each neighborhood association. The second suggestion was to set up a system of liaisons or contact persons from each neighborhood association for communication purposes.

During the second quarter of 2007, the Board agreed to continue its review of the CPRB brochure.

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 second quarter of 2007.

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

February 2007	Ronald Flagg, James Malatras, John Paneto, Andrew Phelan, Jr., and Anthony Potenza.
March 2007	Jason Allen, Mauri Davis Lewis, Daniel Fitzgerald, James Malatras, John Paneto, and Anthony Potenza.

April 2007 Mauri Davis Lewis, Daniel Fitzgerald, James Malatras, John

Paneto, Andrew Phelan, Jr., and Anthony Potenza.

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 second quarter of 2007, the Board received eight (8) new complaints in addition to its fifteen (15) active complaints and twelve (12) suspended complaints. Monitors were appointed to investigate six (6) of the eight (8) new complaints. Of the twenty-three (23) complaints before the Board, the Board presented ten (10) complaints for review and rendered findings for the allegation(s) contained in seven (7) complaints. These ten (10) complaints contained a total of twenty-one (21) allegations of misconduct. Of the ten (10) complaints reviewed, Board action was taken on three (3) complaints. These actions included the Board voting unanimously to table rendering its findings and request that the OPS conduct a more thorough and complete investigation of the complaint; and to provide the Board with an opportunity to locate a complainant whose case was suitable for mediation.

As to the seven (7) complaints where findings were rendered, the Board made findings consistent with the preliminary findings of the Office of Professional Standards in five (5) cases.

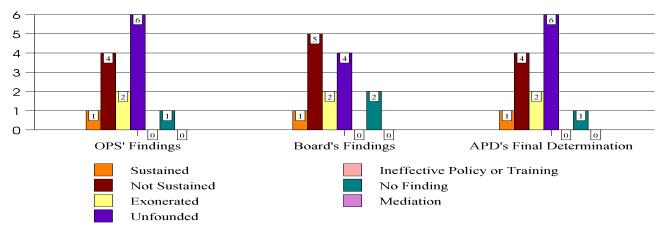


Figure 1: Comparison of Findings Made by the Board, the OPS, and the Albany Police Department during the Second Quarter of 2007.

Of the seven (7) complaints where findings were rendered, the Board made findings that were inconsistent with the preliminary findings of the Office of Professional Standards in two (2) cases. The findings of the Albany Police Department for these two (2) cases were consistent with the preliminary findings of the Office of Professional Standards and inconsistent with the Board's findings.

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. 43-02/OPS No. C02-356 [monitor appointed]

Nature of Allegation(s):

1) Excessive Use of Force - during a call for a domestic dispute at the complainant's house, a police officer attacked the complainant, twisting her arms, slamming her to the floor, mashing her face into the floor, and picking her up by the collar causing her to choke; *and*

2) Call Handling - the officer failed to listen to the complainant's version of the story; lied in the incident report claiming the complainant was a substance and alcohol abuser; and never told the complainant that she was under arrest or notified her of her rights.

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

2) **Sustained** as to the call handling allegation.

CPRB Finding(s): 1) **Not Sustained** as to the excessive use of force allegation: and

> 2) At its November 11, 2002 meeting, the Board reviewed and made a finding of **Sustained** as to the call handling allegation as authorized by Section 42-344(A) of the Albany City Code.

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

2) **Sustained** as to the call handling allegation.

CPRB No. 2-05/OPS No. C05-35 [monitor appointed]

Nature of the Allegation(s): 1) Call Handling (refused medical treatment on scene) - following

an altercation with an employee at a Stewart's Shop, the complainant advised the responding officer that he was injured and needed medical attention, but the officer responded "you're not going in an ambulance your a** is going in the paddy wagon"; and

2) Call Handling (refused medical treatment during booking) while at central booking, the complainant made his injuries known but was ignored.

OPS Preliminary Finding(s): 1) Exonerated as to the call handling (refused medical treatment on scene) allegation; and

> 2) **Not Sustained** as to the call handling (refused medical treatment during booking) allegation.

CPRB Finding(s): 1) **Exonerated** as to the call handling (refused medical treatment on scene) allegation; and

> 2) **Not Sustained** as to the call handling (refused medical treatment during booking) allegation.

APD Final Determination(s): 1) **Exonerated** as to the call handling (refused medical treatment on scene) allegation; and

> 2) **Not Sustained** as to the call handling (refused medical treatment during booking) allegation.

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: 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.

CPRB No. 32-05/OPS No. C05-574 [monitor appointed]

Nature of the Allegation(s): 1) <u>Unprofessional Conduct (Race based Stop)</u> - an officer engaged

the complainant in a traffic stop on the basis of his race by claiming

that the officer had a warrant issued; and

2) <u>Unprofessional Conduct (Disrespectful Behavior)</u> - an officer

spoke to the complainant in a sarcastic tone and was disrespectful to

the complainant.

OPS Preliminary Finding(s): 1) **Unfounded** as to the unprofessional conduct (Race based Stop)

allegation; and

2) **Not Sustained** as to the unprofessional conduct (Disrespectful

Behavior) allegation.

CPRB Finding(s): 1) **Unfounded** as to the unprofessional conduct (Race based Stop)

allegation; and

2) **Not Sustained** as to the unprofessional conduct (Disrespectful

Behavior) allegation.

APD Final Determination(s): 1) **Unfounded** as to the unprofessional conduct (Race based Stop)

allegation; and

2) Not Sustained as to the unprofessional conduct (Disrespectful

Behavior) allegation.

CPRB No. 18-06/OPS No. C06-283 [monitor appointed]

Nature of Allegation(s): Use of Force - an officer punched the complainant in the face

> causing the complainant's eye to become black and blue and loss of sight in one eye; and the officer threw the complainant to the ground

causing him to cut and hurt his leg.

OPS Preliminary Finding(s): Exonerated

CPRB Finding(s): **Exonerated**

APD Final Determination(s): Exonerated

CPRB No. 19-06/OPS No. C06-282 [monitor appointed]

Nature of the Allegation(s): 1) Arrest Authority & Procedures (Unlawful Stop) - an officer stopped the complainant for no reason; and

- 2) Arrest Authority & Procedures (Unlawful Search) after being removed from his vehicle, officers searched the complainant's car for no reason; and
- 3) Conduct Standards (Rude/Disrespectful) while the complainant's brother was using his video camera, an officer snatched the camera from the brother; and
- 4) Conduct Standards (Evidence Tampering) the complainant was arrested for possession of marijuana that was found on the rear floor of his vehicle, when a sergeant picked up the empty bag off the ground and placed it in an evidence bag; and
- 5) Property Handling during the search of the vehicle, the officers allowed the K9 police dog to scratch the front panel, hood and door of the complainant's vehicle.

- OPS Preliminary Finding(s): 1) **Unfounded** as to the arrest authority and procedures (unlawful stop) allegation; and
 - 2) **Unfounded** as to the arrest authority and procedures (unlawful search) allegation; and
 - 3) **Unfounded** as to the conduct standards (rude/disrespectful) allegation; and
 - 4) **Unfounded** as to the conduct standards (evidence tampering) allegation; and
 - 5) **Not sustained** as to the property handling allegation.

CPRB Finding (s):

- 1) **Unfounded** as to the arrest authority and procedures (unlawful stop) allegation; and
- 2) **Unfounded** as to the arrest authority and procedures (unlawful search) allegation; and
- 3) **No Finding** as to the conduct standards (rude/disrespectful) allegation; and
- 4) **Unfounded** as to the conduct standards (evidence tampering) allegation; and
- 5) **Not sustained** as to the property handling allegation.

- APD Final Determination(s): 1) **Unfounded** as to the arrest authority and procedures (unlawful stop) allegation; and
 - 2) **Unfounded** as to the arrest authority and procedures (unlawful search) allegation; and
 - 3) **Unfounded** as to the conduct standards (rude/disrespectful) allegation; and
 - 4) **Unfounded** as to the conduct standards (evidence tampering) allegation; and
 - 5) **Not sustained** as to the property handling allegation.

CPRB No. 29-06/OPS No. C06-490 [monitor appointed]

Nature of Allegation(s):

Conduct Standards - during a traffic stop, an officer tried to intimidate the complainant by writing him a ticket so that he would tell the officer what the officer wanted to know about someone named "Johnson"; and when asked for their badge numbers, the officer and the state trooper said it was on the ticket which the complainant never received.

OPS Preliminary Finding(s): Not Sustained

CPRB Finding(s): **Not Sustained**

APD Final Determination(s): Not Sustained

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

Nature of Allegation(s):

1) Property Handling - during a traffic stop, when an officer asked the complainant for her driver's license, she gave him her ID wallet and checkbook and it was not returned to her; and

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, and
 - 2) Not Sustained as to the firearms use allegation; and
 - 3) **Exonerated** as to the conduct standards allegation.

CPRB Action:

At its February 13, 2007 meeting, the Board voted unanimously pursuant to its authority under § 42-343(F)(2) of the City Code, to table rendering its findings and request that the OPS conduct a more thorough and complete investigation of the complaint.

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

Nature of Allegation(s):

- 1) Excessive Use of Force during his arrest by the Albany police. the complainant sustained injuries and was tortured by the officers who put their fingers 2 inches into his throat; and
- 2) Call Handling (Refused Medical Treatment) officers denied medical attention for the complainant; and
- 3) Call Handling (Failure to Give Miranda Warning) the officers never read the complainant his rights or told the complainant that he was being arrested when taken into custody.

- OPS Preliminary Finding(s): 1) **Unfounded** as to the excessive use of force allegation; and
 - 2) **Unfounded** as to the call handling (refused medical treatment) allegation; and
 - 3) Exonerated as to the call handling (failure to read Miranda warning) allegation.

CPRB Action:

At its March 13, 2007 meeting, the Board voted unanimously pursuant to its authority under § 42-343(F)(2) of the City Code, to table rendering its findings pending an opportunity for the complainant to provide the OPS with his statement in the presence of the monitor appointed to the case; and for the OPS to interview any witnesses provided by the complainant and independent witnesses identified by the OPS.

CPRB No. 40-06/OPS No. C06-762 [monitor appointed]

Nature of Allegation(s): Call Handling (Unprofessional Conduct) - during a traffic stop by

two police officers, after looking at the complainant's license, one

of the officers asked the complainant "Are you going to do

laundry?"

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 second quarter of 2007, Chairman Jason Allen met with Chief James Tuffey, Assistant Chief Anthony Bruno, Commander Burris Beattie and Board member John Paneto to discuss the mediation and monitors protocol. At that meeting, it was agreed that a meeting with the APD union representatives was necessary to move forward with the mediation protocol. On April 6, 2007, Board members met with former Board Chairperson Barbara Gaige, Chief James Tuffey, Assistant Chief Bruno, and APD union representatives Lt. Timothy Close and Christian Mesley. At that meeting, the union representatives noted their concerns and provided input on the protocol. The Board agreed to revise the mediation protocol to address the union representatives concerns.

POLICE DEPARTMENT LIAISON - POLICY REVIEW/RECOMMENDATIONS

During the second quarter of 2007, the committee held its first meeting of the year. The committee met on April 10, 2007 to discuss the APD's early warning system which was created by the Department to track and identify problems early.

TASK FORCE ON MONITORS

The Task Force completed its input and revision of the monitor protocol. At its April 10, 2007 meeting, with the approval of the City of Albany, the Board voted unanimously to increase the monitors pay rate from \$50 per hour to \$65 per hour.

MEETINGS

The Board met as a whole three times for the conduct of business during the second quarter. Meetings were held on February 13, 2007, March 13, 2007, and April 10, 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 . . ."

Board members James Malatras, Anthony Potenza, Daniel Fitzgerald and Coordinator of the Board Sharmaine Moseley participated in ride-alongs with APD officers. The ride-along consist of a Board member riding with an APD officer during his/her work shift to observe. This is an opportunity for the Board members to observe the interaction between the officers and the community.

New Member Citizen Police Academy

During the second quarter of 2007, new Board members Mauri Davis Lewis, Daniel Fitzgerald, James Malatras, John Paneto, and Anthony Potenza attended seven (7) of thirteen (13) three-hour citizen police academy training sessions. These sessions included an overview of the Albany Police Department, including its command structure; patrol unit; the Office of Professional Standards; computerization in law enforcement; emergency services team; community response unit; criminal investigations unit; information coordination unit; community services/crime prevention; PAL; children and family services unit; and domestic violence unit. In addition, the members were given an overview of the University at Albany Police Department.

REPORTS

At its March 13, 2007 meeting, the Board voted unanimously to approve its Third Quarterly Report for 2006, prepared and submitted by the Government Law Center.

At its April 10, 2007 meeting, the Office of Professional Standards provided the Board with a summary of its 2007 First Quarter Report.

OTHER

On April 20, 2007, members of the Board attended an Albany Police Department piping out ceremony for Assistant Chief Paula Breen at the Public Safety Building.

GOVERNMENT LAW CENTER

During the second 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 seven (7) of thirteen (13) three-hour citizen police academy training sessions.
- Prepared and forwarded materials about the Board and the complaint review process to members of the outreach committee for its guest lecture to students participating in a criminal justice course at SUNY Albany and its meeting with the West End Neighborhood Association.
- Engaged in discussions with Deputy Mayor Philip Calderone and Corporation Counsel John Reilly regarding the Center's contract for services to the CPRB. Also discussed was the proposed increase in compensation for the CPRB monitors.
- Revised the mediation and monitor protocols to include feedback from the Board and APD union representatives.
- Forwarded the revised mediation protocols to the Board, Chief James Tuffey, and Assistant Corporation Counsel Patrick Jordan for approval.
- Coordinated and scheduled Board member ride-alongs with the Albany Police Department.
- Drafted and forwarded correspondence from the Board to the Albany Common Council requesting a resolution for GLC Senior Staff Attorney Justina Cintron Perino.

- ▶ Drafted and forwarded correspondence from the Board to the OPS requesting the further investigation of CPRB No. 37-06/OPS No. C06-683.
- ▶ Drafted and forwarded correspondence to Chief Tuffey requesting the APD's final determinations for complaints reviewed by the Board.
- Forwarded correspondence to the Board from Chief Tuffey on the APD's final determinations for complaints reviewed by the Board.
- Forwarded correspondence to the Board from Mayor Jennings regarding the suspension of CPRB No. 35-05 and CPRB No. 33-06.
- Drafted and forwarded correspondence regarding Freedom of Information Law (FOIL) requests.
- Prepared memorandum, summarizing monitor assignments for each open and active complaint in the second quarter, and forwarded the memo to the OPS, and members of the CPRB.
- Forwarded the Board's 2006 Third Quarterly Report to its members, City of Albany public officials and residents.
- Forwarded to the Board press clippings regarding the Albany CPRB.
- Prepared and forwarded to the OPS, a summary of pending complaints before the Board.

In addition, the Center performed the following administrative tasks:

- Arranged logistics for and coordinated three 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 policy committee meeting, including: securing dates, times, locations, and preparing meeting materials;
- Arranged logistics for two outreach meetings, including: securing dates, times, and locations for each meeting, and providing notice to the members;
- 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 three 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 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 third quarterly 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 productive second quarter, which included; participating in APD ridealongs; attending seven sessions of the APD Citizen Police Academy; meeting with the APD and union representatives regarding the mediation protocol; participating in two community outreach

meetings; holding three regular monthly meetings; 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: May 1, 2007