

# NACOLE Review

NATIONAL ASSOCIATION FOR CIVILIAN OVERSIGHT OF LAW ENFORCEMENT

www.nacole.org

Summer 2010

## Smile, Officer, You're on Candid Camera: Recording Law Enforcement Officers Performing Their Official Duties in Public Places

By Captain Tag Gleason

“SMILE, YOU'RE ON CANDID Camera!” was the tag line of a once popular television program based upon the idea of a hidden camera filming unsuspecting people in unusual predicaments, but some law enforcement officers today are not smiling when bystanders are recording their words and actions. In fact, some are arresting people for doing it.

Police officers from cities across the country, including New York, Boston, and Los Angeles have detained or arrested people who video or audio taped or photographed them performing their official duties in public. The wide availability

of inexpensive, compact, and high quality electronic devices such as cell phones equipped with video recording capabilities and pocket-sized digital cameras is making it easier to record such activity.

Typically, these stops and arrests are based upon the officer's belief that the person making the recording is violating a local law related to interfering with a public officer in the performance of official duties or violating a statute addressing the recording of private conversations.



Photo: Sean Jordan, Seattle Police Photographer

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“Candid Camera,” page 9

## Assistant Attorney General to Speak at NACOLE Conference in Seattle

NACOLE'S 16<sup>TH</sup> ANNUAL conference offers attendees a unique combination of training, workshops and discussions, a keynote presentation by the Assistant Attorney General of the U.S. Department of Justice Civil Rights Division, and hands-on deadly force simulation training, all set against the scenic backdrop of Seattle's Puget Sound and the nearby Olympic and Cascade Mountains.

The conference, *Promoting Excellence*, runs from September 20 to 23, 2010 at the beautiful Fairmont Olympic Hotel, located in the heart of downtown Seattle, a short walk from historic Pioneer Square, Pike Place Market, the

International District and Seattle's cultural showcases. Oversight practitioners, community members, elected officials, and members of law enforcement who attend will experience an outstanding line-up of panels and featured speakers. Presentations will cover a wide range of topics including police response to the mentally ill, criminal investigations of officers, workplace retaliation, policing mass protests, in-custody deaths, and discipline alternatives.

Conference attendees will also have an opportunity to participate in or observe realistic



Experience Music Project and the Seattle Space Needle share acreage on the Seattle Center Grounds.  
Photo: Tim Thompson

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# President's Message

By Philip K. Eure

**A**S THE PRESIDENT OF NACOLE, I am often contacted by media outlets to comment on efforts to establish or improve police oversight in different parts of the country. Within the past few months, I have given interviews to reporters about oversight developments in locations as diverse as San Jose and Fresno (California), St. George (Utah), Jackson (Mississippi), Sarasota and Gainesville (Florida), Detroit (Michigan), Charleston (West Virginia), Fairfax County (Virginia), Pittsburgh (Pennsylvania) and Ithaca (New York), among other places.

In addition to these press interviews, members of the NACOLE board regularly return phone calls made to the toll-free 800 NACOLE line from people around the country who have oversight-related questions or requests for technical assistance.

These contacts with the media and individual inquiries have been revealing to me in two major ways. First, there is a growing acceptance of independent police review, and NACOLE is helping to drive the discussion. This discussion is increasingly taking place in medium-sized and smaller communities around the country. A glance at the roster of conference attendees in recent years further confirms this fact. Second, there is still some mystery about what oversight agencies do and a thirst for knowledge about the mechanics of how the different models work.

Preparations are being finalized for NACOLE's 16th annual conference in Seattle, Washington, September 20 – 23, 2010. Participants will have a valuable opportunity to act as inquisitive news reporters, learning about the latest trends and developments in police accountability, as well as the different oversight models, all the while interacting with peers from around the world.

Indeed, as discussed elsewhere in this newsletter, NACOLE has put together an outstanding

array of workshops and panel discussions. The topics will be of interest to everyone, from those who seek to launch or revamp police review entities in their communities to conference participants wanting greater insight into use-of-force, police discipline or mass protest issues, among other subjects. Keeping with the conference theme of "Promoting Excellence," the sessions are designed to better equip attendees with an enhanced skill set and more tools to combat police misconduct and build greater trust between law enforcement and the public.

In recognition of the growing importance of citizen oversight of the police, both here in the United States and overseas, we are especially honored that President Obama's administration will be sending its top civil rights enforcer, Thomas Perez, to address our gathering in Seattle. Mr. Perez is the Assistant Attorney General, in charge of the newly reinvigorated Civil Rights Division at the U.S. Department of Justice. Given that the administration has recently stepped up enforcement against patterns and practices of police misconduct, we look forward to hearing more about the federal government's initiatives in this area and how NACOLE member agencies fit into this picture.

As is true on college campuses, much of the real education at a NACOLE conference takes place outside of the "classroom." And so we hope you will take advantage of breaks and down time in Seattle to meet with new and old NACOLE friends alike in order to swap experiences. Our work can be challenging and lonely at times. If you've never been to an annual NACOLE conference before, you will be surprised at how similar the experiences of many others are. You will also be comforted by the guidance and support offered by fellow conference-goers.

By all means, particularly if you arrive early or remain after the conference, you should set aside some time to explore the natural beauties and charms of Seattle. The conference site, at the Fairmont Olympic Hotel, is centrally located and



Phil Eure, 2010 NACOLE President

within a short walking distance of the city's most famous attractions.

It would not be possible to run an organization like this one without the dedicated assistance of people who volunteer their time. From overseeing the administration and finances to planning the conference, encouraging professional growth and standards, providing technical assistance, seeking out funding opportunities, publishing this newsletter and making website improvements, NACOLE is fortunate to draw on a talented board and other NACOLE members who keep the organization moving forward. It has been a privilege to work with all of them. We are also grateful for the services of Cameron McElhiney, our conference coordinator, whose steady, calm, and problem-solving approach makes potential crises disappear, always managing to get us to "yes." ■

*Philip K. Eure is the president of NACOLE. He is also the executive director of the Office of Police Complaints in Washington, D.C.*

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# Oversight Developments from Around the U.S.

**By Sheila Mahadevan  
and John Peters**

## **Atlanta, Georgia**

*Population: 537,958 (U.S. Census estimate)*

*Police force: 1786 (APD website)*

In May 2010, the Atlanta City Council passed a bill granting the Atlanta Citizens Review Board (CRB) authority to subpoena officers of the Atlanta Police Department (APD). The approved bill also requires the police chief to discipline any officer who refuses to testify before the CRB.



The CRB argued that without the ability to subpoena officers, it had little power. Even when ordered to appear before the CRB, APD officers routinely refused to answer questions, and the board had to ask the City Council to subpoena witnesses.

Support for the bill was prompted in part by CRB's inability to subpoena several APD officers involved in a September 2009 drug raid of a mid-town Atlanta gay bar. During the incident, the officers detained and searched more than 60 bar patrons. The incident yielded no major arrests, and 25 of the officers involved refused to testify before the CRB. After much debate, in March 2010 the City Council voted to issue subpoenas to 18 of the involved officers.

## **New Orleans, Louisiana**

*Population: 311,853 (U.S. Census estimate)*

*Police force: 1,550 (NOPD public affairs estimate)*

In May 2010, the Civil Rights Division of the U.S. Department of Justice (DOJ) announced that it will open an investigation into the New Orleans Police Department (NOPD) in an attempt to iden-

tify police practices in need of reform. DOJ's announcement came days after newly-elected mayor Mitch Landrieu publicly asked for its assistance.

As part of its "pattern or practice" investigation, DOJ will examine allegations of excessive force, unconstitutional searches and seizures, racial profiling, and related misconduct by NOPD officers. DOJ will also review the NOPD's use of force, internal investigations, risk management, and training policies.

According to Attorney General Eric Holder and Assistant Attorney General for the Civil Rights Division, Thomas E. Perez, reform efforts will focus on a reduction in crime rates, restoration of public trust, and upholding the rule of law. In addition to being welcomed by Mayor Landrieu, the investigation is also supported by newly-appointed NOPD superintendent Ronal Serpas.

## **Fairfax County, Virginia**

*Population: 1,037,605 (U.S. Census website)*

*Police force: 1350 (FCPD public affairs estimate)*

Nicholas Beltrante, a former D.C. police officer and World War II veteran, recently formed the Citizen's Coalition for Police Accountability (Citizen's Coalition) in Fairfax County, Virginia. In addition to lobbying the Fairfax County Board of Supervisors to adopt a citizen's review panel, the coalition's goals include ensuring that Fairfax County Police Department (FCPD) officers are held accountable for improper police actions while on duty, and making police reports and other records publicly accessible.



According to Beltrante, Virginia is one of the few states lacking citizen review of its police force, and is one of the only states in which documents such as incident reports are not available to the public.

The Citizen's Coalition was formed after the 2008 death of teacher's assistant Ashley McIntosh, who was killed after her car was struck by a speeding FCPD police cruiser, and the 2009 death of former Army Green Beret David Masters, an unarmed man who was shot and killed by an FCPD officer. In both instances, the officers involved were cleared of all criminal charges. Furthermore, the FCPD has refused to release the name of the officer identified in the Masters' shooting or disclose any information that would shed light on the facts surrounding Masters' death.

Sharon Bulova, Chairman of the Fairfax County Board of Supervisors, recently wrote to Beltrante notifying him that the Board of Supervisors would pursue the Coalition's suggestion to adopt a citizen review panel. According to Bulova, FCPD Police Chief David Rohrer has also "agreed to consider a process for community discussion on how a review mechanism might be structured."

## **New York City, New York**

*Population: 8.3 Million (US Census)*

*Police Force: Approximately 34,500 (NYPD Website)*

This summer, New York City's Civilian Complaint Review Board (CCRB) will begin appointing attorneys to serve as supporting counsel for New York Police Department (NYPD) prosecutors who handle disciplinary trials of officers accused of misconduct.

Substantiated CCRB cases are referred to NYPD for discipline. NYPD can then handle the case in several ways. It can pursue discipline for the officer in a disciplinary proceeding, negotiate a plea agreement with the officer, or close the

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# CACOLE Update

**By Luauna Selman**

**T**HE CANADIAN ASSOCIATION FOR Civilian Oversight of Law Enforcement (CACOLE) held their annual professional development conference in Fredericton, New Brunswick, June 7, 8, 9, 2010 and welcomed delegates and speakers from Canada, the United States, Northern Ireland, Scotland, Norway, and Hong Kong.

The objective of the conference, "Civilian Oversight – Strengthening Public Confidence in Police," was to foster sharing of knowledge and expertise, mutual understanding, professional development, and dissemination of information on

best practices. Its keynote speaker, Art Vertlieb, is a highly respected criminal attorney who served as Commission Counsel for the Braidwood Inquiry into the death of a man at Vancouver International Airport who had been shocked multiple times with a Taser by Royal Canadian Mounted Police.

The conference panel on "Tasers as a Policing Tool: Lightening Rods or Life Savers?" created considerable media 'buzz,' with delegates and speakers in demand for interviews from reporters representing local and national print and electronic media organizations.

Another conference highlight was the study commissioned by CACOLE's Board of Directors

and conducted by EKOS, one of Canada's most recognized and respected names in public opinion research, on how the public views policing, civilian oversight, and the complaints process. The results of this survey provided valuable insight into issues on the public agenda.

For more information on the conference please visit [www.cacole.ca](http://www.cacole.ca).

We hope to see you at our 2011 conference next June in Calgary, Alberta! ■

*Luauna Selman is the Executive Director of the Canadian Association for Civilian Oversight of Law Enforcement.*

# NACOLE Kicks-Off Mentoring Program

By Ilana Rosenzweig

NACOLE'S MENTORING PROGRAM, unveiled at its 2009 annual conference, kicked off this year, matching 18 participants into nine pairs of mentor-mentees who communicate regularly by telephone and in person. Their discussions have focused on the short and long term goals of both the mentees and the mentors and evolved to provide the maximum benefit depending on the unique situation of each pairing.

Brian Buchner, a Special Investigator with the Los Angeles Office of the Inspector General who designed and is coordinating the mentoring program, held its first conference call in January 2010. Buchner explained during the call his hopes for the program, outlined its structure, and paired up the 18 individuals who had volunteered to participate at the 2009 conference and in response to an announcement on NACOLE's List-Serv. The participants, from Washington D.C., Chicago, Los Angeles, North Carolina, San Francisco, and Seattle then began periodic discussions with their mentor or mentee.

A few mentoring matches began with the mentees completing learning needs and skills assessment surveys to determine the professional skills needing further development. They will focus on those areas in their activities and will track progress towards their goals.

One match immediately focused on building the mentee's skills as an investigator in an investigative model agency. The mentor is using his extensive background in law enforcement criminal and internal investigations to provide the mentee

with materials on good investigative techniques and practices. These materials will be the basis for future discussions, including the ways in which the mentee can apply the information to his own investigations.

Another match immediately began to focus on how the mentee can obtain data from a law enforcement agency to perform research. The mentor is sharing her knowledge and experience in this area.

Other mentor/mentee pairs have decided to read and discuss relevant literature on police accountability and oversight. This literature includes a study of racial disparities in police officer discipline and attitudes of people who file complaints against the police, a RAND study for NYPD concerning stop and frisk procedures, and an article regarding organizational factors that contribute to police deadly force liability and analyzing problem behavior patterns in cohorts of police officers.

Matches have also discussed oversight administrative issues, such as budget and staffing issues that are affecting their respective agencies, the "ins and outs" of their respective agencies, and



NACOLE's mentoring program pairs newer oversight practitioners with experienced professionals in formal mentoring relationships.

experiences they have had in various agencies.

The diversity of approaches to the mentoring program reflects the diverse benefits a professional mentoring program can provide. Mentees can improve their skills under the guidance of more experienced mentors. Both mentees and mentors benefit from sharing experiences and challenging each other to expand their knowledge of the issues impacting law enforcement and those who perform oversight functions. ■

*Ilana Rosenzweig is the Chief Administrator of the City of Chicago's Independent Police Review Authority and is a participant in the NACOLE mentoring program.*

## Overdue Oversight coming to Jackson, Mississippi

By Dawn Reynolds

IT'S BEEN A LONG TIME COMING, BUT residents of Jackson, Mississippi may finally see the results of many years of work in the establishment of independent police oversight. After multiple public hearings, that included testimony by NACOLE President Phil Eure, the Jackson City Council passed a resolution at its February 2010 meeting to establish an oversight system.

"While there have been a number of high-profile police misconduct cases leading up to the City Council's decision, this is not the result of one or even a few dramatic incidents," said Akil Bakari, longtime community activist and State Coordinator for the human rights organization, the Malcom X Grassroots Movement (MSGM).<sup>1</sup> "This is the result of a long series of

incidents and a historical pattern of misconduct."

Bakari said police misconduct has been the subject of community town hall meetings across the state for many years. "The instigating events behind the public meetings run the gamut," said Bakari. "We see everything from shootings, in-custody deaths and excessive force to conduct unbecoming." Bakari observed it is not limited to big cities such as Jackson and that complaints of police misconduct are common throughout Mississippi.

According to Brent Cox, Public Education and Criminal Justice Coordinator for the American Civil Liberties Union - Mississippi, community outrage over allegations of police misconduct is often compounded by a perception that investigations into police misconduct are biased. Cox said a 2008 shooting that took place in Lucedale, Mississippi, is illustrative. "The public was stunned," said Cox, "when a grand jury in George

County found the death of Billey Joe Johnson had been the result of a 'self-inflicted' gunshot wound."

Johnson had been pulled over on December 8, 2008 by a George County Deputy Sheriff for running a red light. The deputy testified that Johnson shot himself with a shotgun after the deputy had returned to his patrol car. Many in Mississippi found the grand jury's verdict, and the sheriff's department's account of the incident, impossible to believe. Johnson, who was 17 at the time of his death, had just ended his junior year in football by scoring 18 touchdowns and rushing for 1405 yards. In a state that treasures its athletes Johnson was ranked as one of the top high school players by college and university recruiters as well as sports writers. His friends and relatives in Lucedale said he was a happy kid

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# NACOLE 16<sup>th</sup> Annual Conference Special Section



Seattle's lively and dynamic waterfront offers sightseeing, dining and shopping galore. Photo: Seattle's Convention and Visitors Bureau



(Left) At 605 feet, the Seattle Space Needle towers over the Experience Music Project on the Seattle Center grounds.

Photo: Tim Thompson

(Right) Located in the center of downtown Seattle, Westlake Center features over 70 boutiques and eateries. During the spring and summer, its colorful plaza is a place for people to linger and take in the sights and sounds of the city. Photo: Tim Thompson



## NACOLE 16<sup>th</sup> Annual Conference 'PROMOTING EXCELLENCE' Seattle, Washington September 20-23, 2010

**W**E INVITE YOU to the National Association for Civilian Oversight of Law Enforcement's 16th Annual Conference, an opportunity for those involved in and affected by civilian oversight. This year will again provide a forum for individuals to interact with a growing community of individuals working towards excellence in policing and oversight. We hope that all community members, civilian oversight practitioners, government officials, and law enforcement officials will join us in Seattle to continue this oversight dialogue.

The special conference section of the NACOLE Review contains the 2010 Session Schedule and some session highlights from the outstanding panels planned for this year's conference. You will also find information regarding the NACOLE training program and the Certified Practitioner of Oversight (CPO) Credential and information regarding our host city, Seattle Washington. Please visit [www.nacole.org](http://www.nacole.org) for additional information and program updates. ■

# NACOLE 16<sup>th</sup> Annual Conference Special Section

## Certified Practitioner Of Oversight Program To Continue This Year

**I**N 2008 THE NACOLE BOARD OF Directors announced the Certified Practitioner Of Oversight (CPO) Credential. The CPO program is designed to recognize oversight practitioners who have participated in and achieved a high level of professional training. In addition to the CPO Credential, NACOLE will continue the Training Certificate Program which recognizes participation in conference training.

To earn the CPO credential, a person must participate in designated training sessions, earning them a Certificate of Training at three qualifying conferences in a five-year period. This year there will be 19 participants eligible to complete the program should they receive their training certificate and complete the reading requirement.

Applications for the CPO Credential or the Training Certificate Program may be made at the

time of conference registration or at any time during the conference by completing the application. There is no additional fee for this program but you must be a member of NACOLE to participate.

Please visit [www.nacole.org](http://www.nacole.org) for further information on this program, including the supplemental reading list. ■

## Where To Stay And What To Do While In Seattle

**N**ACOLE IS PLEASED TO ANNOUNCE ITS PARTNERSHIP with the Fairmont Olympic Hotel for the 2010 Annual Conference. We have secured a rate of \$160 per night for conference attendees. Please note that your reservation must be received by August 29th, 2010 to qualify for this reduced rate. Also please note that the Fairmont has extended this rate three days prior and three days following the event for those wishing to extend their stay in Seattle. Please visit [www.nacole.org](http://www.nacole.org) for information regarding hotel reservations.

While you are in Seattle, make sure to visit some of the amazing attractions the city has to offer. Although the Space Needle is something familiar to most, there are also ferry tours of Puget Sound, an underground tour of the city, a world-class aquarium and, of course, the famous Pike Place Market. This list is just a small sampling of the activities you can choose from. For more information on Seattle and all it has to offer, please visit [www.visitseattle.org](http://www.visitseattle.org). ■

## 2010 NACOLE Conference - Sample Panels

### **Monday, September 20<sup>th</sup>: Survival Skills in an Era of Government Budget Cuts**

Oversight agencies operate in a variety of different political contexts. Whatever the circumstances, these offices usually rely on funding decisions made by representatives of the executive and legislative branches of their jurisdictions. Even though a recovery is now underway in most of the country, the current economic recession has forced city and county leaders to make some difficult decisions about which services, and at what level, to provide to the public. Police oversight agencies have not been immune from these decisions. Within the past year, at least one agency (Miami-Dade County) was eliminated while another oversight office (City of San Diego) lost its full-time executive director and had to merge with the city's human relations office. Even in the best of economic times, oversight bodies sometimes have to fight to obtain and preserve adequate funding. Among the topics that this session will explore are: 1) arguments to make to government officials to avoid the harshest effects of the budget-cutting ax; 2) mobilizing advocacy and community groups to support adequate funding for oversight agencies; and 3) making the most of the funds that are ultimately allocated.

### **Tuesday, September 21<sup>st</sup>: Policy Matters: Lessons from the Trenches**

Civilian oversight agencies can play a critical role in promoting excellence through recommending changes to law enforcement practices and procedures. Panelists will share the successes and obstacles they have encountered while advocating for a specific policy recommendation to change a police practice or procedure. The panel will discuss the standard phases of policy-making, including the design phase, the roll out of the procedure, and the implementation. In addition, panelists will focus on a specific approach they have adopted, including involving the public in crafting and advocating for the recommended policy change, establishing an infra-structure to promote law enforcement involvement and buy-in for proposed policy changes, and making policy recommendations without any express authority to do so.

### **Wednesday, September 22<sup>nd</sup>: Stakeholder Outreach: Beyond the Traditional Community Meeting**

It is vital, as organizations mature, to ensure that they are continually improving and updating their outreach efforts – and looking beyond traditional “community outreach.” This workshop will

explore unique approaches to outreach to all stakeholders in the oversight process. Drawing upon their experiences, panelist will focus on outreach targeted at specific stakeholder groups, including law enforcement members and immigrant communities. In addition, they will share experiences with conducting outreach, including the use of surveys to gauge opinion and set goals for an oversight organization.

### **Thursday, September 23<sup>rd</sup>: Deadly Force Investigations: Important Considerations and Investigative Techniques**

The use of deadly force can result in complex investigations and/or prosecutions, political pressure, and community unrest. And, because law enforcement inherently has the power to use deadly force when necessary, the investigation into and determination of the appropriateness of deadly force is not always an easy matter. Therefore, in order to ensure that investigations are appropriately conducted, it is vital for the oversight practitioner, as well as the investigators, to understand relevant investigative principles and techniques. This panel will feature experienced professionals who have investigated and represented police officers in deadly force incidents, and who have confronted this issue both internally and in the community. ■

# NACOLE 16<sup>th</sup> Annual Conference Special Section

Monday,  
September 20

- 9:00 a.m. Registration Begins
- 11:00 a.m. Featured Speaker: Thomas Perez, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice
- 2:15 p.m. Survival Skills in an Era of Government Budget Cuts
- 2:15 p.m. Workplace Retaliation in Law Enforcement Agencies: Analyzing the Issues from the Training, Investigatory, Legal, and Civilian Oversight Perspectives
- 4:00 p.m. Models of Oversight Roundtable Discussions
- 6:30 p.m. Opening Reception

Tuesday,  
September 21

- 8:30 a.m. It's A Medical Emergency: Best Practices for Arrest-Related Deaths
- 8:30 a.m. Improving Police Response to the Mentally Ill - A Panel Discussion of Best Practices
- 10:15 a.m. Basic Investigative Skills for Civilian Oversight Professionals
- 10:15 a.m. Seattle Youth Violence Prevention Initiative
- 1:30 p.m. How to Assess the Quality of an Investigation
- 1:30 p.m. Policing Demonstrations in the United States: A Multi-City Perspective
- 3:15 p.m. Policy Matters: Lessons from the Trenches
- 3:15 p.m. Critical Incidents - Police Oversight Problem Solving Workshop

Wednesday,  
September 22

- 8:30 a.m. Investigating Criminal Conduct by Police Officers and Ensuring Appropriate Administrative Investigations and Imposition of Discipline
- 8:30 a.m. Stakeholder Outreach: Beyond the Traditional Community Meeting
- 10:15 a.m. Prosecuting and Defending Police Officers Accused of Criminal Misconduct
- 10:15 a.m. Disciplining Peace Officers: Punishment or Remediation?
- 12:30 p.m. Luncheon with Featured Speaker Ray Ybarra, PUEBLO, Center for Legal and Human Rights
- 2:00 p.m. Mediation: A Training Session
- 2:00 p.m. Oversight of Law Enforcement in the Era of the Internet and Social Networking Sites
- 2:00 p.m. The First Year is the Hardest: The Challenges of an Oversight Agency's First Year
- 3:45 p.m. General Meeting & Elections
- 6:30 p.m. Sankofa Reception

Thursday,  
September 23

- 8:30 a.m. Deadly Force Investigations: Important Considerations and Investigative Techniques
- 8:30 a.m. Off-Duty Misconduct: Nexus and Deterrence
- 10:15 a.m. Leadership in Civilian Oversight
- 12:00 p.m. Conference Concludes



## Who We Are: Seattle has a Unique Three-Pronged Hybrid System Of Civilian Oversight

By Kathryn Olson, OPA Director

**S**TARTED IN THE EARLY 1990's, civilian oversight of the Seattle Police Department (SPD) has developed into a three-pronged structure consisting of a civilian-headed investigative unit, an independent auditor, and a civilian review board. The three prongs are the Office of Professional Accountability (OPA), the OPA Auditor, and the OPA Review Board.

A 1999 Citizens Review Panel that evaluated police accountability and SPD's misconduct investigation process concluded that having civilian involvement in all stages of internal investigations was critical for restoring public confidence in the system. The resulting three-pronged structure was reaffirmed in 2008 after a comprehensive review of Seattle's civilian oversight system. All three components play important roles in the oversight process and provide for checks and balances to enhance public confidence in the system.

### The OPA – A Civilian Director

OPA is the office within SPD that investigates all complaints of officer misconduct. The OPA Director, appointed by the Mayor and confirmed by the City Council to serve a three year term, oversees a staff of sworn police personnel and reports to the Chief of Police.

Balancing citizen concerns with police officer rights in the investigation process is vital to a respectful relationship between the Seattle community and SPD. OPA strives to ensure for all parties involved that misconduct complaints are investigated fairly, thoroughly, and expeditiously. Through rigorous investigations, officers are held accountable when they engage in misconduct and acknowledged for following policy when exonerated. The investigation process also provides an opportunity to review SPD policy and training needs, regardless of individual case findings.

Following investigation of a complaint by the OPA Investigations Section, the Director makes recommendations on disposition to the Chief, who has final authority on all matters of discipline. If the Director and Chief disagree about whether to sustain a complaint, the Chief must state his reasons in writing and the Director is required to report such differences to the Mayor and City Council. The OPA Director also must report any instance in which an officer is not disciplined because an investigation time-line is missed.

In addition to complaint management, OPA

reviews policies and procedures to help ensure the Department follows best practices. The Captain responsible for overseeing SPD Ethics reports to the OPA Director, allowing for a comprehensive approach to issues of police professionalism.

### The OPA Auditor

Before the creation of the OPA, beginning in the early 1990's, Seattle used a civilian auditor outside SPD to review Police Department internal investigations.

Though still an independent contractor, the civilian auditor's role has expanded since that time. Now, the OPA Auditor and OPA Director work together to assess every complaint during intake to ensure it is properly classified for handling, including referring some for mediation. The Auditor reviews completed OPA cases prior to the Director's final certification and can require further investigation if necessary. The Auditor also conducts enhanced review of issues impacting police accountability. The OPA Auditor is an independent contractor outside the SPD. The Auditor is appointed by the Mayor and confirmed by the City Council. Retired Judge Anne Levinson is the recently appointed Auditor, while Retired Judge Terrence Carroll has been serving on an interim basis.

### The OPA Review Board

The third prong of Seattle's oversight system is the OPA Review Board (OPARB). This board consists of seven citizen volunteers who are appointed by the City Council. Current OPARB members are: Patrick Sainsbury (Chair), Tina Bueche (Vice Chair), George Davenport, Sharon Dear, Steven Freng, Martha Norberg, and David Wilma.

OPARB solicits community input about and evaluates police practices and the OPA complaint



The Seattle OPA staff and OPA Auditor: Front Row – Sgt. Brett Rogers, Kathryn Olson (OPA Director), Capt. Tag Gleason, Anne Levinson (OPA Auditor) Back Row – Lt. Mark Kuehn, Sgt. James Danielson, Sgt. Randy Woolery, Sgt. Steve Hirjak

handling process. It can also review closed OPA investigations (but not participate in any way in open investigations), and helps facilitate a public hearing prior to the start of contract negotiations with the Seattle Police Officers Guild to identify issues regarding the OPA system. OPARB also coordinates outreach with OPA and the Auditor.

### Public Outreach and Reporting

OPA, the Auditor, and the OPA Review Board work together to conduct outreach efforts and on a variety of special projects and reports. They regularly share information with the public about their individual efforts to monitor police accountability.

The OPA Review Board conducted an extensive community outreach effort over a six month period in 2009 that was designed to introduce newly appointed Board members to the community and to provide public input to OPARB's work plan. (Details about this outreach effort will be shared in a panel at the September NACOLE Conference called "Stakeholder Outreach.")

Working with the OPA Director and Auditor, OPARB met with and received information from over 28 community agencies and groups. Though

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## “Candid Camera,” Continued from page 1

Regretfully, sometimes it's just for being an annoyance to the officer.

Officers also may be detaining individuals, and confiscating recording devices, absent legal justification, based upon a “hunch” about a person “acting suspiciously.” For example, the person simply appears interested in what some authority has identified as a “possible terrorist target,” e.g., a bridge, dam, ferry, landmark, government building, or . . . law enforcement officer.

### Officer Safety vs. Public Safety

In some situations, officers express concern that a person pointing any device in their direction represents a legitimate “officer safety” risk, especially since publications focused on the law enforcement community alert officers to be vigilant for weapons camouflaged as innocent looking items – including firearms appearing as cameras. The safety of law enforcement officers is obviously a high priority. However, at least one prominent law enforcement professional, Joseph D. McNamara, PhD, a retired New York Police Department Deputy Inspector and current fellow at Stanford University's Hoover Institution, in an op-ed piece in the Wall Street Journal, offers the proposition that, “[T]he police culture in this country has changed. An emphasis on ‘officer safety’ and paramilitary training pervades today's policing . . . . Yes, police work is dangerous and the police see a lot of violence . . . but the funda-

mental duty of the police is to protect human life.” Dr. McNamara raises the issue of whether “officer safety” has trumped “public safety” as a higher priority for law enforcement officers evaluating the risk a person poses to them.

The First Amendment, subject to reasonable time, place, and manner restrictions, protects the rights of a person to both *access* and *gather* information about the police. “Videotaping is a legitimate means of gathering information for public dissemination and can often provide cogent evidence,” *Robinson v. Fetterman*, 378 F. Supp. 2d, 534, 541 (E. D. Pa. 2005). Furthermore, neither the personal privacy of a law enforcement officer nor the personal privacy of a civilian interacting with an officer in a public place in the course of the officer's official duties provides a legitimate basis for restricting the use of photographs, videotapes, or audiotapes to document the words and activities of the law enforcement officer. The activities of the police are a matter of public interest and are subject to public scrutiny.

### First Amendment Rights

The Seattle Police Department has a formal policy protecting the First Amendment rights of people to observe, record, and disseminate by means of photographing, audiotaping, or videotaping the on-duty activities of officers in a public place. The policy provides that a bystander “may be allowed to remain in proximity of any stop, detention or arrest, or any other incident occurring in public so long as their presence is lawful and the activities, including verbal comments, do not obstruct, hinder, delay, or threaten the safety or

compromise the outcome of legitimate police actions and/or rescue efforts.” *Seattle Police Department Manual, Section 17.070*.

This article is not intended to criticize the good faith effort of law enforcement officers to apply the law in a manner that respects the constitutional rights of all persons; it is intended to promote a constructive dialog regarding the rights – and responsibilities – of people who observe, record, and disseminate the words and activities of law enforcement officers. Public trust demands public accountability; public accountability demands public scrutiny.

“When people are engaged in something they are not proud of, they do not welcome witnesses. In fact, they come to believe the witness causes the trouble.”

—John Steinbeck, *Travels with Charley*

**Editor's Note:** The San Francisco Police Department adopted a written policy in 1995 guaranteeing the “Rights of Onlookers” to “remain in the immediate vicinity” to observe and record “stops, detentions and arrests of suspects occurring in public areas” as long as they do not interfere or violate the law, threaten or incite others to violate the law and unless the suspect objects to them overhearing their conversation with the officer. San Francisco Police Department General Order 5.07 (<http://sf-police.org/Modules/ShowDocument.aspx?documentid=14784>) ■

Captain Tag Gleason is the Ethics and Professional Responsibility Officer for the Seattle Police Department.

## “Seattle,” Continued from page 1

Shoot/Don't Shoot simulations used to train police officers in the use of deadly force. In this unique experience, participants will face projected real-life scenarios in which they will decide whether or not to shoot a simulated firearm at the screen. This hands-on experience will help oversight practitioners understand the crucial components of deadly force encounters and the decision making process involved in assessing and reacting to a potential threat.

### Civil Rights Attorney Thomas Perez

NACOLE's featured speaker, Thomas Perez, is the Assistant Attorney General of the Civil Rights Division of the United States Department of Justice (DOJ) and is a nationally recognized civil rights attorney who has devoted his entire career to public service. He previously served as a federal prosecutor for the Civil Rights Division of the DOJ, a Deputy Assistant Attorney General for Civil Rights under Janet Reno, Special Counsel to Senator Edward Kennedy, and as the Director of the Office for Civil Rights at the U.S. Department of Health and Human Services during the last two years of the Clinton Administration. The Civil Rights Division of DOJ, under the leadership of Mr. Perez, works to combat discrimination and prosecutes hate crimes, misconduct of public officials, and other issues of concern to those



Thomas Perez, the Assistant Attorney General of the Civil Rights Division of the U.S. Department of Justice, is the featured speaker at the upcoming NACOLE conference.

involved with civilian oversight.

Ray Ybarra, a co-founder of and organizer for PUEBLO, a non-profit group involved in the immigrant rights movement in Arizona, will speak at NACOLE's luncheon on Wednesday September 22. Mr. Ybarra is a human rights activist, writer and filmmaker who implemented a legal observer project during the Minutemen operations along the U.S.-Mexico border. Mr. Ybarra will talk about his work, including his organization's current role in challenging Arizona's controversial

new law that gives police broad powers to stop and detain those suspected of being in the country illegally. This is a very timely and can't-miss multi-media presentation for those attending the conference.

Conference attendees will also be able to enjoy the diverse cultural, historical, and recreational opportunities offered by Seattle and environs. The Fairmont Olympic Hotel is a short light rail trip away from the Space Needle, the Pacific Science Center, and the Experience Music Project (and is just a two-block walk from the Link Light Rail, which will take you to or from SeaTac Airport in 35 minutes for \$2.50). Attendees can take a ferry ride around Puget Sound to enjoy the view of the Seattle skyline and the Olympic or Cascade Mountains, including the majestic snow-capped Mount Rainier, located just 54 miles from Seattle and at over 14,000 tall, one of the highest peaks in the continental United States. They can drive thirty minute outside the city to go wine tasting or hiking in some of the most beautiful terrain found in the Pacific Northwest. The options are varied and limitless.

NACOLE hopes to continue its tradition of providing a forum for education and open dialogue for all issues surrounding the oversight of law enforcement with the line up of speakers and sessions it has planned. For further details about the conference, accommodations, or information regarding your visit in Seattle, please visit [www.nacole.org](http://www.nacole.org) throughout the summer for the most up to date information. ■

## “Updates,” Continued from page 3

case without imposing discipline. Previously, New York’s policy only permitted civilian attorneys employed by NYPD’s Department Advocate’s Office to try disciplinary cases. The policy change



stems from the CCRB’s concern over the lack of cases prosecuted by NYPD. The CCRB asserted that NYPD was not prosecuting enough of its referred cases. NYPD attorneys argued that only they

had the expertise to decide which of the referred cases to prosecute.

“This pilot project provides a great foundation for enhancing cooperation and dialogue between the CCRB and NYPD regarding the CCRB’s substantiated cases,” said CCRB Executive Director Joan Thompson.

The extent of CCRB attorney involvement in the case will be left to the discretion of the lead prosecutor.

### Portland, Oregon

Population: 537,081 (US Census)

Police Force: 1,150 (Portland Police Bureau Website)

Since 2001, the Portland Police Bureau has been under the review of the Independent Police Review Division (IPR) and the nine-member

Citizen Review Committee (CRC). Both groups seek to improve police accountability, promote higher standards of police service, and increase public trust.

Despite these positive transitions, Portland has not seen the desired outcomes in recent years, and in 2009, Portland’s Auditor LaVonne Griffin-Valade decided major reforms were needed.

After two highly publicized police shootings, the need for oversight reform became clear. One major change was the decision to hire experts to review the closed investigation of James Chasse’s in-custody death.

“To make reviews of investigations of officer-involved shootings and in-custody deaths more relevant and meaningful to the Police Bureau and the public, those reviews need to be as timely as possible,” Griffin-Valade said.

In March 2010, the Portland City Council



unanimously passed the IPR reform ordinance.

The ordinance broadens the power of the oversight division by enabling it to review both bureau and citizen-initiated complaints, allowing it to initiate investigations and granting it subpoena power.

### Duluth, Minnesota

Population: 84,167 (US Census)

Police Force: 150 (Duluth Police Dept. Website)

The Duluth Task Force for Improved

Community Police Accountability (DTFICPA) was created in 2005 to establish effective community oversight of the Duluth Police Department. The task force seeks to promote trust between police and diverse populations and cultivate racial justice within the police department and the community. The DTFICPA task force is composed of community organizations and the Duluth Police Department.

To improve the effectiveness of the task force, members have begun utilizing community surveys. The surveys are a way for individuals to recommend the most effective system of community review and share accounts of their experiences with police officers.

The findings of the community survey are expected to be completed by August, 2010, with a report issued in September. So far, five community review options have been identified through the survey, including the establishment of a Civilian Review Board.

**Correction:** The article on Oversight Developments in San Diego, California in the Spring 2010 issue of the NACOLE Review incorrectly reported that CLERB had adopted revisions. In fact the revisions were proposed and public comment received. Currently the proposed revisions are under consideration by a subcommittee. ■

*Sheila Mahadevan is a summer law clerk with the Office of Police Complaints in Washington, D.C., and a third-year law student at Howard University School of Law.*

*John Peters is a summer intern with the Office of Police Complaints in Washington, D.C., and is a senior at the University of Mississippi in Oxford, Mississippi.*

## “Mississippi,” Continued from page 4

with a good future.

“We have a rich history of police misconduct,” said Brent Cox. “In general, people believe police too often treat civilians with unreasonable aggression and hostility.” Cox also observed that city governments have been reluctant to hold their police departments accountable. Cox said that when it became known that the former Mayor of Jackson, Frank Melton, was dressing up as a police officer and going out on raids, community confidence in the city and its police department sank further.

Cox is frank in acknowledging there are many obstacles to overcome. “There is the usual resistance from police officers,” said Cox, “and public records laws in Mississippi are notoriously weak.” He added, “There is also a culture which values law and order and finds that value incompatible with police accountability and transparency.” Cox said he believes a majority of policy makers now recognize the current system is not working.

Cox speaks from firsthand experience. He was arrested for lawfully observing Jackson officers at

work, but was subsequently acquitted. He filed a complaint with the Jackson Police Department. “That was two years ago,” he said. “I still haven’t received an answer from them.”

“The system as it now stands is simply opaque,” Cox said. He described a current system in which civilians must face a number of obstacles including having their complaints notarized and sworn under penalty of perjury. Weak public records laws in Mississippi mean that it takes legal action, and the wherewithal to go to court, to open police files and internal affairs investigations to public scrutiny.

### Successful litigation

According to both Cox and Bakari, litigation has been the most reliable method for holding police departments in Mississippi accountable for their actions. Both pointed to the work of Chokwe Lamumba, a Jackson attorney who had success in bringing police misconduct cases to trial.

Brent Cox noted that Mississippi is on the U.S. Department of Justice radar. He believes recent visits to the state by DOJ officials, including Tom Perez, Assistant Attorney General responsible for the DOJ Civil Rights Division, played a critical role in encouraging Jackson officials to move

forward. Akil Bakari also stressed the role of the media. “I don’t think you can overestimate it,” said Bakari. “Without the media much of what goes on in Mississippi in terms of police misconduct would never come to light.”

Cox and Bakari recognize some of the hardest work lies ahead and both shared concerns that even with the positive developments in Jackson, problems with police misconduct are not isolated to the state’s capitol.

“It now remains,” said Cox, “to work for a system in Jackson that is effective and to keep working until any civilian in Mississippi can be assured that a complaint made against a police officer will be treated seriously.” ■

<sup>1</sup> The Malcom X Grassroots Movement has chapters in Atlanta, Detroit, Fort Worth, New Orleans, New York, Oakland and Washington D.C. The MSGM Website <http://mxgm.org>.

*Dawn Reynolds, is a NACOLE member in Oregon. She serves on the NACOLE Professional Standards and Strategic Planning Committees.*



## "Who We Are," Continued from page 8

the consensus was that SPD is doing a very good job of law enforcement and that the Department is responsive to community concerns, specific areas for improvement were identified. Race and minority issues continue to require attention, along with the Department's relationship with the homeless and youth. (A panel highlighting Seattle's "Youth Violence Prevention Initiative" is scheduled for the NACOLE Conference.) The Review Board has included these and other topics in its 2009-2011 Strategic Plan.

In the spring of 2010, the three OPA entities issued a joint report on "Civilian Oversight of Criminal Investigations of Seattle Police Department Employees." Former OPA Auditor Kate Pflaumer was supported by the OPA Director and OPARB in publishing two focused studies, one reviewing the Seattle Police Department's Relationship with Diverse Communities (March 2009) and another on obstruction arrests in Seattle (October 2008).

### 2009 OPA Complaint Statistics Overview

OPA publishes annual reports on complaints statistics and trends, along with information about policy and training recommendations.

A number of observations can be made about 2009 OPA complaint statistics:

*Fewer SPD officers received OPA complaints in 2009 than in previous years:* In 2007 and 2008, approximately 20% of officers received OPA complaints, while this figure dropped to 15% in 2009.

*Though the number of contacts with OPA continues to rise, only a small percentage involve serious allegations of police misconduct:* The number of overall contacts with OPA steadily increased by about 100/year to 1442 in 2009. The great majority of intake involves requests for information or referrals, or is handled by the named employee's supervisor. Approximately 12% of OPA total contacts in 2009 (176 complaints) involved allegations of more serious misconduct, and were classified for full investigation.

*OPA sustained 12% of the complaints investigated:* Approximately 12% of all complaints closed in 2009 (198 cases involving 390 allegations) resulted in a Sustained finding, which is consistent with sustained findings in the past few

years. Another 12% were closed with a Supervisory Intervention finding (where the employee is referred for training or counseling rather than disciplined) and the remaining 76% of cases were closed as Exonerated, Unfounded, Not Sustained or closed administratively. Of those complaints that were sustained, 1/3 involved off-duty violations of law (e.g., DUI, domestic violence, or reckless driving).

#### *Complaints involving use of force continue to decrease:*

The most common complaint referred for full investigation involves an unnecessary use of force allegation. Nonetheless, use of force complaints have been dropping steadily. Seattle PD has a stringent policy requiring officers to report use of force, and all incidents are reviewed by a number of people to ensure the force was within policy, including OPA review when a use of force complaint is filed. An important tool for assessing use of force, along with all other police/citizen interactions, is the In-Car Video/Audio Recording System.

*Allegations of failure to use the In-Car Video/Audio Recording System are increasing:* SPD has a policy that officers with In-Car Video/Audio Recording Systems (DICVS) should make every effort to record citizen contacts. Though recordings do not always tell the full story about a police incident, they often are invaluable in assessing the conduct of both the officer and citizen, and can help OPA better evaluate a complaint from the outset. For example, review of video/audio assists in determining whether a complaint should be administratively closed, referred for criminal investigation, or is appropriate for mediation. When recordings are unavailable and there is no obvious explanation, an allegation of failure to use in-car video is added to the underlying complaint.

*Alternative discipline approaches are being*



The OPA Review Board: Front Row - Sharon Dear, Martha Norberg, Tina Bueche (Vice Chair). Back Row - David Wilma, Patrick Sainsbury (Chair), Steve Freng, George Davenport, Jr.

*used in appropriate cases:* Many instances of police action reviewed by OPA do not clearly demonstrate misconduct but the underlying facts indicate that training would be useful. The Supervisory Intervention finding allows for well-intentioned mistakes to be addressed by education and counseling, rather than punishment. Even where misconduct clearly is involved, traditional discipline approaches such as requiring unpaid time off are not always the most effective in promoting behavioral change. Thus, OPA has been working with others inside and outside SPD to consider discipline alternatives based on adult learning models. Where appropriate, the Chief of Police has incorporated alternative discipline in sustained cases, such as requiring the involved officer to do a research project related to the misconduct, to assist with policy review, or to read a book or articles on point and write guidance on the issues involved.

Further information about OPA, the OPA Auditor, and the OPA Review Board and copies of all published reports can be found at <http://www.cityofseattle.net/police/OPA> or <http://www.seattle.gov/council/oparb>. ■

*Kathryn Olson is the Director of the Seattle Office of Professional Accountability.*

## The NACOLE Review

THE NACOLE REVIEW is produced under the supervision of NACOLE's board of directors. The board thanks those individuals who contributed to this edition of the newsletter. This edition was edited by Jayson Wechter and Ilana Rosenzweig. In addition, the board is grateful for the assistance of Cameron McEllhiney, who provides independent contracting services for NACOLE. We would also like to extend our gratitude to Matthew Brooks of Brooks Publications, Inc., [www.brookspublications.com](http://www.brookspublications.com), for providing layout and publication services to the NACOLE Review. We are seeking article suggestions and feedback on what you'd like to see in upcoming issues and volunteers to write articles and book reviews. Please contact Jayson Wechter ([Jayson@well.com](mailto:Jayson@well.com)).

# The NACOLE Professional Mentoring Program

*The NACOLE Professional Mentoring Program pairs newer oversight practitioners with experienced professionals in formal mentoring relationships.*

*The program aims to enhance personal and professional growth, increase sharing of knowledge, skills and best practices and expand the professional network of its participants.*

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