

Civilian Oversight of Law Enforcement

Challenges, Guiding Principles, and the Road to Police Accountability

Rockland County People's Panel on Policing

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Presentation by Brian Corr • Immediate Past President of NACOLE



Policing and Civilian Oversight in the United States

History and the Role of Procedural Justice & Legitimacy



Carryovers from England



The Standard Narrative of the Origins of U.S. Policing

“When one thinks about policing in early America, there are a few images that may come to mind: A county sheriff enforcing a debt between neighbors, a constable serving an arrest warrant on horseback, or a lone night watchman carrying a lantern through his sleeping town. These organized practices were adapted to the colonies from England and formed the foundations of American law enforcement.”

<https://lawenforcementmuseum.org/2019/07/10/slave-patrols-an-early-form-of-american-policing/>

Enslaved Africans and Slave Patrols: 1704 to 1865



Slave Patroller's Oath, North Carolina, 1828

“I [patroller's name], do swear, that I will as searcher for guns, swords, and other weapons among the slaves in my district, faithfully, and as privately as I can, discharge the trust reposed in me as the law directs, to the best of my power. So help me, God.”

<https://lawenforcementmuseum.org/2019/07/10/slave-patrols-an-early-form-of-american-policing/>

“The Police are the Public, and the Public are the Police”



Sir Robert Peel's Seventh Principle, 1829

“Police, at all times, should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence.”

“The Police are the Public, and the Public are the Police”



- Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community.
- Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community.
- Civilian oversight alone is not sufficient to gain legitimacy; without it, however, it is difficult, if not impossible, for the police to maintain the public's trust.

Facts about the Field: *Civilian Oversight*



- There are approximately 18,000 law enforcement agencies across the United States — no two are exactly alike.
- There are more than 160 civilian oversight entities across the United States — no two are exactly alike.
- Most large cities and large law enforcement agencies have oversight agencies, as do a growing number of small and mid-size cities.
- Many began in reaction to specific incidents of police misconduct or scandals.
- Civilian oversight has been prominently featured in U.S. Dept. of Justice settlement agreements.

Evolution of Civilian Oversight



Civilian Oversight has usually been **reactive**:

- Follows a high-profile incident or scandal
- Responds to individual complaints
- Reviews policies after one or more complaints
- Emphasizes legalistic rules
- Uses adversarial, administrative process
- Recommends sanctions for individual officers
- Relies on deterrence



Evolution of Civilian Oversight



Civilian Oversight is increasingly **proactive**:

- Explores problems proactively (e.g., investigation, collection, and analysis of data)
- Identifies underlying issues and causes
- Focuses on organizational change
- Concentrates on reduction and prevention of misconduct
- Builds partnerships with law enforcement
- Creates bridges between law enforcement and the wider community



Photo: Kristopher Skinner/Bay Area News Group

America Asks if Black Lives Matter



- July 2009: Arrest of Harvard Professor Henry Louis Gates in Cambridge, Mass.
- February 2012: Shooting of Trayvon Martin in Florida
- August 2014: Shooting of Michael Brown in Ferguson, Mo.
- July 2014: Choking of Eric Garner in New York City
- November 2014: Shooting of Tamir Rice in Cleveland, Ohio



Harvard Professor Henry Louis Gates being arrested for disorderly conduct on his front porch

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- July 2014: Choking of Eric Garner in New York City
- November 2014: Shooting of Tamir Rice in Cleveland, Ohio
- April 2015: Death of Freddie Gray in Baltimore, Md.
- October 2014: Shooting of Laquan McDonald in Chicago, Ill.
- April 2015: Shooting of Walter Scott in Charleston, S.C.
- July 2016: Shooting of Philando Castile in Minneapolis, Minn.
- July 2016: Five Dallas, Texas Police Officers Killed at BLM Rally
- March 2018: Shooting of Stephon Clark in Sacramento, Calif.
- April 2020: Death of George Floyd



Sacramento Police helicopter footage shows the moment two officers killed Stephon Clark, a 22-year-old unarmed black man, in his own backyard.

President's Task Force on 21st Century Policing



The President's Task Force on 21st Century Policing divides its recommendations into six pillars:

- Building Trust and Legitimacy
- Policy and Oversight
- Technology and Social Media
- Community Policing and Crime Reduction
- Officer Training and Education
- Officer Safety and Wellness



President Obama's Task Force on Policing Recommends

https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

President's Task Force on 21st Century Policing



Key quotes from “Pillar Two: Policy and Oversight” in the report’s executive summary:

...policies must reflect community values. Law enforcement agencies should collaborate with community members...to develop policies and strategies for deploying resources that aim to reduce crime by improving relationships, increasing community engagement, and fostering cooperation.

“What happens when they followed the rules, but...?”



The focus on identifying and addressing police misconduct is necessary but insufficient.

- “Lawful but Awful”
- When there’s “no violation of policy” we still need to ask “what went wrong and what should be done in the future?”
- Back-end accountability: it’s designed to answer the question of what happened.
- Procedural justice is more important than the lawful nature of police conduct.

The Four Pillars of Procedural Justice



Voice

- Having the opportunity to participate in the decision making, to let their side be heard.

Neutrality

- Perceiving that the decision-making process is unbiased and trustworthy.

Quality of Treatment

- Receiving interpersonal treatment that is respectful and dignified.

Trustworthiness

- Believing that the police are concerned about people and want to do what is right for them and the community.

What Shapes Legitimacy?



The primary issue shaping people's views about legitimacy when dealing with the police is whether the police are exercising their authority in fair ways: **procedural justice**.

- Quality of decision making: Are decisions made fairly, in a neutral, unbiased way?
- Quality of treatment: Are people treated fairly, in a respectful, courteous way?
- Procedural justice is often more important than the legal outcome of those encounters and experiences.
- Putting legitimacy into practice involved sustained, deliberate thoughtful effort.

Front-End Accountability



Based at New York University School of Law, the Policing Project is developing methods of democratic engagement for policing agencies and the communities they serve, and testing them in interested jurisdictions.

- There have been many conversations on the underlying causes of the problems in policing.
- Communities feel both “over-policed” and “under-policed” at the same time.
- Other fields use experts to create rules, engage with public and get feedback and ultimately consent, and then implement.
- The Policing Project is experimenting and at the beginning of a learning process based on a cost/benefit analysis of social cost of policing.
- They are helping facilitate conversations between communities and police.

The Nature and Structure of Civilian Oversight in the U.S.

Content & Context



Civilian Oversight in the U.S.



Civilian Oversight in the United States:

- Investigates, audits, or reviews internal law enforcement investigations or processes, including citizen complaints and use of force incidents.
- Conducts ongoing monitoring of law enforcement agencies' policies, procedures, training, and management and supervision practices.
- Includes any agency or procedure that involves active participation in the above by persons who are not sworn officers.

Common Models of Oversight in the U.S.



- Review-Focused Model
- Investigation-Focused Model
- Monitor/Auditor/Inspector General Model
- Hybrid Models

Establishing Credibility: Expectations of Oversight



- Familiarity with police practices, investigations, and criminal law/criminal procedure
- Impartial and objective
- Willingness to meet and communicate with police organization and staff
- Compliance with confidentiality laws and evidentiary standards
- Willingness to consider all sides of a situation and ability to re-evaluate if additional/contrary information/evidence received

Key Points to Consider



- Civilian oversight practitioners have a unique role as public servants overseeing law enforcement agencies. The community, government, and law enforcement have entrusted them to conduct their work in a professional, fair and impartial manner.
- They earn this trust through a firm commitment to the public good, the mission of their agency, and to holding themselves to ethical and professional standards.
- Seek professional development to ensure competence. Acquire the necessary knowledge and understanding of the policies, procedures, and practices of the law enforcement agency you oversee.

Civilian Oversight of Law Enforcement: Report on the State of the Field & Effective Oversight Practices (Preliminary Findings)

A project funded by the U.S. Department of Justice Community Oriented Policing Services Office, Community Policing Development Grant number 2016CKWXK017



State of the Field & Effective Oversight: project deliverables



NACOLE plans to complete the following by March 2020:

- Nine Case Studies of Civilian Oversight Models
- Report on the State of the Field and Effective Oversight Practices
- Decision-Making Guidebook on Establishing and Strengthening Various Models of Civilian Oversight
- Interactive Online Toolkit

State of the Field & Effective Practices: Case Studies



Agency	Model	Year created	Population	Overseen staff/officers
Atlanta Citizens Review Board	investigative	2007	472,522	2,230
Cambridge Police Review & Advisory Board	hybrid (investigative/review)	1984	113,000	278
Denver Office of the Independent Monitor	auditor/monitor	2004	693,060	2,444
Indianapolis Citizens Police Complaint Office	review	1989	864,771	1,511
LAPD Office of the Inspector General	auditor/monitor	1995	3,976,000	12,812
Miami Civilian Investigative Panel	investigative	2001	453,579	1,100
New Orleans Independent Police Monitor	auditor/monitor	2008	391,495	1,158
Philadelphia Police Advisory Commission	review	1993	1,568,000	6,300
Washington, DC Office of Police Complaints	investigative	1998	693,972	3,900

State of the Field & Effective Oversight: preliminary observations



- The number of civilian oversight agencies continues to grow.
- Data-driven policy analysis is increasingly common.
- Access to department records and information varies greatly.
- Accountability and evaluation requirements for the civilian oversight agency are more prevalent than in the past.
- There is an increasing focus on front-end accountability, rather than only back-end accountability.
- Procedural justice and legitimacy with all stakeholders are key for effective oversight.



Thirteen Principles of Effective Civilian Oversight

1. Independence
2. Clearly defined and adequate jurisdictional authority
3. Unfettered access to records and facilities
4. Access to law enforcement executives and internal affairs staff
5. Full cooperation
6. Sustained stakeholder support
7. Adequate funding and operational resources
8. Public reporting and transparency
9. Policy and pattern analysis
10. Community outreach
11. Community involvement
12. Confidentiality, anonymity, and protection from retaliation
13. Procedural justice and legitimacy

Thirteen Principles of Effective Civilian Oversight



Key considerations for evaluating effective practices:

1. Is this practice an appropriate “fit” for our local context?
2. How will this practice strengthen our civilian oversight in relation to the thirteen principles of effectiveness?
3. What are the potential unintended consequences of implementing this practice?

Trauma, Systemic Injustice and Healing: A Path Forward

A trauma-informed approach to policing and civilian oversight in the United States



Trauma



What is trauma?

- Any event – or series of events – that shatters an individual’s sense of safety in the world and overwhelms their capacity to adapt and cope.

What is a traumatic response?

- Traumatic stress reactions are normal reactions to abnormal circumstances.
- Reactions to trauma can vary greatly and are significantly influenced by the individual’s sociocultural history.

Trauma



Universal Types of Trauma

- Interpersonal trauma
- Terrorism & mass-casualty events
- Natural or human-made disasters
- Vicarious trauma
- Oppression & marginalization
- Historical & community trauma

Trauma-Informed?



What does being “trauma informed” mean?

- Realizes the widespread impact of trauma and understands potential paths to recovery
- Recognizes the signs and symptoms of trauma in clients, families, staff and others involved with the system
- Responds by fully integrating knowledge about trauma into policies, procedures and practices
- Seeks to actively resist re-traumatization

Confronting Systemic Injustice



Based at the John Jay College of Criminal Justice in New York City, the National Initiative for Building Community Trust and Justice is addressing historic harm and trauma and the need for truth and reconciliation

- Acknowledging the past and then use it to move forward together
- Not taking for granted the voices that are being heard are the only important voices.
- “We all want the same thing: peaceful and just communities” – Brian Corr

Is Civilian Oversight “The Answer?”



Civilian oversight alone is not sufficient to gain legitimacy; without it, however, it is difficult, if not impossible, for the police to maintain the public's trust.



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“If you have come to help me you are wasting your time.

But if you have come because your liberation is bound up with mine, then let us work together.”

Australian Aboriginal activists in Queensland, 1970s

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