

NACOLE Review

NATIONAL ASSOCIATION FOR CIVILIAN OVERSIGHT OF LAW ENFORCEMENT

Winter 2007

www.nacole.org

NACOLE Knows the Way to San Jose

Silicon Valley City will Host
13th Annual Conference

It is with great enthusiasm that the Board of Directors of NACOLE invites you to the 13th Annual NACOLE Conference to be held this fall in San Jose, California. Through annual conferences over the past 12 years, NACOLE has provided practitioners of oversight, members of the community, elected and professional government officials, and members of law enforcement with the opportunity to dialogue and exchange information about citizen oversight of law enforcement.

NACOLE conferences offer a unique opportunity to network and continue the dialogue within a growing oversight community, as well as receive educational and up to date technical information relevant to the field of oversight. Panels will address topics relevant to attendees establishing new oversight models and to those who are working to continue to refine and strengthen existing oversight systems.

We also hope to welcome a large international contingent for this year's conference. Plans are being made to include sessions that will address international issues as well as provide an atmosphere in which the experiences of oversight in other countries can be shared.

The conference will be held September 25-28, 2007, at the San Jose Fairmont Hotel. Please check the NACOLE website (www.nacole.org) throughout the winter and spring for further updates. San Jose and the San Francisco Bay Area offer excellent cultural and outdoor adventure opportunities that can provide attendees with both extra-curricular activities and extended-stay options.



▲ The glass dome of San Jose's new City Hall serves as a symbol of NACOLE's commitment to transparency in policing.

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Greetings from the NACOLE President



As I write this letter, the number of days remaining in 2006 is dwindling; the year is rapidly coming to a close. At this time of year, in spite of all the busyness and distractions of the holiday season, I always find time to take stock of where I have been and where I want to go in the year ahead. As NACOLE's current president, I find myself reflecting on the past year to see what lessons can be gained and applied to our common future in the field of law enforcement oversight.

By any measure, 2006 was a very strong one for NACOLE. We are fortunate to have an involved and highly committed membership. Our members actively participate on our

board, work tirelessly as committee members, and share their expertise and knowledge as speakers and panel members at our annual conference. Thanks to the success of our last two conferences in Miami (2005) and Boise (2006) and the fiscal restraint exercised by our board, NACOLE will be ending this year in excellent financial shape. The funds generated by the last two conferences should enable NACOLE this next year to realize its long-held dream of seeking grant funding for the expansion of services to our members.

On a personal note, I want to express my gratitude to all those who came to our 12th Annual Conference in Boise this past September. It

brought me great joy to act as host to so many old and new friends in oversight, wonderful people from throughout North America and the world. At the conclusion of the four-day conference, I was filled with a renewed commitment and excitement about our work. I encourage all of you to take advantage of the education, enthusiasm, and fellowship only a NACOLE conference can offer by joining me and the rest of the board in San Jose, California, September 25 through 28, 2007.

Pierce Murphy is the president of NACOLE's board of directors. He is also the ombudsman for the City of Boise.

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CACOLE Meets in Vancouver for Annual Conference

Delegates Attend from 18 Countries

By Robert Mitchell, QC

The Canadian Association for Civilian Oversight of Law Enforcement (CACOLE) held its 2006 conference in Vancouver, British Columbia, October 2 – 5. The terrific venue, exceptional agenda, and participation by an unprecedented number of delegates from around the world made the conference a great success.

The conference theme was “*Civilian Oversight – Striking the Right Balance*.” The composition of the speakers was itself a reflection of a balanced approach, with politicians, oversight agencies, police chiefs, professional standards officers, police union leaders, academics, aboriginal leaders, representatives of non-governmental organizations, lawyers and complainants’ counsel sharing their views and debating current issues.

A conference highlight was the dedication of an entire day to international speakers on oversight topics. NACOLE was well represented - three of the organization’s board members, Eduardo Diaz, Barbara Attard, and Pierce Murphy, were speakers at the conference, and many other NACOLE members attended. Of the 161 registered delegates to the conference, there

were about 45 non-Canadian delegates representing 18 different countries, including England, Scotland, Northern Ireland, Ireland, Belgium, the Netherlands, Austria, Portugal, Namibia, South Africa, Bermuda, Chile, Grand Cayman, New Zealand, Australia, and Brazil. The feedback from participants was entirely supportive and enthusiastic.

At the conclusion of the conference, positive discussion began over the creation of the International Network for Independent Oversight of Policing (INIOP). An *ad hoc* committee was formed, and plans made to meet in early 2007 in Brussels to formalize its creation. NACOLE is actively involved in this process.

I warmly invite all NACOLE members to register for CACOLE’s next conference scheduled for Halifax, Nova Scotia, on October 10 -12. Keep your eye on the CACOLE website: www.cacole.ca for details as they develop.

Robert Mitchell, QC, is the newly elected president of CACOLE’s board of directors. He is also chair of the Office of Saskatchewan Police Complaints.

Police Misconduct Goes Online

What Your Agency Can Do To *Click* It Off

By Kelvyn Anderson

As the digital media revolution plunges ahead, the records and online activities of police, citizens, criminals – anyone with a computer or other net-connected device – create a dizzying array of legal and investigative challenges for police oversight agencies. Even the conduct of employees of police review agencies has been scrutinized.

Trouble in cyberspace

Consider these recent incidents from around the U.S.:

❑ Corvallis, OR (May 2006): Three officers on duty respond to a noise complaint from a party. A photograph of one of the officers cuddling up with lingerie-clad co-eds is posted on MySpace.com. He is disciplined, but keeps his job.

❑ New York, NY (2006): A CCRB investigator is fired after police complain about his use of the N-word and other comments on MySpace.com. A police union official notes that a review of the investigator’s cases may be appropriate due to “credibility issues.”

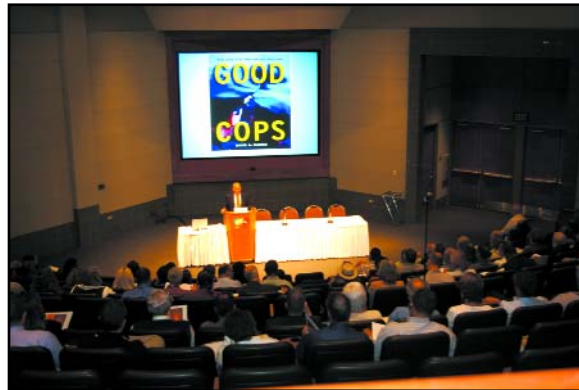
❑ Wichita Falls, TX (October 2006): Prosecutors dismiss about 40 felony drug cases for credibility issues after a police officer is suspended in connection with his MySpace page, which included images of dismembered women.

Emboldened by anonymity, some officers brag openly of their misconduct. Consider this 2003 website posting from a 75th district NYPD officer:

♦ See “Police Misconduct” on pg. 7



NACOLE delegates take in the sights and sounds of Boise while in town for the 2006 NACOLE Conference entitled, "Making Justice Visible."



Annual NACOLE Conference in Boise a Big Success

National experts on police accountability address the gathering

NACOLE's twelfth annual conference was held this past September in Boise, Idaho. By all accounts, it was a roaring success. More than 180 delegates attended the conference, some coming from as far away as South Africa, Belgium, Northern Ireland, and the Republic of Ireland. At least 26 states were represented as well, including a large contingent from southern Florida. Following the opening session on the afternoon of Monday, September 25, conference attendees were treated to a block party in Boise's famous Basque neighborhood. The street was closed off so the delegates and local officials could mingle under the stars and enjoy Basque food and music.

This year's conference had as its theme, "Making Justice Visible." The NACOLE board chose this theme not only to represent the work of citizen oversight, but to provide a link to the site of our second evening reception, the Anne Frank Human Rights Memorial. This lovely outdoor memorial consists of reflection pools and a statue of Anne Frank standing on a chair peering out a replica of the window of her family's attic hiding place in Amsterdam during World War II. Surrounding the pools

are large stone slabs in which are carved famous quotes from leading human rights figures from around the world. One quote from Mahatma Gandhi reads, "Make injustice visible." Following tours of the memorial led by docents and a performance by a local children's chorus, the delegates enjoyed good food and conversation at the nearby Idaho Historical Museum.

The conference opened with an inspiring and insightful speech by Professor David Harris, author of "Good Cops: The Case For Preventive Policing." Other keynote speakers and presenters included Idaho Federal District Court Judge B. Lynn Winmill, civil rights attorney David Nevin, Michael Bromwich, Esq., former Inspector General of the United States Department of Justice and current Independent Monitor for the Washington, D.C. Metropolitan Police Department, and Dr. Lorie Fridell, a nationally recognized expert on racial profiling. Many other excellent speakers and panels filled this four-day conference with strong content, helpful training, and lively discussion. Visit the NACOLE website (www.nacole.org) to download podcasts of keynote speakers and select other sessions from the conference.

NACOLE Approves Code of Ethics

Agencies Urged to Adopt Similar Policies

NACOLE members took an important step at the organization's 2006 Boise conference when they voted to adopt a code of ethics.

Citing an increase in the number of police oversight agencies across the nation, and recognizing the field's growing professionalism, NACOLE's board of directors last year created a subcommittee on professional standards. Working from a draft prepared by NACOLE member Jayson Wechter, the subcommittee worked during the spring and summer to prepare a document in time for the 2006 NACOLE conference.

NACOLE provided copies of the draft code of ethics to members prior to and during the conference. In addition, a special town hall meeting during the conference was devoted to the topic. Conference-goers engaged in a robust discussion of the draft code of ethics, contributing many suggestions that were incorporated into a revised final version, which was then presented to the membership for a vote during the organization's annual meeting in Boise.

Subcommittee member and past-president of NACOLE, Barbara

Attard, noted that citizen oversight boards and agencies oversee law enforcement, which is itself a highly visible and organized professional group. According to Jayson Wechter, another subcommittee member, "A code tells those we deal with: these are our core values. This is what we stand for. This is what you can expect from us."

Sam Pailca, the director of the Office of Professional Accountability (Seattle), chaired the subcommittee. She was assisted by a broad and experienced group of oversight professionals from around the country, which included Barbara Attard, independent police auditor (San Jose), Joyce M. Hicks, executive director of the Citizens' Police Review Board (Oakland), Flo Finkle, executive director of the Civilian Complaint Review Board (New York), Keshia Taylor, assistant chief investigator, Office of Police Complaints (D.C.), Jayson Wechter, an investigator with the Office of Citizen Complaints (San Francisco), and John Fowler, associate director of the Office of Professional Accountability (Seattle).

The code of ethics, as adopted by the organization's members, sets

standards in the following areas: Personal Integrity; Independent and Thorough Oversight; Transparency and Confidentiality; Respectful and Unbiased Treatment; Outreach and Relationships with Stakeholders; Agency Self-examination and Commitment to Policy Review; Professional Excellence; and Primary Obligation to the Community. Each section of the code reflects the consensus on the necessary elements of an independent, objective and effective oversight mechanism.

Commitment by members to a high standard of professional conduct has long been recognized as one of the hallmarks of a profession. Although citizen oversight practitioners range from volunteer board members to full-time executive directors, auditors and monitors, the code of ethics is intended to govern the conduct of all people who are involved in external review of the police. NACOLE encourages each agency to adopt its own policy for incorporating the code of ethics into its operations.

NACOLE's code of ethics can be viewed and downloaded from the NACOLE website, www.nacole.org.

Who We Are: Key West, Florida

By Amanda G. Willett

The City of Key West Citizen Review Board (CRB) in Florida was created by referendum on November 2, 2002, by a 60% majority vote of the Key West citizens and is now an integral part of the City Charter. The CRB was established as an independent board with the power to issue subpoenas and the authority to review and investigate police misconduct complaints filed by

citizens and tourists against officers of the Key West Police Department. The CRB forwards its findings and recommendations to the city manager, chief of police, state attorney, and, in appropriate cases, to other state or federal law enforcement agencies and/or grand juries. The CRB currently reviews both complaints filed by individuals with the CRB, and complaints that are filed separately with Internal Affairs (IA).

The board consists of seven members who volunteer their time and efforts. Four of the seven board members were nominated from diverse community-based civic and social organizations and then appointed by the City of Key West Commission. The appointed board members then selected the remaining

◆ See "Key West" pg. 8

Opinion and Analysis

Is Citizen Oversight in California DOA?

By John Parker

In California, just as the ocean's tides have created havoc on our coastline, the tides of change brought on by litigation spawned by police unions have eroded the public's right to learn important facts surrounding police misconduct allegations.

In a 6-1 decision, the California Supreme Court ruled on August 31, 2006, that the public cannot have access to police discipline records used during administrative appeals before civil service commissions. According to many legal commentators, the decision also effectively extends to the state's citizen oversight agencies and boards, and prevents them from holding public hearings or otherwise making their investigative reports or decisions available to the public.

In the wake of this important decision, *The Copley Press, Inc., v. The Superior Court of San Diego County*, 39 Cal.4th 1272 (2006), it is important to understand the ramifications of the case, and the options available to oversight practitioners in California.

The essentials of the case are as follows. *Copley Press* publishes the *San Diego Union-Tribune*. The newspaper sought to gain access to a San Diego County Civil Service Commission hearing on a deputy sheriff's appeal of a termination order. The hearing had been closed to the public in accordance with state law regarding the confidentiality of peace officer personnel records and two prior California appellate court decisions. When the commission denied the paper's request to attend the hearing, the *Union-Tribune* asked for disclosure of documents filed with, submitted to, or created by the commission concerning the appeal. The commission withheld most records, including the deputy's name, asserting disclosure exemptions.

In upholding the commission's reliance on the exemptions, the *Copley* decision has dealt a major blow to

the development of more effective citizen oversight of the police in the Golden State. Although the language of the ruling arguably applies only to civil service proceedings, the decision has already had an immediate effect on police review agencies and boards in California. Some agencies, such as those in Berkeley and San Diego County have closed their police misconduct hearings to the public. Other oversight entities have declined to release to the public investigative reports and written decisions following hearings, until the uncertainty surrounding the reach of the *Copley* decision is resolved.

These measures run counter to the goals of greater police accountability. Public revelation of police misconduct allegations has often resulted in calls for, and the implementation of, police reform. But the *Copley* decision has only led to more police secrecy, an odd development that is inconsistent with the openness and transparency generally found in democratic societies. Because law enforcement has such enormous power in California and throughout the U.S., greater restrictions on the public's access to information about the misuse or abuse of police powers should be viewed skeptically.

Is this the death knell for meaningful citizen oversight, or is it an opportunity for our state legislators and the electorate to correct flawed laws pertaining to officer personnel records that resulted in the Supreme Court's decision?

An in-depth analysis of the ruling in *Copley* is beyond the scope here. But the high court's decision contained a few glimmers of hope for supporters of citizen review that should be noted. First, the court indicated that its ruling was based on its interpretation of state law concerning confidentiality of peace officer personnel files. Therefore, review boards with independent investigative functions and separate records and that are distinct from the employing law enforcement agency may not be bound

by the ruling. Second, as the justices also pointed out, legislative change to state law could overturn the restrictions announced in Copley.

Both strategies are currently under consideration. State lawmakers from the San Francisco Bay Area, in conjunction with the ACLU of Northern California, are exploring a possible legislative remedy. On the litigation front, the Berkeley Police Review Commission has challenged in Superior Court the decision and its application to independent review boards. If the Berkeley agency prevails in that case, it is expected that the peace officer asso-

ciation in that city will appeal.

Whichever side wins in the lower courts, it seems that the California Supreme Court will ultimately have to decide squarely the issue of whether independent police review boards and agencies are barred from holding public hearings or releasing documents that bear on police misconduct. There is a lot at stake.

John Parker is the executive officer of the Citizens' Law Enforcement Review Board in San Diego County. He has been an oversight practitioner and manager in San Francisco and San Diego County since 1990.

◆ "Police Misconduct" from pg. 3

"So I have come up with a better way of writing tickets. I just write down the plates of the cars that cut me off the the (sic) parkways and I send them a bogus parking ticket in the mail. The person will then have to deal with the Parking Violations Bureau and not me. Problem quickly resolved. So, in other words, be careful who you cut off on the road. They might be an off duty cop and they could write your plates down and write you a \$150 parking ticket. Have a nice day."

Most police officers understand the importance of maintaining public confidence and dignity in law enforcement. Two of the three Corvallis, Oregon, officers walked away from the scene rather than compromise their professionalism. In fact, many inappropriate websites or postings have been revealed to superiors by outraged fellow cops, suggesting there may not be the same "blue wall of silence" in cyberspace.

Policy issues

Many police departments and municipalities have "acceptable use" policies that regulate personal use of computers for officers and employees, which can be modified to address inappropriate digital conduct. Police have free speech rights like all Americans, but posing in uniform with scantily-clad women or pointing a service weapon at the camera crosses the line and can be cause for discipline.

Following an incident involving a recruit last year, the Seattle Police Department came up with a draft policy that addresses potential problems in public forums, both in the flesh and virtual. It will prohibit "financial or personal gain from misuse of your status as an officer," and "photos in any part of the uniform," or with department-issued equipment. There are exceptions, and an individual can request an exemption from the policy if appropriate.

How your agency can respond

❑ **Review or recommend policies and protocols for Internet use for police under your purview, and develop one for your own agency.** Consistent application of these protocols ensures fairness for both oversight agencies and police.

❑ **Seek out and pay attention to local websites used by officers in your department.** Cops love the digital water cooler like everyone else, and their chatter produces interesting insights, along with the same kind of gossip, misrepresentations and slander you find all over the Internet. Some officers from most large police departments have set up or contribute to unofficial sites with names like *Philadelphia Blue* or *NYPD Rant*. While you can monitor blog and message board content through *Google Alerts* or other search engines, identifying individuals would probably involve a subpoena to the internet service provider of the board or website operator.

❑ **Develop knowledge of computer forensics and Internet protocols. This know-how is critical when attempting to establish website ownership, or put a face and an identity on a posting.** A number of cases involving allegations of cyber-stalking and other net-based activity by officers have been dropped simply because the I.A. investigator didn't know how to ferret out the details. Support and encourage development of these skills among your agency investigators and internal affairs officers.

Kelvyn Anderson is deputy director of the Philadelphia Police Advisory Commission. He is also a member of NACOLE's board of directors.

◆ "Key West" from pg. 5

three members from the general public through an application process. A board member's term is four years. Board members can serve no more than nine consecutive years and their terms are staggered so that no more than three board members' terms will expire in any given year.

The CRB was established with a projected annual budget of \$200,000. By outsourcing the bulk of the investigations and operating more as an auditing agency, the CRB was able to reduce the budget to \$137,000. Permanent staff consists of an executive director and an attorney. The board also employs a private investigator and other staff on an as needed basis. The executive director works to ensure that all complaints receive a fair and objective investigation and/or hearing.

Complaints are filed at the CRB office or by mail. The complaint is logged and sent to IA for review and/or investigation. Upon completion, the file is sent back to the CRB with a report and a finding. The CRB first reviews the file to determine if IA's investigation or review is thorough, complete and fair; if the CRB is not satisfied that the IA investigation has met these criteria, the file is returned to IA with questions. The CRB also tracks the allegations

by type, number, date of occurrence, Officer, and findings to establish trends.

In the past four years, the CRB has reviewed a variety of cases ranging from excessive use of force to rudeness. During the first year of existence, the CRB noted a large number of complaints against officers for excessive use or misuse of pepper spray. Several complainants stated they were sprayed while they were handcuffed. By the end of 2004, the complaints of this nature declined considerably and they are now nearly non-existent. In 2006, the CRB has received just one pepper spray case which is currently under review.

The Use of Force charges have dropped 30% from the previous year. The CRB continues to work well with the internal affairs unit of the Key West Police Department. Statistics also reveal that the City of Key West experienced a 12.3% decline in violent crimes since 2005. The CRB has been successful in promoting public confidence in the professionalism and accountability of the sworn staff of the Key West Police Department.

Amanda G. Willett is the executive director of the City of Key West Citizen Review Board.
