

NACOLE Review

NATIONAL ASSOCIATION FOR CIVILIAN OVERSIGHT OF LAW ENFORCEMENT

www.nacole.org

Fall 2009

The Austin Conference — A Chance to Reflect and Get Energized About the Future

By Philip K. Eure

THE THEME OF THIS FALL'S conference, "Focusing on the Future," was selected by NACOLE's board of directors during our conference planning meeting in Austin in February. We are excited about holding this year's event in the Texas capital, and we hope that you will be able to join us for a program devoted to training those working in the field of oversight, eliciting thoughtful dialogue, and bringing our community up to speed on the latest trends and developments.

If you've never been to a NACOLE conference before, you will feel welcomed by the friendly and supportive environment where you can recharge your batteries, network with others in the

From the President

field and gain new insights into combating police misconduct. Our work can be tough and lonely at times; annual conferences enable our attendees to build a sense of common purpose that is both therapeutic and energizing.

The Hyatt Hotel conference site on the Colorado River provides terrific views of a vibrant Austin. Downtown restaurants, nightlife and other attractions are only minutes away on foot, or you can rent a kayak, canoe or bicycle for excursions along the scenic river.

As police oversight agencies turn their attention to the future, there are signs that the nation's economy is beginning to recover from the deep



▲ Graphic courtesy of The Austin Convention & Visitors Bureau (ACVB)

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Growing a Community- Mediation Program A Look at the Nation's Four Largest Mediation Programs

By Ajenai Clemmons

MEDIATION IS AN ALTERNATIVE to the traditional complaint-handling process. It is usually a voluntary process that allows complainants and officers to sit down face to face in a neutral and confidential setting to discuss their issues with a professional mediator, allowing each party to be heard safely and gain a better understanding of the other's perspective about an incident. Mediation promotes mutual understanding and learning so both parties can prevent similar situations in the future. It is especially effective addressing incidents involving

communication failures.

Mediation is more likely to lead to satisfaction among complainants and officers than the traditional complaint-handling process, and officers who participate frequently receive fewer future complaints as they learn from mediation and make different decisions on the street. Mediation is more likely to result in a timely resolution when compared to formal investigations and results in the expenditure of less time, labor and money.

Getting Buy-In

In 2008, the four largest community-police mediation programs in the United States were

New York City's Civilian Complaint Review Board (CCRB) with 112 mediations, San Francisco's Office of Citizen Complaints (OCC) with 71 mediations, Denver's Office of the Independent Monitor (OIM) with 43 mediations, and Washington, D.C.'s Office of Police Complaints (OPC) with 36 mediations.

While each program is structured differently with varying eligibility requirements, all of the agencies agree that the key to starting a mediation program or expanding an existing one is educating potential

participants.
"You

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The Importance of Effective Independent Oversight in Maintaining Community Confidence

The San José Saga

By Skyler Porras

NESTLED AT THE BASE OF SILICON Valley, the city of San José, California, the 10th largest city in the country and one of its most diverse, often prides itself as being a leader and innovator. But many residents feel that San José has fallen far behind on issues of transparency and accountability of their police department and that community trust in the City has diminished when it comes to police practices.

In the fall of 1993, San José appointed Teresa Guerrero-Daly as its first Independent Police Auditor (IPA). The creation of the IPA was a compromise offer by the City at a time when many community members and organizations were calling for a civilian police review board. Within the first few years of the creation of the IPA, concerns were raised about the auditor not having basic investigatory powers and a lack of independent authority to implement her policy recommendations. Several of those recommendations, including one that individuals arrested for CA Penal Code §647(f) “drunk in public” should be given the option of taking a breathalyzer test, were either declined or ignored by the City Council.

Fifteen years later, the City continues to face those same issues, and its critics claim that several recent actions have eroded the public’s trust in the City to support appropriate oversight of police practices.

In late 2007 the City Attorney issued an opinion that the City Council did not have the power to grant the IPA additional authority. This interpretation of the City Charter resulted in the Council rescinding the authority of the office to audit investigations of officer-involved shootings if no complaint had been filed. This was of great concern to the community because this authority was initiated after the controversial officer-

Editor’s Note:

Recent developments: The San Jose Police Officers Association (POA) jumped into the fray of this issue with the June publication of their newsletter, in which The POA’s vice president maligned a community leader, characterizing him as a “thug” and accused him of making threats during his public comments to the Mayor and Council. A coalition of community leaders is calling on the city to take decisive action to move forward to improve the relationship between the community and law enforcement. A new Independent Police Auditor has not yet been hired, and likely will not until year-end, leaving the position vacant for a full year.

involved shooting of Cau Bich Tran, a young Vietnamese mother several years earlier.

One year later, in October 2008, the City Council narrowly voted to not renew the contract of the City’s second IPA, Barbara Attard, who was very highly regarded within the community but also viewed by the Mayor and some members of the Council as being “too independent”.

The decision regarding Attard’s employment came as the police department had become mired in controversy over reports in the San José Mercury News that San José officers arrested far more people for CA PC §647(f) “drunk in public” than any other city in California and that a significantly disproportionate number of those arrested for the charge were Latino (San Jose’s population is approximately 32% Latino, but Latinos com-

prised 57% percent of 647(f) arrests). While the Mayor initially stated that he felt the cause of the disproportionality was “likely socio-economic”, the City Council ultimately responded by creating a taskforce made up of city and county representatives, the police department, and 10 community stakeholder representatives. One of the purported goals in creating the taskforce was to begin to bridge the gap in the community’s trust of the police department that the reports had created. However, 7 of the 10 community stakeholders jointly resigned in protest because they felt the process was poorly handled by the City.

In the midst of the taskforce process, with distrust of the City and police department mounting in the community, the Mayor announced his new Independent Police Auditor appointee, a senior auditor with the City Auditor’s office and a reserve police officer in a nearby community. Within days of the Mayor’s announcement, the San José Mercury News reported that the new IPA appointee had a brother who was an officer in the San José Police Department, a fact that the Mayor had not only failed to disclose to the public when announcing the appointment, but also was not provided to the community members who had participated in the interview process or to the City Attorney. The Mayor stood by his and the Council’s decision but, within the week, the new appointee resigned. Months later, the Council has reopened the process to appoint the next IPA.

These experiences in San José have damaged the City’s relationship with many in the community and have illuminated why transparency and accountability cannot be mere buzzwords and why true independence is vital for effective oversight. ■

Skyler Porras is the executive director of the San José branch of the Northern California Chapter of the American Civil Liberties Union.

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NACOLE Assists

Did you know that NACOLE assists by providing technical assistance and advice to jurisdictions and others that are considering the creation or reinvigoration of organizations in their communities dedicated to citizen oversight of the police? Find out how NACOLE can help by contacting us at www.nacole.org

Oversight Developments From Around the U.S.

By Nathaniel Adams

Fresno, California

Population: 495,000 (*City of Fresno website*)
Police force: 836 (*Lt. Dennis, Fresno PD*)

This spring, the City of Fresno created the Office of the Independent Police Auditor (IPA). Establishing the IPA was a shared victory for community members, elected officials and law enforcement, as the Fresno City Council adopted Mayor Ashley Swearengin's proposal that was supported by Police Chief Jerry Dyer.

Aided by an administrative assistant and a community outreach specialist, the IPA will have authority to review the police department's internal investigations and make administrative recommendations to department officials.

Adopting a citizen oversight plan has been on the public agenda for eight years. Broad support for the idea finally took hold this year, partly in response to the videotaped beating of a homeless man by two police officers during a February arrest.

An eight-member advisory committee of local politicians, law enforcement officials, and citizens was expected to select the city's first auditor as early as this July.

Columbia, Missouri

Population: 96,000 (*U.S. census estimate*)
Police force: 149 (*2009 city budget*)

Three years after accusations of racial profiling spurred calls for independent police oversight, Columbia is on the verge of establishing a Citizens Police Review Board.

A mayor-appointed panel of 15 law enforcement experts, business leaders, and civic representatives has presented a draft ordinance to the city council defining the board's structure and duties. After hearing public testimony in early June, the

council will revise and vote on the proposal later this summer.

If the plan is adopted as drafted, a nine-member board will hear appeals from the police chief's decisions regarding alleged police misconduct, and it will be able to make recommendations to the chief and the city manager on police policies and training. While the board would lack subpoena power, it could hire independent investigators and hear voluntary witness testimony in the course of reviewing claims.

NACOLE Review editors plan to make this "Oversight Developments" section a regular feature in upcoming editions. Please forward any suggested items to Jayson Wechter at Jayson@well.com.

New Orleans, Louisiana

Population: 311,000 (*U.S. census estimate*)
Police force: 1,550 (*NOPD public affairs office*)

The New Orleans Police Department (NOPD) will soon fall under the watch of an independent police monitor. After years of public dissatisfaction with police conduct, the city council established the position last summer, but movement in other city offices delayed the hiring process.

The police monitor will report to the New Orleans inspector general (IG), another relatively new office that oversees all city operations.

While lacking direct investigative powers, the monitor will have authority to review complaints from the public and recommend that the police department reopen internal investigations that the monitor considers inadequate. The monitor's

office is also required to publicly issue at least one annual report, using NOPD files and data to identify and analyze patterns of police misconduct.

Florida: Orange County, Fort Meyers, Key West

In late May, a state appeals court held that the Orange County Citizens Review Board's intensive review of internal affairs investigations violates the state constitution. The decision is a blow to Orange County, which includes Orlando, and it has raised concerns among oversight agencies throughout Florida.

Fort Myers currently has an appointed Citizens' Police Review Board; although it has no investigative power of its own, the board can review complaints as well as the police department's closed internal investigations and make recommendations based on its findings. As of now, the November ballot contains a referendum to create a separate, elected board with investigative and subpoena powers. But the statewide police officers' union is preemptively challenging that plan in state court, citing the Orange County ruling.

Also heading to court is the Key West Citizen Review Board (CRB). A Key West officer has refused to heed a CRB subpoena regarding a complaint that he lied in order to obtain a search warrant. The officer's attorney claims the board's subpoena power violates both the state constitution and the collective bargaining agreement between the local officers' union and the city. The CRB has indicated that it is willing to go as far as the state supreme court to vindicate its authority. ■

Nathaniel Adams, a second-year law student at Columbia University, was a summer law intern with the Office of Police Complaints in Washington, D.C.

Police Accountability a Long-Time Concern of Justice Sonia Sotomayor

Supreme Court Justice's Legal Rulings on Police Misconduct are in the Mainstream

By Zachary Oseland

U.S. COURT OF APPEALS JUDGE Sonia Sotomayor's decisions on a range of legal issues have been heavily scrutinized since President Obama nominated her to the U.S. Supreme Court, but her rulings on claims that police abused their power have received little attention.

Sotomayor has not ruled in a significant number of cases dealing with police misconduct claims. The term "police misconduct" came up in only six of the 669 cases in which she authored the majority opinion. These included cases involving the use of excessive force by police officers and the potential for municipal liability for police



▲ Justice Sonia Sotomayor, the first Hispanic justice to be appointed to the U.S. Supreme Court.

breaking; she appears to have consistently applied well-established legal principles and precedents.

Sotomayor has been willing to hear plaintiffs' claims that excessive force was used against them, but has not necessarily ruled in their favor. In *Jones v. Pamley*, 465 F.3d 46 (2nd Cir. 2006), a case involving a protest disrupted by the New York State Police, Sotomayor emphasized that "the touchstone of the inquiry [into whether excessive force was used] is [the] reasonableness," of the officer's conduct. Recognizing that officers are "forced to make split-second judgments in tense, uncertain, and rapidly evolving

misconduct. Her opinions have not been ground-

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Book reviews:

Police Corruption

Preventing Misconduct and Maintaining Integrity

By Tim Prenzler, CRC Press, 2009 (www.crcpress.com)

By Jayson Wechter

FROM HIS OUTPOST AT THE CENTRE of Excellence in Policing and Security at Griffith University in Brisbane, Tim Prenzler has examined misconduct prevention strategies throughout Australasia and worldwide. The product of his nearly two decades of research is this concise and accessible publication that examines the causes and effects of police misconduct and outlines best practices for measuring and controlling it, including the role of civilian review, which he views as essential.

Prenzler describes the importance of installing long-term accountability measures to avoid the cycle of “scandal, reform and decay” identified by New York City’s Knapp Commission in the 1970s. Clearly articulated, unambiguous and consistently enforced standards are critical.

A complaints and discipline system must be appropriately balanced between a “retrospectively oriented system” designed to determine the truth and respond to misconduct with disciplinary or other measures, and a “future-oriented” approach focused on behavioral improvements (i.e. retraining and improved supervision) and reconciliation of conflicts (i.e. mediation).

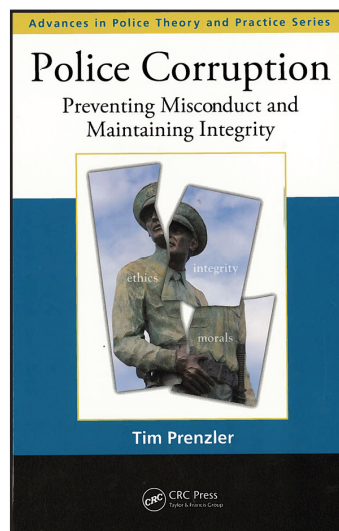
An agency can find this balance and measure its effectiveness through regular surveys of complainants and police officers (to evaluate the types of questions they were asked, the attitude of the investigator and the quality of communication) and by having its files audited by an independent panel of experienced lawyers and investigators.

Complaint processing and investigation need not narrowly focus on investigating the possible culpability of an individual officer for an isolated

complaint, but can consider the officer’s complaint history “to see if there is a pattern of complaints and remedial responses that have already been tried,” as well as “procedural and cultural issues” within a police station or detail. The complainant’s objective can be key to determining whether an alternative to formal investigation, such as mediation, is appropriate.

Prenzler advocates looking beyond individual complaints (most lack sufficient evidence to confidently determine what happened) but recording as much detail about each one as possible and analyzing complaint data “across as many variables as possible” to identify patterns and problems and focus on preventative measures. Crucial variables that should be compiled and analyzed include attributes of complainants (gender, ethnicity/race, age, residence location and social status) and officers (rank, length of service, assignment and duties) as well as the police operations and procedures involved (traffic stop, detention, arrest, use of chemical spray, etc.). He notes the importance of examining complaint data over time and in relation to the size and activities of specific police units. One study in England and Wales found great variation in the proportion of complaints per officer, from a low of 142 per 1000 officers to a high of 492 per 1000.

Because “complaints are not normally spread



evenly across a police department but can cluster in certain units” sophisticated data collection and analysis is key to “Systems Controls and Risk Management,” to include early warning or intervention systems for individual officers, specific units and types of operations (i.e. undercover drug buys, high-risk raids and vehicle pursuits). One Queensland study he cites found a small number of officers receiving a high number of complaints, which, Prenzler says, makes “complaint mapping” an effective tool for police managers.

According to Prenzler, the crucial question concerning civilian oversight is no longer whether

to adopt external review but how to make it effective. He does not prescribe a specific oversight model, but identifies important attributes to achieve success. These include committed and properly trained investigators (one British report recommended the creation of national standards and accreditation for internal investigators), personnel to analyze complaint and incident patterns, the power to investigate any matter independent of a specific complaint and to direct a police department to adopt preventative measures such as early warning systems. ■

Jayson Wechter, a member of the NACOLE Board of Directors and Co-Chair of its Professional Standards Committee, is an investigator with the San Francisco Office of Citizen Complaints.

TRIBAL POLICING

ASSERTING SOVEREIGNTY, SEEKING JUSTICE

By Eileen Luna-Firebaugh. Tucson: The University of Arizona Press, 2007.

*Adapted from a Review by
Jill Norgren.*

Eileen Luna-Firebaugh’s small volume makes a large and important argument: “through the creation of empowered and accountable tribal police departments, tribes can seize the opportunity to advance their sovereignty and their right to self-government, as well as improve the lives of tribal members”. Her book walks the novice through the complicated history of policing in Indian Country, the term she

employs, and describes the complexities of law and jurisdiction as they affect the work of tribal police departments.

Indian tribes hold a unique relationship to the United States and its local governments. As Luna-Firebaugh explains, American Indian tribal governments are not creations of the US government and their right to act flows from inherent sovereignty, not the US Constitution. She acknowledges, however, that tribal governments are subject to legal and political constraints in their relationship with the federal government as well as state governments, formalized in statutes and

court cases. The US Supreme Court has recognized tribal sovereignty repeatedly but nearly always limited its scope. Moreover, the creation, in the nineteenth century, of Indian police units and courts by the US Department of the Interior’s Bureau of Indian Affairs was “in large measure for the purpose of controlling the Indian and breaking up tribal leadership and tribal government”.

Luna-Firebaugh understands the constraints

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NACOLE 15th Annual Conference Special Section



NACOLE 15th ANNUAL CONFERENCE 'FOCUSING ON THE FUTURE'

AUSTIN, TEXAS
October 31st – November 3rd, 2009

THE NATIONAL ASSOCIATION FOR Civilian Oversight of Law Enforcement (NACOLE) invites you to the Fifteenth Annual Conference, an opportunity for community members, civilian oversight practitioners, government and law enforcement officials to dialogue and exchange information about policing and civilian oversight of law enforcement. NACOLE encourages you to participate in the dialogue with the growing community of individuals effecting change in policing and oversight.

This special conference section of the NACOLE Review contains the 2009 Session Schedule, speaker highlights, hotel information, and specifics about NACOLE's Training Certificate Program, as well as information about the City of Austin and the Austin Office of the Police Monitor and the Citizen Review Panel, the agencies that provide oversight of the Austin Police Department.

Please visit www.nacole.org for more information and updates. ■

NACOLE 15th Annual Conference Special Section

NACOLE and Austin Beckon, Are You Ready for a Treat?

By Sacheen Yates

YOUR BAGS MAY NOT BE PACKED, but hopefully you have plans in place for the upcoming 2009 NACOLE Conference in Austin, Texas. The fifteenth annual NACOLE conference promises to be one of the best.

The NACOLE Board of Directors and the local planning committee have put together a great slate of speakers. The conference will feature expert panelists and guest speakers, including: luncheon speaker, Craig Watkins, the District Attorney of Dallas, TX; Shanetta Y. Cutlar, Chief of the Special Litigation Section, U.S. Department of Justice; Lisa Moore, President of the National Alliance for the Mentally Ill (NAMI); Nelson Linder, President of the Austin Chapter of the NAACP; Dr. Jerome Blum, Jefferson Award Winner and advocate for screening and support for returning veterans; Lorie Fridell, PhD, professor and national expert on racially biased policing; William Lewinski, PhD, of the Force Science Institute; Merrick Bobb, President and founder of the Police Assessment Resource Center, and many other distinguished presenters.

NACOLE is pleased to announce that confer-

ence attendees will be treated to a live performance of "The Rant," a highly acclaimed play that explores racial tensions and related issues in the context of a police shooting and the subsequent investigation by an oversight agency, written by Andrew Case, former oversight practitioner and accomplished playwright.

The City of Austin will provide a incredible backdrop. It is a city like no other. Austinites are outgoing and hospitable; they surround themselves with good food and great music. It is a city that people visit and never want to leave. The City of Austin and the Office of the Police Monitor are working to make your trip to Austin a memorable one.

The NACOLE Conference begins on Halloween, October 31, 2009. HALLOWEEN IS BIG IN AUSTIN. We encourage conference participants to don costumes for the opening reception and participate in the Entertainment District parade that will follow the opening festivities.

Conference delegates will have the opportunity to experience the positive attributes of our beautiful city. The Office of the Police Monitor (OPM) invites conference guests to join the OPM staff in morning walks/runs along the hike and bike trail

located just outside the conference hotel on the banks of Lady Bird Lake. The afternoon lunch break will also provide an opportunity to see sights around the conference hotel. In addition, the OPM is coordinating brown bag lunch outings to Barton Springs pool located in Zilker Park as well as a canoe/kayak excursion on the lake.

Downtown Austin is very pedestrian friendly, but why walk when you can take a pedi-cab? Conference guests will have easy access to pedi-cabs during afternoon lunch breaks and evening dinner hours. Guests will receive full color maps of the downtown area along with discounts to recommended local restaurants. The OPM will provide each conference participant with a list of local highlights, including a tour of the State Capitol, the LBJ Library, and the University of Texas Campus—"Hook 'em Horns."

Guests coming into Austin before the conference or staying a day or two after the conference are encouraged to contact the OPM directly for sightseeing opportunities and ideas (512-974-9096). ■

Sacheen Yates is a compliance specialist in the Office of the Austin Police Monitor.

NACOLE ANNOUNCES A NEW PROFESSIONAL CREDENTIAL PROGRAM

THE NACOLE BOARD OF DIRECTORS is pleased to announce its *Certified Practitioner of Oversight (CPO) Credential*, a program designed to recognize oversight practitioners who participate in and have achieved a high level of professional oversight training and to encourage employers and oversight agencies to financially support and encourage participation in these voluntary training programs.

In addition to the CPO Credential Program, NACOLE will continue its Training Certificate Program, initiated in 2008, recognizing the partic-

ipation in conference training. Conferees who attend a minimum of three sessions designated as "Training Sessions" and two additional conference sessions of their choice will be awarded a Certificate of Training.

To earn the CPO Credential, a person must participate in designated training sessions, thus earning a Certificate of Training, at three qualifying conferences in a five-year period, and satisfy supplemental reading requirements. Credit towards the *CPO Credential* will be awarded to individuals who applied for and participated in the 2008 Certification Program. The *Credential* is

valid for five years from the date of the first qualifying conference.

Applications for the *CPO Credential or Training Certificate Program* may be made at the time of conference registration or at any time during the conference by completing the application form. There is no additional fee for this program. However, to participate in the program you must be a member of NACOLE.

Diploma style documents will be issued to individuals meeting designation requirements. Individuals earning the *CPO* designation may indicate their status on business cards, letterhead and elsewhere. ■

Suggestions?

We are constantly seeking suggestions for articles and feedback on what you would like to see in upcoming issues, as well as volunteers to write articles and book reviews. If you have ideas or would like to help, please contact Jayson Wechter at: Jayson@well.com

Who We Are: Austin Office of the Police Monitor and the Citizen Review Panel

OPM promotes mutual respect between police and the community

By Sacheen Yates

AUSTIN, TEXAS, THE LOCATION OF the 2009 NACOLE conference, is a vibrant community located on the Colorado River. Oversight of the Austin Police Department (APD) is a dual process entrusted to the Office of the Police Monitor (OPM) and the Citizen Review Panel (CRP).

The OPM, established in 2002 by the City of Austin in cooperation with the Austin Police Association (APA) is the first point of contact for community members to file complaints of police misconduct. This civilian-staffed agency, working under the supervision of the City Manager, conducts initial interviews with complainants and explains the complaint and investigative process. Police Monitor, attorney Cliff Brown, was appointed by the City Manager in January 2007. In addition to Cliff, the OPM has a staff of eight. (See attached photo.)

Complaints are investigated by the Internal Affairs Division and are closely monitored by the OPM, which participates in all interviews, including those with witness and subject officers. The OPM makes recommendations to the Chief of Police about the quality of IA investigations and/or changes to department procedures. The OPM can also refer cases to the Citizen Review Panel for further recommendations or independent investigation.

Created to bring greater transparency to the process of police investigations, one of the OPM's core missions is to promote mutual respect between the APD and the community it serves.

Outreach and Education

OPM staff regularly participate in outreach activities, attending APD sponsored community and educational forums, neighborhood association

meetings and citywide celebrations such as National Night Out, Juneteenth, and Cinco de Mayo. The staff also receives training at the APD Academy and does ride-alongs with patrol officers to gain insight into current police practices.

The Police Monitor regularly speaks to community and police groups to discuss issues and incidents that impact the community and law enforcement. He works collaboratively with the Chief of Police on difficult issues, including officer involved shootings and allegations of biased-based profiling.

Within hours of a May 2009 officer involved shooting that raised community ire, the Police Monitor, the Chief of Police, the City Manager, the Mayor and the President of the local chapter of the NAACP held a press conference to address the community's raw emotions and instill confidence in the investigative and oversight processes. A town hall meeting was held three weeks later to answer questions about the investigative process.

Citizen Review Panel

The CRP is an additional layer of oversight that serves as a link between the APD and the community. Comprised of seven volunteer citi-



▲ The OPM staff pictured above (from left to right):
Back Row: JoAnn Hartgrove, Renita Sanders, Cliff Brown, Carmen Scott, Sonia Arredondo
Front Row: Sacheen Yates, Hermelinda Zamarripa

zens appointed by the City Manager, the CRP meets monthly and has the authority to make recommendations in concert with the OPM to the Chief of Police on APD policy, procedures and discipline.

Panel members are required to attend three to four days of tailored training at the APD Training Academy, six hours of IAD training, and participate in two 10-hour ride alongs with patrol officers.

Members of the CRP are Dick Neavel, Thomas L. Martinez, Joseph Hawkins, Dominic Gonzales, Sylvia Hardman and Ketan Kharod. ■

Sacheen Yates is a compliance specialist in the Office of the Austin Police Monitor.

Where to stay while in Austin

We are please to be partnering with the Hyatt Regency Austin for this year's 2009 Conference. NACOLE has secured a rate of \$160/night. Please note that your reservation must be received by October 9, 2009 to qualify for this rate. If you plan to extend your stay in the Austin area, this rate is available three days prior and three days after the conference. Please visit our website at www.nacole.org to make a reservation or contact the Hyatt directly at 1-800-233-1234.


The hotel is located about 8 miles from the Austin Bergstrom

International airport. Transportation is available via taxi or via the Airport Super Shuttle.

For further information regarding the hotel, transportation, or the city of Austin, please visit the following websites:

www.nacole.org
www.austin.hyatt.com
www.austintexas.org

NACOLE 15th Annual Conference Special Section

Saturday, October 31st	<p>10:00 a.m. Registration Begins</p> <p>10:30 a.m. Models of Oversight: Real-Life Examples of the Success (and Limitations) of Different Oversight Models</p> <p>1:30 p.m. Incident Analysis: Different Perspectives</p> <p>3:15 p.m. National Guidelines for Civilian Oversight Professionals - A Presentation by PARC</p> <p>4:30 p.m. Model Specific Roundtables</p> <p>7:30 p.m. Welcoming Reception</p>
Sunday, November 1st	<p>8:30 a.m. Best Practices for Investigating and Auditing Less-Lethal Force</p> <p>8:30 a.m. Immigration Issues and Citizen Oversight</p> <p>10:30 a.m. Oversight of Jails & Prisons</p> <p>10:30 a.m. Making the Grade: Performance Standards Aimed at Getting an "A"</p> <p>1:30 p.m. Citizen Complaints and Officer Dissatisfaction: Better Resolution Through Mediation</p> <p>1:30 p.m. Inter-Agency Collaboration for Effective Complaint System Management and Development</p> <p>3:15 p.m. Cooperatively Investigating Lethal Use of Force Incidents: An LAPD Case Study</p> <p>3:15 p.m. R.E.S.P.E.C.T.: Finding Out What it Means to Youth and Law Enforcement</p> <p>7:30 p.m. The Rant, A play by Andrew Case</p>
Monday, November 2nd	<p>8:30 a.m. Plenary Address: Shanetta Cutlar, Special Litigations Section, Civil Rights Division, U.S. Department of Justice</p> <p>10:30 a.m. Promoting Fair and Impartial Policing: A Comprehensive Program for Addressing Bias in Policing</p> <p>10:30 a.m. Ethics, Integrity & the Police Culture - Examining the Police Code of Silence</p> <p>12:00 p.m. Luncheon Keynote, Craig Watkins, the District Attorney, Dallas, TX</p> <p>1:30 p.m. Returning Veterans: The Effect of the War in Iraq and Violence in Our Community on Policing in the United States</p> <p>1:30 p.m. Force Science Institute: A Presentation by Dr. Bill Lewinsky</p> <p>3:15 p.m. NACOLE General Meeting & Elections</p> <p>7:00 p.m. Sankofa Reception </p>
Tuesday, November 3rd	<p>8:30 a.m. The Reality of Working With the Mentally Ill</p> <p>8:30 a.m. Police Equity Research: Partnerships for Transparency and Accountability</p> <p>10:15 a.m. Refocusing the Vision, Focusing on the Future</p> <p>12:00 p.m. Conference Concludes</p>

Police Oversight in Brazil: the Role of the Public Ministry

By
Thiago André Pierobom de Ávila

THE CONSTITUTION OF BRAZIL, ratified in 1988, gave special attention to oversight of the police. Since Brazil had a history of dictatorship during the 60's and 70's, the new Constitution designated the Public Ministry to serve as "ombudsman." This institution is usually translated as the prosecution, but has many other functions related to the defense of civil rights and collective interests, one of them being the external control of the police.

The Brazilian Public Ministry has oversight authority over the two police agencies in Brazil: the Military Police, in charge of preventive patrol, and the Civil Police, in charge of the investigation of crimes.

Each state has a different organization for the Public Ministry. In the Federal District of Brasília (Brazil's capital), the Public Ministry has four offices related to police oversight: the Police Oversight Office, the Torture Prosecution Office, the Military Prosecution Office, and the Misdemeanor Prosecutors. The Police Oversight Office, composed of three Prosecutors and administrative staff, has the function of coordinating oversight related to the activities of the Civil Police. They receive citizen complaints and conduct independent misconduct investigations, prosecute civil police officers for crimes and administrative punishment, sue the Civil Police Department, oversee the Internal Affairs investigations, and make policy recommendations. They also visit Police Stations and Prisons to inspect conditions, and oversee the effectiveness of Civil Police investigations. Periodic reports are generated to inform the public of complaint statistics, investigations, and convictions related to police misconduct cases.

The Public Ministry has engaged prosecutors, police officers and the community to ensure that the police respect civil rights.

In 2007 the Police Oversight Office, in collab-

oration with community members, developed a booklet, "Citizen Police Project" which discusses the rights and responsibilities of citizens in dealing with police officers, as well as complaint procedures. The Military Police, the Judiciary and the Bar Associations supported the project. The booklet has been used in an advertising campaign to reduce incidents of the abuse of authority, unnecessary street clashes between citizens and officers, and increase accountability of the police. Prosecutors gave lectures for police officers and for students in schools in at risk neighborhoods. The lectures focused on the respect of the civil rights of citizens by police officers, to include illegal arrests, force issues, the right of citizens to ask for officers' names, and the right to file a misconduct complaint and receive information about the outcome of the case.

In June 2008, a Police Oversight Congress was held in Brasília to discuss new strategies by the Public Ministry. The conference included international lecturers Philip Eure (OPC of Washington, DC), Richard Rosenthal (Independent Monitor of the City & County of Denver, CO), and a video lecture by Merrick Bobb (Police Assessment Resource Center, CA). The conference produced the "Letter of Brasília", with proposals to improve the Public Ministry's activities in police oversight throughout Brazil. Soon afterwards, the National Association of General Attorneys of Brazil created a special commission to study how to improve the Public Ministry's performance. After a preliminary report of this commission, the National Counsel of the Public Ministry ordered the Attorney General to create procedures to compel all criminal prosecutors to regularly engage in police oversight activities, such as periodic visits



▲ Thiago Ávila makes a presentation to public school teachers regarding police authority and civil rights.

to police stations, public reporting, and developing procedures to receive complaints against police officers.

It is a great challenge to control police power in a country in which there remain a great number of socially excluded people, where some death squads composed of police officers exist, and organized crime is at times at war with the police. Through the direction of the 1988 Constitution and work that has been done, improvements have been made to ensure a fairer social control system. In Brazil, the Public Ministry is working to fulfill its duty. ■

Thiago Andre Pierobom de Avila is a federal prosecutor in Brasília, Brazil.

Links of interest:

Letter of Brasília:

www.mpdf.gov.br/Comunicacao/arquivosBoletim/carta_de_brasilia.doc

Booklet "Citizen Police":

www.mpdf.gov.br/joomla/pdf/cartilhas/Cartilha_Policia_Cidada.pdf

Pictures of Prosecutors' Lectures in the Schools:

www.mpdf.gov.br/comunicacao/destaques/cartilha.htm

Website Makeover - Exciting Changes to Come

By Brian Buchner

UPDATING THE NACOLE WEBSITE is a priority for the Board of Directors; the Website Committee has been working with a web developer to revamp the site's structure and functionality. Although still in development, we've made great progress. The updated website will be more interactive and will include several new features and enhancements to improve overall functionality and allow information to be accessed and updated

directly on the site.

Making the website more interactive will improve the look and feel of the site, enhance search and browsing capabilities, provide access to timely information and resources and allow members to log-in, view and edit their information instantly. The new site will also feature a conference registration function that will allow users to register, pay and make changes to their registration information. Similarly, the new site will enable members to renew their membership and pay membership dues directly on the site.

Employment announcements will continue

to be available as will access to the listserv.

Finally, the Committee is revising content for the website, including updating the list of oversight agencies, publications and helpful links.

All of these improvements will increase our capacity to provide members and the public with meaningful timely information about the organization and civilian oversight. ■

Brian Buchner is a Special Investigator with the Los Angeles Office of the Inspector General and a member of the Website Committee.

Twitter for Oversight

What's up with Twitter, and how is it useful to my agency?

By Kelvyn Anderson

THE HOTTEST ENTRY IN SOCIAL networking since Facebook, Twitter provides 140 characters to instantly broadcast your message to desktops, BlackBerrys and cell phones across the planet. Police Departments and other public safety agencies¹ are using the service to provide targeted crime alerts and other information to followers who sign up to receive the information. As police agencies have jumped on the service in droves over the last year, Twitter has been called the "police scanner of the digital world."²

The Philadelphia Police Advisory Commission (Commission) set up an account and joined several other local agencies on Twitter in April 2009, and is using the service to broadcast meeting notices, highlight important information about police-community issues, and keep an ear to the ground for tweets about incidents around the city.

More than a service for posting short messages, Twitter is also a breaking news, near-real time search engine for just about anything imaginable, from the elections in Iran to incidents involving our police departments. In April 2009 a group of teens and young adults were involved in an incident with police at a local club. We became aware of the incident via a series of tweets³ complaining about police actions, and in about 2 to 3 hours used them to pinpoint email and phone contacts for the individuals who were directly involved. You can use a free service like Monitter⁴ to keep track of tweets you're interested in, even if you're not a member. Don't forget that photos are posted through Twitter as well, and can be searched through sites like Twicsy.⁵

Be warned that many events will not be so neatly contained, and can generate layers of useless repeated tweets along with fabricated or exaggerated misinformation. Try to get a rope and a filter around all this chatter by creating news feeds for your most common searches and organ-

izing them in a tool like Google Reader or something similar.

Use Twitter to highlight web-based information of interest to your agency's audience: we've been encouraging the use of several new crime mapping applications for example, so we've tweeted links to those items, as its much faster and easier than adding them to our website. The Commission offices have moved recently, so Twitter was useful to broadcast the move information over several weeks to alert the community to our new location.

Twitter's code plays well with other applications. You can get web browser plugins or mashups that will track or post tweets, integrate the service with your blog, or plot geo-coded tweets on Google Maps or Google Earth.

Twitter is still moving up the curve and has been plagued by lingering security issues, with hackers manipulating the site's coding vulnerabilities to hijack traffic and high-profile celebrity accounts.⁶ Carefully monitor who has access to your Twitter accounts, use strong passwords and exercise caution with the information you choose to post. Twitter and other social networking services make it easy to push the button, but remember to think before leaping. Spend some time learning the Twitter lingo and the logic behind



▲ A screenshot from the Twitter site

managing followers in your network. HowStuffWorks⁷ has a great explanation of Twitter for beginners. ■

Kelvyn Anderson is the Deputy Director of the Philadelphia Police Advisory Commission, a former NACOLE board member, and the NACOLE Listserve guru.

¹<http://tinyurl.com/copsontwitter>

²<http://tinyurl.com/copsontwitter2>

³<http://tinyurl.com/pacttwitter>

⁴<http://monitter.com/>

⁵<http://twicsy.com>

⁶<http://tinyurl.com/securetwitter>

⁷<http://tinyurl.com/howtwitterworks>

"President's Message," Continued from page 1

recession. Cuts in state, county and municipal budgets have nonetheless seriously affected the operations of many member agencies, causing them to compete fiercely with other local government priorities for scarce dollars.

Paradoxically, the size of many police forces can be expected to grow in the near future as the result of the infusion of billions of dollars of federal stimulus funding authorized by President Obama and Congress. The immediate challenge

faced by the citizen oversight community is to maintain the urgency of police accountability issues in the eyes of the public and elected officials, thereby making the case for funding the important work performed by our offices.

President Obama's nomination of Sonia Sotomayor for a seat on the U.S. Supreme Court recently brought to light the importance of police accountability efforts. In its May 26, 2009, press release announcing Sotomayor's nomination, the White House specifically cited her experience in the Manhattan District Attorney's Office prosecuting police misconduct cases as one of her achievements. Clearly, from Pennsylvania Avenue to Main Street, there is growing recognition around the country that an essential element of

striving toward a more perfect democracy means holding police officers accountable to the public.

NACOLE is on the cutting edge in promoting standards and working to train independent professionals and others to oversee the police. Each year, more and more cities and counties around the United States join the ranks of this developing area of civil rights protection. From the approximately 50 citizen oversight agencies that existed in the mid-1990's to the more than 150 such offices, boards and commissions that operate now, the police review field is growing. Other parts of the world have seen the same trend. A quick glance at the collection of articles distributed via NACOLE's listserv on any given day reveals the extent to which the "oversight conversation" ►►

is increasingly taking place across America and overseas.

In order to nurture this growth and meet the demand throughout the year, NACOLE and its

extensive network of oversight professionals are in frequent contact with members of community and advocacy groups, elected officials and others, providing useful information about best practices in the field. When we gather in Austin from October 31 to November 3, the “oversight conversation” will be taken to another level that will include practical guidance and training from experts on a range of relevant topics.

I want to thank my fellow NACOLE board members for all of their hard work in helping to put together the Austin conference, as well as for their efforts in moving the organization forward during the past year. It has been an honor to serve with such a committed group of distinguished people. In addition to planning this year’s conference, members of the all-volunteer board, named in the box on page 2, have been very busy providing technical assistance to existing and emerging oversight agencies, developing standards for the field, pursuing grant opportunities, revising our website for improved content and capacity, publishing this newsletter and overseeing the administration and finances of the organization.

When you combine the efforts of NACOLE with the energy and determination of individuals who, like you, are making great strides in promoting independent police review throughout the United States and beyond, the future of our profession is looking very bright. ■

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



ing San Francisco police officers, published an OCC authored article about mediation in its newsletter with a sidebar written by the union’s vice-president strongly encouraging officers to participate in the program.

New York’s CCRB implemented a “Frequently Asked Questions” form for officers to help them feel more comfortable with the mediation process. Washington D.C.’s OPC emphasizes explaining how mediation benefits the subject officer along with promoting police accountability and like most mediation programs has built-in incentives to encourage officer participation.

In addition to speaking with individual complainants about why mediation may be a better option than an investigation, oversight agencies conduct public outreach through community presentations and media assistance. Denver’s OIM met with over 150 organizations and its mediation program was the subject of a front page article in a major local newspaper, which helped legitimize and publicize its program.

Another essential component, notes New York City’s Mediation Director, Lisa Grace Cohen, is having a committed agency and committed staff behind the mediation.

Getting started

All four agencies agree that securing a pool of strong, experienced mediators is critical to either starting a program or expanding an existing one. Some programs pay their mediators, some use volunteers, and others take advantage of city contracts with a mediation vendor. New York and Denver provide trainings to orient their mediators to the unique challenges they will face with police officer-citizen interactions.

Maintaining Momentum

The Denver OIM realized that as command staff and sergeants were rotated out of Internal Affairs into other assignments, the OIM would need to periodically re-establish the benefits of mediation throughout the Department.

Washington, D.C. took more aggressive steps to follow up with complainants and help them become more comfortable with the mediation process and benefits and to identify and address any unnecessary delays in the mediation process.

All four agencies use and recommend a survey tool to capture important data regarding satisfaction with the process, outcome, mediators, etc. that help the program managers continue to improve the experience for future participants. Denver’s OIM, which meets each month with its mediation vendor and Internal Affairs to ensure quality control saw satisfaction with the mediation outcome rise almost 21% and satisfaction

with the process increase by 27% between the first and second year of the program.

Phil Eure, Director of the OPC, encourages programs hoping to mediate more complaints to look at the case eligibility requirements for larger programs and see how their criteria could be expanded. “Don’t expect to have 30 or 40 or 50 mediations in the first year,” he said. Your program will grow...but you’ve got to just get in there and get started.” ■

Ajenai Clemmons is the Community Relations Ombudsman for the Office of the Independent Monitor in Denver.

“Justice Sotomayer,” Continued from page 3

circumstances,” Sotomayer applied the well-established standard of what a reasonable officer would do in the situation, given all the circumstances.

In *Jones*, she overruled the lower federal district court’s granting of summary judgment against an excessive force claim decision, stating that plaintiffs must be allowed to argue their claim unless no reasonable jury could find that excessive force was used. But in the same decision, she limited the definition of excessive force, overruling a lower court holding that any arrest made without probable cause was inherently carried out using excessive force.

Another case, *Amnesty America v. Town of West Hartford*, 361 F.3d 113 (2nd Cir. 2004), involved claims of excessive force and municipal liability for police misconduct. Sotomayer wrote extensively about the liability issue. She stated that “a single action taken by a municipality is sufficient to expose it to liability,” such as when a police department adopts an unconstitutional policy. Even if the official policy is constitutional, “a single instance of deliberate indifference to subordinates’ actions can provide a basis for municipal liability.” The indifference at issue here was a police chief who allegedly ignored his officers’ use of excessive force. Sotomayer was not yet prepared to hold the town of West Hartford liable. She sent the case back to a lower court to determine whether misconduct had occurred, and if it had, whether the misconduct could “be said to represent the conscious choices of the municipality itself,” or whether it was attributable to a single rogue officer. ■

Zachary Oseland, a law student at Duke University, was a summer law clerk for the Office of Police Complaints in Washington, D.C.

“Mediation,” Continued from page 1

absolutely have to get the buy-in from the parties involved, your own office, the police department and the public,” said Mediation Director Donna Salazar of San Francisco’s OCC. The Police Officers’ Association (POA), the union represent-

The NACOLE Review

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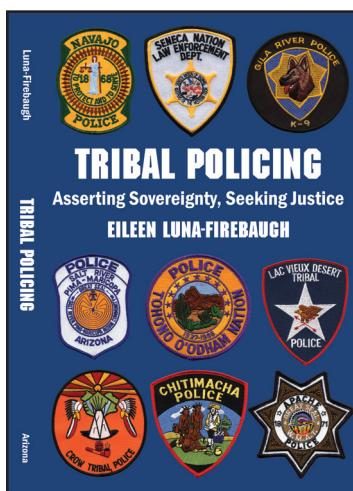
“Tribal Policing,” Continued from page 4

and challenges. Tribal police are responsible for vast geographic areas but lack, she writes, “resources that most mainstream police officers take for granted,” including working police vehicles, operational 911 systems, access to police radios, and unlimited phone service. Training is often limited and departments experience difficulty receiving assistance from other (non-tribal) law enforcement agencies. A 2003 report from the US Civil Rights Commission found that per capita spending on law enforcement in American Indian communities was roughly 60 percent of the US average. At the same time, US Department of Justice studies report “what many in the American Indian community already knew: crime victimization rates in the American Indian community are significantly higher than in the U.S. population at large, and more than twice as high as the next highest, the African American community”.

Luna-Firebaugh describes rates of victimization for American Indian women almost fifty percent higher than that for African American men. The violent crime experienced by Native American women has been discussed repeatedly in congressional hearings on the Violence Against Women Act (Tribal Title IX). The claim is made that the federal government’s erosion of tribal government authority, along with the chronic under-funding of law enforcement agencies that should protect Native American women has com-

pounded rates of violence against them.

Clearly the need for better policing exists. Luna-Firebaugh writes that there has been “rapid development of tribal police departments” in the last several decades. In this book she gives the findings of a multi-year study employing inter-



view techniques to determine the approaches tribes have taken in developing and implementing these new and expanded departments.

The author finds that community policing prevails as the most widespread model for tribal police. Its methods and concept of restorative justice, and enhancement of community cohesion and action are ideas, she argues, that fit well with-

in Indian Country.

The author’s survey data reveal that tribal police departments diverge from non-Indian departments in the number of midlevel managerial and command positions held by women. She considers this outcome “impressive,” and hopes that “the empowerment of women officers to function fully as police may have a significant bearing on the ability of tribal police departments to contend successfully with the rampant violence on reservations”. This is an important hypothesis, one that ought to have been more fully discussed.

The issue of police accountability is taken up in Chapter 9. The author argues that the idea has support in Indian communities and should be the subject of further research, particularly with regard to the enhancement of civilian oversight.

TRIBAL POLICING offers a useful introduction to a topic insufficiently discussed in the literature. The book ought to provoke practitioners and theorists to consider how better to address the complicated issues of policing in communities burdened by a colonial history, including a maze of law addressing civil and criminal jurisdiction. ■

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