

# THE NACOLE REVIEW

SUMMER 2003 ISSUE:



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## MISSION

NACOLE is a nonprofit organization of civilian oversight practitioners and supporters working to promote fair, firm and consistent law enforcement in the United States through the practice of civilian oversight.

NACOLE is based on the belief that law enforcement derives its authority from the community, and requires a two-way dialog between the community and those charged with the duty to enforce laws.

NACOLE provides training; referrals; information sharing and technical assistance to the oversight community and to persons and jurisdictions attempting to establish oversight.

## NATIONAL ASSOCIATION FOR CIVILIAN OVERSIGHT OF LAW ENFORCEMENT (NACOLE) 9<sup>th</sup> Annual Conference

September 21-24, 2003  
Millennium Biltmore Hotel  
506 South Grand Avenue  
Los Angeles, CA 90071

**Reservations:** 800.245.8673 or 213.612.1575

**Questions:** 213.624.1011

## KEYNOTE SPEAKERS

HONORABLE JUDGE RAYMOND FISHER, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT PASADENA, CA

ERWIN CHERMERSKY, PROFESSOR OF PUBLIC INTEREST LAW, LEGAL ETHICS, & POLITICAL SCIENCE, UNIVERSITY OF SOUTHERN CALIFORNIA LAW SCHOOL

## PROFESSIONAL DEVELOPMENT WORKSHOPS

FORCE & EXCESSIVE FORCE: WHEN WORDS FAIL

JUSTICE POST 9/11: INTELLIGENCE GATHERING, RACIAL PROFILING, DEMONSTRATION, & FIRST AMENDMENT ISSUES.

SUCCESS IN CIVILIAN OVERSIGHT: BEST PRACTICES & STRATEGIES TO COUNTER RESISTANCE

CIVILIAN REVIEW: BASIC TOOLS FOR OVERSIGHT OF DISCIPLINARY CASES

INTERVIEWING TOUGH WITNESSES & JUDGING CREDIBILITY

FORCE APPLIED: CASE STUDY

# LETTER FROM THE PRESIDENT

Dear Members of National Association for Civilian Oversight of Law Enforcement (NACOLE) and friends:

You are cordially invited to our Ninth Annual Conference **"Tools for Success - Tools For Justice"** to be held in Los Angeles, California. Over 150 people including, practitioners, researchers, police officials; civic leaders, educators, business people, elected officials, union activists, attorneys, and religious leaders are expected to attend this year's conference. The three-day conference will provide many opportunities for you to engage in invigorating discussions and make promising new connections. Panels will focus on the particular challenges facing civilian oversight around the country in terms of lack of political support; budget cuts; policing post 9/11; and other dimensions of policing and oversight.

We encourage you to share this information with your government, community leaders and friends. **Register today to take advantage of the reduced rate for "early registration" of \$275.** The conference program, registration and hotel information are also available on line at: <http://www.nacole.org>

If you need an invoice, please e-mail Rose Ceja-Aragon at: [rcaragon@aol.com](mailto:rcaragon@aol.com)

If you have any questions, about the conference or NACOLE I can be reached at: 1.866.4nacole, or via e-mail: [monteiro@nacole.org](mailto:monteiro@nacole.org)

Sincerely,

**MALVINA MONTEIRO**  
**NACOLE PRESIDENT**

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## BOARD OF DIRECTORS

### Officers

President: Malvina Monteiro, Cambridge, MA

Vice President: Barbara Attard, Berkeley, CA

Secretary: James Johnson, Cincinnati, OH

Treasurer: Rose Ceja-Aragon, Denver, CO

Past President: Sue Quinn, San Diego, CA

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Denise DeForest - Omaha, NE

Eduardo Diaz - Miami, FL

Teresa Guerrero-Daley - San Jose, CA

Pierce Murphy - Boise, ID

Dede Wilhelm - Kauai, HI

## NACOLE STRIVES TO:

- ✓ Facilitate and involve the community as a true partner in community policing.
- ✓ Provide educational opportunities and technical assistance to existing and emerging organizations that perform civilian oversight of law enforcement.
- ✓ Encourage and promote the highest ethical and professional standards in organizations providing civilian oversight of law enforcement.
- ✓ Provide a national forum for exchange of information for agencies that provide civilian oversight of law enforcement.

# NACOLE 9<sup>TH</sup> ANNUAL CONFERENCE

## "CIVILIAN OVERSIGHT: TOOLS FOR SUCCESS - TOOLS FOR JUSTICE"

The National Association for Civilian Oversight of Law Enforcement (NACOLE) will host a national debate about the present and future of Civilian oversight and policing in United States. NACOLE brings together excellent speakers, and panelists from diverse professions and backgrounds to address the conference. Panel discussions will cover a wide range of issues including: What type of civilian oversight will benefit our community? What are trends in civilian oversight and how do we best shape them? What policies and practices work?

The NACOLE Conference, "Tools for Success – Tools for Justice" will explore the implications of these challenges and issues in oversight.

The Conference will be held in Los Angeles, California from Sunday, September 21 to Wednesday, September 24, 2003.

### **BENEFITS OF THE CONFERENCE:**

- ✓ Exposure to critical law enforcement issues shaping our future.
- ✓ Opportunities to undertake new roles in civilian oversight nationally and locally.
- ✓ Opportunities to meet and share ideas with leaders in the civilian oversight field.
- ✓ Excellent written materials, handouts and sample reports from other practitioners in civilian oversight.
- ✓ Membership in a fast-growing national network of civilian oversight and law enforcement leaders across the United States.
- ✓ Development of essential skills to involve the community as a partner in community policing.
- ✓ Extensive national dialogue between law enforcement personnel, citizens and civilian oversight practitioners.
- ✓ Define what communities need to know when establishing a civilian oversight system, changing existing review mechanisms and what accomplishments can be expected in the short and long term in any jurisdiction.
- ✓ Network with city and state agencies to promote civilian oversight and police accountability reform processes.
- ✓ Explain types of resistance used to derail or co-opt any form of civilian oversight system and effective strategies of countering that resistance.
- ✓ Discuss what a community can expect to gain from a functioning civilian review process, and how citizen review agencies are effective in the reduction of municipal liability suits.

# NACOLE 9<sup>TH</sup> ANNUAL CONFERENCE

"CIVILIAN OVERSIGHT: TOOLS FOR SUCCESS - TOOLS FOR JUSTICE"

## HOTEL INFORMATION

### CONFERENCE HOTEL:

#### Millennium Biltmore Hotel - Los Angeles

506 South Grand Avenue

Los Angeles, CA 90071

USA 90071-2607

Phone: 213.612.1575

Reservations: 866.866.8086

FAX: 213.612.1545

E-mail: [biltmore@mhrmail.com](mailto:biltmore@mhrmail.com)

### RESERVATIONS & GROUP RATES:

Single Occupancy	\$129.00 per night
Double Occupancy	\$139.00 per night
Additional Person	\$20.00 per night
Suites	\$450.00+ per night

### TRANSPORTATION:

Super Shuttle serves The Millennium Biltmore Hotel (currently \$13.50 each way) from LAX Airport on a regular daily schedule.

### PARKING:

Overnight valet parking is available at the rate of \$22.00 per day.

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NACOLE has reserved rooms for the conference attendees at the Millennium Biltmore, Los Angeles.

- In order to get the approved group rate you must mention that you are part of the NACOLE conference.
  - The rates are extended for the period three days before through three days after the conference.
  - The Room Rates do not include taxes; current taxes on hotel guest rooms are 14%, which rate is subject to change without notice.
  - To make reservations by telephone please call 1-866-866-8086.
  - All reservations must be received no later than **Friday, September 5, 2003.**
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# NACOLE 9<sup>TH</sup> ANNUAL CONFERENCE

## "CIVILIAN OVERSIGHT: TOOLS FOR SUCCESS - TOOLS FOR JUSTICE"

### AGENDA

#### SUNDAY, SEPTEMBER 21, 2003

6:00 – 8:00 p.m. Registration

7:00 – 9:00 p.m. Reception

#### MONDAY, SEPTEMBER 22, 2003

8:00 – 9:00 a.m. Additional Registration  
Continental Breakfast

9:00 – 10:00 a.m. Welcome,  
Introductions and  
Opening Remarks

10:15 – 11:45 a.m. Keynote Address:  
Civilian Oversight:  
Tools for Success -  
Tools for Justice

11:45 – 1:30 p.m. Delegate's Choice  
Lunch

1:30 – 3:00 p.m. Force and Excessive  
Force: When Words Fail

3:15 – 5:00 p.m. Justice Post 9/11: Intelli-  
gence Gathering, Racial  
Profiling, Demonstrations  
and First Amendment  
Issues

5:00 p.m. Free Evening

9:00 – 11:00 p.m. Hospitality Suite

#### TUESDAY, SEPTEMBER 23, 2003

7:30 – 8:00 a.m. Continental Breakfast

8:00 – 9:00 a.m. **Concurrent  
Presentations**

Mediation In Oversight: A  
Means For Changing  
Behavior

Insights On A Serious  
Police Misconduct Case:  
Oakland "Riders"

#### TUESDAY, SEPTEMBER 23, 2003

##### CONCURRENT WORKSHOPS

9:00 – 11:45 a.m. Success in Civilian Over-  
sight: Best Practices and  
Strategies to Counter  
Resistance

9:00 – 11:45 a.m. Civilian Review: Basic  
Tools for Oversight of  
Disciplinary Cases

12:00 – 1:30 p.m. NACOLE Luncheon:  
Keynote

1:30 – 3:00 p.m. Assessing Credibility and  
Interviewing Tough  
Witnesses

3:15 – 5:00 p.m. Force Applied: Case  
Study

5:00 p.m. Free Evening

9:00 – 11:30 p.m. Hospitality Suite

#### WEDNESDAY, SEPTEMBER 24, 2003

8:00 – 9:00 a.m. Sit-down Breakfast  
(Delegates must sign  
up by 9/22/03 at  
9:00 am.)

9:00 – 1:00 a.m. Wrap-up, Conference  
Evaluation &  
Suggestions

\*This is a draft agenda, subject to change.

## 2003 CONFERENCE WORKSHOPS

### **WORKSHOP I: FORCE AND EXCESSIVE FORCE: WHEN WORDS FAIL**

**Objective:** Force and the threat of force are routine aspects of an officer's working day. A significant portion of every officer's training, both initial and ongoing, address how, when and which methods of physical compulsion should be employed. We will have a discussion regarding the appropriate and inappropriate application of force by peace officers, including how an initially appropriate use of force can become excessive.

**Who Should Attend:** Both a primer for newcomers and an exploration for old hands. For members who conduct investigations of excessive force independently or who review investigative files in the process of reaching a decision on cases.

### **WORKSHOP II: JUSTICE POST 9/11: INTELLIGENCE GATHERING, RACIAL PROFILING, DEMONSTRATIONS AND FIRST AMENDMENT ISSUES**

**Objective:** Since the tragic events of September 11, 2001, homeland (national) security and anti-terrorism have become topics of daily news and concern. More significantly, homeland security and anti-terrorism measures already have impacted directly on public safety and policing in our communities raising in their wake issues of biased policing, infringement of civil rights and liberties, corruption of community policing, and police state strategies and tactics. Panelists will address these and related issues and offer information and insights as they relate to the perspective and work of the civilian oversight professional.

**Who Should Attend:** This panel is designed to be of interest to all attendees of the NACOLE conference and should provide the civilian oversight professional with strategies and tools for the identification and evaluation of the impact of the ever-changing federal, state and local mandates for policing related to anti-terrorism and homeland security.

### **WORKSHOP III: SUCCESS IN CIVILIAN OVERSIGHT: BEST PRACTICES AND STRATEGIES TO COUNTER RESISTANCE**

**Objective:** This workshop will address challenges to "effective oversight," changes in political will, and maintaining community support from the perspective of oversight practitioners, police executives, and police unions. In the first segment, the speakers will share their experiences in creating a balance between oversight and law enforcement and will identify success indicators and performance measures. In the second segment, a moderator will engage the panelist in a candid discussion about the barriers to successful civilian oversight.

**Who Should Attend:** This panel is designed to be of interest to all attendees of the NACOLE conference. The panel of experts will present insightful experience to oversight professionals today.

## 2003 CONFERENCE WORKSHOPS (CONT.)

### **WORKSHOP IV: CIVILIAN REVIEW: BASIC TOOLS FOR OVERSIGHT OF DISCIPLINARY CASES**

**Objective:** By the end of this presentation, attendees should be able to:

- Identify common complaints filed by citizens and understand what types of policing standards that those complaints involve;
- Understand the types of resources usually available to practitioners in determining what the applicable policing standards of conduct require;
- Understand how to evaluate the basic fairness and completeness of a police-department investigation; and
- Understand why review board recommendations are often ignored and/or attacked, and what actions may help to reduce attacks on the decisions and the review board itself.

**Who Should Attend:** Members who are relatively new to police oversight and others wanting to hear good examples of analysis for commonly received citizen complaints and review board issues.

### **WORKSHOP V: ASSESSING CREDIBILITY AND INTERVIEWING TOUGH WITNESSES**

**Objective:** By the end of this presentation, attendees should be able to:

- Understand various factors which can affect witnesses credibility;
- Identify the types of information that decision-makers need to fully assess the credibility of witnesses;
- Understand what it is that makes some witness so much more difficult to interview than others; and
- Identify ways to modify the way an interview is conducted, either in terms of the interview protocol or the actual questions asked, to successfully interview tough witnesses.

**Who Should Attend:** Members who conduct interviews or who review investigative files in the process of reaching a decision on cases.

### **WORKSHOP VI: FORCE APPLIED: CASE STUDY**

**Objective:** By the end of this presentation, attendees should be able to:

- Describe the issues involved in the Margaret Mitchell lethal death;
- Describe how to use oversight investigative and monitoring tools to the evidence in a lethal force case,
- Articulate whether or not they believe excessive force was used;
- Describe how police objectives may have been met without loss of life; and
- Describe a process of formulating policy recommendations.

**Who Should Attend:** Any Board, Commission or staff members conducting oversight (investigative or monitoring models); any persons, such as print media investigators, who cover police and or civilian oversight; interested others.

# NACOLE 2003 CONFERENCE

## REGISTRATION FORM

### REGISTRATION INFORMATION (PLEASE PRINT OR TYPE)

Name \_\_\_\_\_ Title \_\_\_\_\_

Organization \_\_\_\_\_ E-mail \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_

### EARLY REGISTRATION (BY AUGUST 29, 2003)

- \$275 Regular Member – early registration/before August 29, 2003 \*
- \$325 Regular Member - late registration/after August 29, 2003
- \$375 Non-Member - early registration/before August 29, 2003
- \$425 Non-Member - late registration/after August 29, 2003

\*Agencies with organizational memberships can register staff and Board members at the \$275/\$325 rate.

### METHOD OF PAYMENT

Money Order       Vender Check      Check No. \_\_\_\_\_

Make the check payable to: **NACOLE**  
P.O. Box 19261  
Denver, CO 80219  
FAX: 303-256-5491

Amount Enclosed \$ \_\_\_\_\_

If you are planning to pay through a vender check, here is the number you will need to use:  
**NACOLE FIN #52-1931116.** Please note your check number on your registration form.

Signature \_\_\_\_\_ Date \_\_\_\_\_

### FOR NACOLE USE ONLY

**MEMBER STATUS**       ORGANIZATIONAL       REGULAR MEMBER       ASSOCIATE

**REGISTRATION STATUS**       EARLY       LATE

Date Postmarked: \_\_\_\_\_ Date Paid: \_\_\_\_\_ Received By: \_\_\_\_\_

**REFUND POLICY:** Unfortunately, we will be unable to refund any portion of your registration fees for cancellation after September 10, 2003.



# MEMBERSHIP APPLICATION

## APPLICANT INFORMATION (PLEASE PRINT OR TYPE)

**Name** \_\_\_\_\_ **Title** \_\_\_\_\_

**Organization** \_\_\_\_\_ **E-mail** \_\_\_\_\_

**Address** \_\_\_\_\_

**City, State, Zip** \_\_\_\_\_

**Telephone** \_\_\_\_\_ **Fax** \_\_\_\_\_

Are you a sworn member of a law enforcement agency?  Yes  No

**Organizational:** Organizational members are agencies who provide civilian oversight of law enforcement by legislative or executive mandate. These agencies will receive one transferable regular membership and non-voting memberships for the remaining members of their boards/staffs. **Annual dues: \$300.**

Name of Civilian Oversight Agency on which you serve/have served or work/have worked. Dates of service or employment:

**Regular:** Regular members are individuals who are not sworn law enforcement officers and who serve/have served as Board/Commission members or staff for agencies mandated by legislative or executive authority to investigate and review complaints against law enforcement officers. **Annual dues: \$150.**

Dates of service or employment:

**Associate:** Associate members are individuals concerned with the oversight of law enforcement. The members shall be able to participate in all NACOLE activities, including serving on committees, but are ineligible to vote or serve as officers. **Annual dues: \$100.**

Signature \_\_\_\_\_ Date \_\_\_\_\_

### Mail Forms and Checks to: NACOLE

P.O. Box 19261  
Denver, CO 80219

# POLICE SHOOTINGS AND PUBLIC REACTION

By: TERESA GUERRERO-DALEY

Few police incidents result in as much concern and public outcry as when the police take the life of a person engaged in minor or no criminal activity. In 1999, San Jose Police Officers were involved in eight shootings that resulted in seven fatalities and one serious injury. As a result, the Office of the Independent Police Auditor (IPA) made several recommendations to the San Jose Police Department (SJPD), which effected systemic changes. Some of these changes included the creation of a "Shooting Review Panel," charged with examining all shootings to identify failures in policy, procedures, or tactics. While over one fourth of SJPD officers were trained in crisis intervention, emphasis was placed on increasing the number of officers receiving this training. Additionally, placement of less lethal weapons and the number available was improved. Overall a heightened awareness in the proper use of force was created.

The SJPD and the IPA were determined to work together towards the successful implementation of these recommendations and for the next three years the number of shootings steadily declined. The 2002-year ended with no officer-involved shootings that either injured or killed a citizen or police officer. We cannot claim to know with any certainty what factors lead to the decrease or increase in police shootings because so much of police work involves the training, judgment, and reaction of the officer involved. After over sixteen months of no officer-involved shootings, San Jose experienced four shootings in two months. These shootings resulted in the death of a young Latino man who was killed as he was trying to drive away from a routine traffic stop and the death of a young Vietnamese mother who was shot in her home while holding a vegetable cutting device.

The shooting of the young mother resulted in public outcry from the Vietnamese and other Asian communities and they organized several marches, protests, and vigils to protest the police action. We cannot recall the last time a woman was killed by the San Jose Police Department. Nevertheless, the SJPD found itself facing an angry public who wanted immediate action. Letters poured in from community leaders and organizations demanding that the IPA look over this case carefully. In response, the SJPD and the IPA put several strategies in place.

It is important for law enforcement and oversight practitioners to have a plan on how to address public reaction to critical incidents. The following strategies are examples of what we have used but are in no specific order.

## **Acknowledge Public Concern:**

It is important that public outcry, anger, or criticism be acknowledged, accepted, and expected as a reaction to police shootings. Soon after the shooting of the Vietnamese mother, the SJPD Police Chief and the IPA met in separate meetings with key community leaders. This was facilitated by the fact that prior to this shooting, the Chief and the IPA had established personal relationships with key community leaders. The IPA has an advisory council comprised of over 20 community leaders who are responsive to the needs of the IPA and whose primary purpose is to serve as the IPA's eyes and ears in their respective communities. In addition, the IPA held a public forum which included representatives from the District Attorney's Office, the SJPD, a Use of Force expert, and the IPA to inform the community about their respective roles in police shootings and to give the public an opportunity to be heard. In addition, the Chief

made public statements of apology to the family and community and wrote a letter that was published in the newspaper expressing his condolence over the tragic shooting.

## **Inform the Public:**

The instrument that the Vietnamese mother was holding became a controversial issue. The SJPD had initially called it a meat cleaver in the press release while the family members were referring to it as a vegetable peeler. The SJPD released a photo of the instrument, which allowed the public to form their own opinion as to the danger that it posed. In addition, the SJPD and the District Attorney petitioned the court to allow the grand jury hearing to be open to the public. This will allow the public to hear the details that led to the shooting, information that is routinely not made public. The IPA committed to issuing a public report of its review of the investigation.

Informing the public can be a daunting task because there are too many examples where government leaders have covered up mistakes, concealed evidence, made misleading statements, or lied. Keep in mind that however accurate the information you give the public may be, a skeptical public is not likely to believe these reports or trust what they may view as biased material. It is crucial that the public be continuously informed of changes or developments, even long after the crisis is over.

## **Distinguish Roles and Responsibilities:**

Agencies involved in the investigation of police shootings need to define their roles and responsibilities and make independent findings. When a shooting occurs, the public is told that different agencies will be conducting separate investigations when in reality, investigations are not independent and primarily

# POLICE SHOOTINGS AND PUBLIC REACTION

By: TERESA GUERRERO-DALEY (CONT.)

rely on the initial police investigation.

Monitoring and conducting an investigation are often described as one and the same. In San Jose, the SJPD Internal Affairs Unit monitors the investigation conducted by the Homicide Unit to determine if the shooting officer violated department policies or procedures. The District Attorney's Investigators monitor the investigation and the Grand Jury is presented with facts that stem from the same investigation conducted by the police homicide unit. The IPA reviews the homicide investigation and any Internal Affairs supplemental reports and is a member of the "Shooting Review Panel."

The focus of these agencies is different and not easy for the average person to distinguish. The homicide investigators, the District Attorney, and the Grand Jury focus on violations of criminal laws, while internal affairs investigators, the IPA, and the Shooting Review Panel focus on policy and procedure violations. It is important to clarify these roles and to avoid pointing fingers or deflecting responsibility because in the eyes of the public, all governmental entities are viewed as one and the same.

## **Act in a Trustworthy Manner:**

Maintaining public trust is imperative in overcoming a controversial police shooting.

Police should not stonewall the family by withholding information needed by the deceased person's family to make arrangements such as funeral services, life insurance claims, and other related matters. The IPA makes itself available to work with the families to help them navigate through the bureaucracy that often times is responsible for coloring the opinion that they have of the police department and our city.

Oversight practitioners should work with the police public information officer (PIO) to avoid releasing biased or inaccurate information that is not relevant to determining the officer's need to shoot. That the deceased had a criminal record is of no probative value if the shooting officer was not aware at the time of the shooting. Releasing this type of information only serves to anger the community and gives the perception that the police are justifying their actions. A common complaint expressed by the public is that the police offer rationalizations for the shooting long before the investigation is completed, which taints and influences the outcome.

## **Build Long-term Relationships:**

When encountered with an angry group following an officer-involved shooting, it is natural to question how accurately they represent the

larger community or are they just a few malcontents with their own agendas. Our experience has shown that a greater number of people do not personally involve themselves in open activism but they do have the same concerns and interest in seeing police shootings thoroughly investigated and that the investigation be reviewed by an independent body. Letters to the Editor, media coverage, complaints to elected officials, and increases in citizen complaints are all indicators of this. It is important to foster good community relations by inviting public participation to the decision making table. We have found that the public is not satisfied with just taking part in the implementation phase, they also want to take part in the creation of police policies and procedures. When we involve the public in the decision making process, we are also sharing the responsibility for its success.

In conclusion, the last ten years have taught me that police shootings will happen, will create different degrees of public reaction, are the incidents that define the effectiveness of our police oversight offices, and can overnight erase years of effort in building public trust. It is perhaps the greatest challenge we, as oversight practitioners, will face. ■

# MINNEAPOLIS POLICE CIVILIAN REVIEW

By: BARBARA DANCIK-DYKES

The Minneapolis Civilian Review Authority (CRA) was established by city ordinance on January 26, 1990, for the purpose of "investigating allegations of misconduct on the part of officers of the Minneapolis Police Department and making findings of fact and conclusions based upon those findings of fact."

In February of 2002, the City Council passed a resolution reducing the budget of

CRA to \$200,000 to phase out the existing processes until a new authority was developed and implemented. The elected officials had been hearing from the community that the civilian review process was flawed and was perceived to be ineffective. The City Coordinator convened a work group comprised of representatives from the community, elected officials, and city staff, to make recommendations for a redesigned CRA. In the summer of

2002 recommendations were made and ultimately adopted by City Council in March 2003.

## **The Revised Process**

The most recent iteration of CRA has produced both substantive and procedural changes that are likely to be more favorable to complainants. Under the previous ordinance, when the Executive Director of CRA made a probable cause determination, the case proceeded to an evidentiary hearing where the

# MINNEAPOLIS POLICE CIVILIAN REVIEW

By: BARBARA DANCHIK-DYKES (CONT.)

standard of proof was "clear and convincing evidence." Under the new ordinance, the standard of proof is "a preponderance of the evidence," meaning that the greater weight of the evidence supports the decision.

Under the new ordinance, once a case has been investigated, the investigator prepares a finding of fact and makes a recommendation to sustain or not sustain the complaint in a written summary. After review by the attorney manager, all cases, whether the recommendation is to sustain or not sustain the complaint, are referred to the board for hearing.

The full board consists of seven civilian members who are residents of Minneapolis. (As of this writing, the board has been recommended to the City Council, and should be approved by month's end.) At the hearing, the CRA manager presents the investigators findings of fact and recommendations to a three-member panel of the board, who "weigh and consider all reliable and credible evidence presented." Because of data privacy laws relating to Minnesota government employees, the hearing is not public and no one other than the CRA manager and the board panel members are present during

the presentation and discussion of the case. Once the manager has made her presentation, the complainant and the police officer, or their representatives, are each permitted 10 minutes to address the board, in the presence of each other, regarding the complaint.

The presence of both parties at the same time is a departure from the previous rules. In order to appear in front of the board and the complainant, police officers must waive their rights to data privacy. An oft-heard concern during the CRA redesign was that the process was not transparent and did not allow complainants an opportunity to be heard. It is hoped that this process will give complainants and officers increased access and participation in the hearing. Elimination of the evidentiary hearing should also streamline the process and yet allow the complainant to have all relevant information presented to the board.

The success of the newly redesigned process remains to be seen. Because the office was shut down for a period of time last year, and because there has not been a board for over a year, there will be plenty of work to await them. At the end of June, there were

more than thirty cases waiting to be heard by the board.

## Caseload

Part of our success will hinge on the ability of CRA to keep up with the staggering caseload. For the years 2000 and 2001, the last two years that the CRA was fully operational, there were 102 and 114 signed complaints, respectively. This year has investigators taking complaints at a rapid-fire pace. For the period January 1 through June 30, the Civilian Review Authority has taken 80 signed complaints.

Minneapolis is faced with a budget crisis, much like many states and municipalities across the country. The newly redesigned CRA was not staffed and funded at a level that would ensure adequate resources to provide for timely investigations and hearings. At present, staffing consists of an attorney manager, two investigators and a program assistant. Because the caseload has increased so quickly with no corresponding increase in staffing, the turnaround time is likely to increase as well.

The community, City Council, and Civilian Review Authority staff remains hopeful that the newly redesigned civilian oversight process will be effective.

## THE CITY OF MIAMI CIVILIAN INVESTIGATIVE PANEL

By: LARRY R. HANDFIELD

In November 2001, citizens of the City of Miami overwhelmingly voted for civilian oversight of the police following several police involved shootings and the arrests of thirteen officers on charges of tampering with and manipulating evidence. Under the guidance of the City Attorney's Office, a coalition of community organizations, including the American Civil Liberties Union, People United to Lead the Struggle for Equality, Brothers of the Same Mind, the Spanish American League Against Discrimination (SALAD) and the

National Association for the Advancement of Colored People assisted in drafting a change in the City's charter.

The City Commission subsequently passed Ordinance No. 12188 creating the Civilian Investigative Panel (CIP). A Nominating Committee solicited and screened 118 applications for membership on the CIP and in December 2002 submitted its recommendations to the Mayor and Commission. The thirteen (13) appointments to the CIP represent a cross section of Miami's diverse community. The CIP, one of only a handful

of civilian oversight agencies nationwide with power to issue subpoenas, is further authorized to conduct independent investigations and public hearings into allegations of police misconduct, review MPD policies/procedures and make recommendations. Several deficiencies in the Miami Police Department's (MPD) policies and procedures as referenced in a recent study by the U.S. Department of Justice are slated for CIP review.

CIP members and support staff have been involved in reviewing its personnel and

# THE CITY OF MIAMI CIVILIAN INVESTIGATIVE PANEL

BY: LARRY R. HANDFIELD (CONT.)

budgeting needs along with the development and implementation of strategies, policies and procedures for its operations and management. To further the CIP's commitment to community-centered policing initiatives, panel members have met with the Chief of Police, civic and community organizations and individuals and participated in

the MPD's Citizens' Police Academy. Several members are also scheduled to attend the upcoming annual NACOLE training conference in Los Angeles, California. It is further anticipated that the CIP will co-sponsor the NACOLE 2005 conference being considered for Miami, Florida.

*The CIP may be contacted via the Internet at: [www.ci.miami.fl.us/cip](http://www.ci.miami.fl.us/cip), e-mail: [srichardson@ci.miami.fl.us](mailto:srichardson@ci.miami.fl.us) or telephone number (305) 579-2444. Our mailing address is: 155 South Miami Avenue, PH1-B, Miami, FL 33130.*

# PORTLAND OREGON'S POLICE COMPLAINT REVIEW PROGRAM

BY: RICHARD ROSENTHAL & LORI STEWART

Operating under the authority of the City Auditor since January 2, 2003, Portland's police oversight program has two components: the Independent Police Review Division (IPR) and the Citizen Review Committee (CRC). These two bodies constitute a hybrid civilian oversight model that combines an audit function with a monitoring function.

The IPR is composed of seven professional staff, including a director, a deputy director, two investigators, a research analyst, a community outreach coordinator, and an office manager. The IPR is charged with receiving and tracking all citizen complaints against Portland Police Bureau (PPB) officers, monitoring Internal Affairs investigations, and coordinating appeals of complaint findings to the CRC. When warranted, the IPR has the ability to conduct independent investigations. The IPR can also administratively close complaints that are clearly false, trivial, untimely, or fail to state any misconduct.

In addition to supporting the disciplinary process, the IPR works to identify citizen complaints that can be better resolved by non-disciplinary means. Alternatives include a mediation program and a "service complaint" process that allows police supervisors to better manage their employees through counseling and incident debriefing.

The IPR also evaluates PPB policies and procedures. For



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example, the IPR is currently conducting reviews of the Police Bureau's early warning system and the handling of tort claims that allege police misconduct. Recently, the IPR hired the Police Assessment Resource Center to conduct a policy and training review of officer-involved shootings.

The Citizen Review Committee consists of nine community volunteers selected through a competitive application process. The CRC gathers community concerns through community outreach, hears appeals of complaint investigation findings, works with the IPR to make policy recommendations, and advises the IPR Director on the operation of

Portland's police complaint handling system.

The relationship between the IPR and the CRC is currently the subject of controversy. Among the issues being debated: Should citizens serve in an advisory capacity or direct the work of professional staff? Should citizens focus their energies on reviewing individual police complaints, or assist in the development of well-researched policy recommendations? Time will tell how this debate is settled. ■

# A GRAND JURY REVIEW OF CITIZEN COMPLAINTS

By: ROBERT TAYLOR

Complaints. The grand jury was interested in reviewing this topic for a variety of reasons, including recent high profile cases. In the spring of 2002, the Los Angeles Times reported that the Inglewood Police Department had a number of complaints for which investigations still had not been completed after two years. This was shortly followed, in mid by a report from the Los Angeles County Office of Independent Review noting that the Sheriff's Department had 800 claims uninvestigated. While a detailed reading of the report revealed that most of those claims were not related to citizen complaints, the issue of law enforcement's dealing with complaints from the public has been raised.

There are about to 50 different law enforcement agencies in Los Angeles County ranging in size from the very large Sheriff's Department and the Los Angeles City Police Department, which have about nine thousand sworn personnel, to small police departments in cities such as Bell Gardens and San Fernando.

For purposes of this study, the grand jury chose to review practices in medium to large agencies across the whole County. The inquiry evaluated the citizen complaint processes in three Sheriffs Department stations and four police departments.

## Los Angeles Sheriffs Department Stations

- East Los Angeles
- Lancaster
- Temple

## Municipal Police Departments

- Burbank Police Department
- Long Beach Police Department
- Pomona Police Department
- Torrance Police Department

The Grand Jury selected these jurisdictions based on several general criteria, including: (1) the geographic location of the Sheriff's station or police department; (2) the

socio profiles of the populations served by each; and, (3) the sizes of the populations served by each.

The Grand Jury compiled and analyzed certain specific data. These included:

- Obtaining statistics on the number and rate of citizens' complaints received by each Sheriff's station and municipal police department, which were subject to this review;
- Characterizing the complaints received by these departments, including analyzing trends during the years reviewed;
- Evaluating the actual citizen complaint process in each jurisdiction, including receiving (intake), logging and tracking, responding, disposing and following-up on complaints;
- Assessing whether actual citizen complaint processing conforms with each jurisdiction's stated policies and written procedures; and,
- Analyzing the length of time from complaint intake to disposition.

## Conclusions

As a result of this inquiry, conclusions were drawn in five areas that are critical to successful citizen complaint systems: public access, complaint screening, citizen notification, early-warning systems, and independent oversight.

## Public Access

It is clear that public access to citizen complaint forms and procedures varies significantly by jurisdiction, by operating unit within each jurisdiction, by shift, and by time of day. Most of the jurisdictions visited do not consistently make their procedures available to the public, and are technically not in compliance with State law (Penal Code Section 832.6).

Anonymous attempts to obtain citizen complaint forms were unsuccessful in 9 of 16 attempts, or 60 percent of the unannounced visits to Sheriff

and police stations. In 7 of these 16 attempts, or 47 percent of the attempts, departments did not provide citizen complaint procedures. Even when citizen complaint forms and procedures were provided, auditors were first required to speak with Watch Commanders or other sworn personnel. In most cases, these individuals requested our name and contact information, the name of the involved officer or deputy and the nature of the complaint before providing any materials. Such inquiries can intimidate or anger complainants when presented as requirements to obtain forms, procedures, or other information, and create an artificial barrier to public access.

Since the citizen complaint process is not made as easy as possible, the departments in the studied jurisdictions have created an inherently adversarial atmosphere and erected a barrier that could impact the public's access to the complaint process. In addition, department management cannot be assured that all citizen complaints are received. By not fully training or monitoring staff on the citizen complaint process, citizens could be discouraged or prevented from filing a citizen complaint.

## Screening Citizen Complaints

The law enforcement agencies included in this study have developed definitions of citizen complaints and policies for complaint intake. They define when the departments recognize and accept citizen complaints, whether the department will track some categories of citizen complaints, and the level of investigation the department will conduct. These intake policies, and the level of investigation conducted by each jurisdiction, vary significantly by jurisdiction and division within each jurisdiction.

A review of department procedures, in conjunction

# A GRAND JURY REVIEW OF CITIZEN COMPLAINTS

BY: ROBERT TAYLOR (CONT.)

with an analysis of the departments' citizen complaint statistics, showed significant inconsistencies in the methods used to count complaints. Practices in many jurisdictions redefine some categories of citizen complaints, or screen out more minor complaints from the process. Accordingly, many complaints go unreported as the departments attempt informal resolution reclassify the complaint. Because of these practices, many departments do not track, fully investigate, or maintain reliable databases for all citizen complaints. Moreover, because of the policies in many jurisdictions, not all citizen complaints are captured. Further, the managers in many jurisdictions are unaware of some citizen complaints and do not have a complete understanding of personnel interactions with the community.

## Citizen Notification

California Penal Code §832.7(b) requires law enforcement agencies to provide two documents to persons filing a complaint. First, the law enforcement agency must provide a copy of the complaining party's statement at the time of filing. Second, the agency must formally notify the complainant of case outcome within 30 days of final disposition. In a sample of records maintained by the departments studied, initial documentation had not been provided in 37 percent of the cases. In 46 percent of the cases, there was no evidence that the complainant had been notified of case disposition.

Failure to provide required documentation to the complainant is in violation of State law. Moreover, providing a complainant with a copy of his complaint statement is a receipt that also enhances internal controls over the intake process. Notifying the complainant of case disposition provides evidence that the department resolved the

citizen complaint.

## Early Warning System

To assist managers with monitoring staff performance, many agencies nationwide have implemented early-warning systems. Early-warning systems are computerized management tools that help to identify officers whose behavior may be problematic.

The Los Angeles County Sheriffs Department has an early-warning system in place. The system tracks data regarding individual employee performance so that management can attempt corrective action before significant problem behavior occurs. The Long Beach Police Department hopes to implement a state of the art system this year. The smaller jurisdictions of Burbank, Pomona and Torrance do not have formal early-warning systems and have no immediate plans to implement any.

## Independent Oversight

Independent oversight of the citizen complaint process provides law enforcement agencies with the opportunity to obtain outside input, especially from the community. Commonly, external oversight bodies consist of citizens and/or professional staff who review citizen complaint processes, investigations, and policies and procedures to ensure that allegations of police misconduct are fairly and equitably investigated and resolved. Several effective citizen complaint oversight models are functional throughout the United States. The Los Angeles County Sheriffs Department receives independent oversight over its investigative processes. This independent oversight is embodied in the Office of Independent Review, the Special Counsel, and the Department of the Ombudsman, each of which has a distinct and separate oversight role. The Long Beach Police Department's citizen complaint process is overseen

by the Citizen Police Complaint Commission, an independent review board. The smaller jurisdictions of Burbank, Pomona, and Torrance, have no independent oversight. ■