Civilian Oversight of Law Enforcement

Background, Guiding Principles, & Effective Practices in Oversight
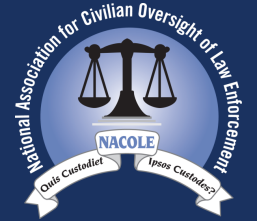
**City of San José
Charter Review Commission**

August 23, 2021

Presentation by Brian Corr • Immediate Past President of NACOLE
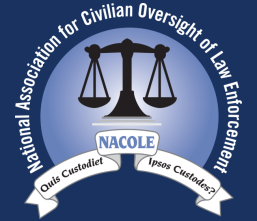
PRESENTATION OVERVIEW

- Policing and Civilian Oversight: Origins and Key Ideas

- The Three Pillars of Civilian Oversight

- The Path to Civilian Oversight in the U.S.

- The Nature and Structure of Civilian Oversight

- The State of the Field & Effective Oversight Practices

- Moving to an Effective Practice Framework

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/

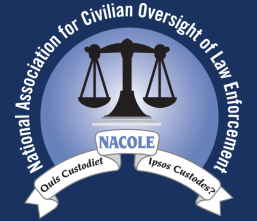# Enslaved Africans and Slave Patrols: 1704 to 1865

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"
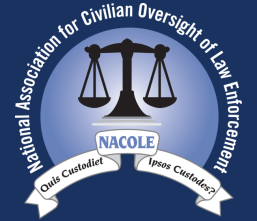
Sir Robert Peel's Seventh Principle, 1829

"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.

"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.
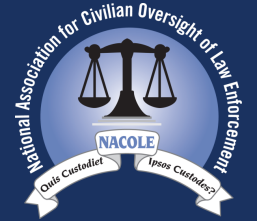
Front-End Accountability

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.

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

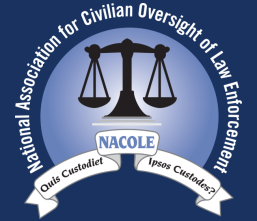https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

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 polices and strategies for deploying resources that aim to reduce crime by improving relationships, increasing community engagement, and fostering cooperation.

President's Task Force on 21st Century Policing

From the Task Force's Implementation Guide, p. 4:

The National Association for Civilian Oversight of Law Enforcement (NACOLE) brings together individuals and agencies working to establish or improve the oversight of law enforcement officers in the United States.

The continuum for civilian oversight ranges from limited authority to reviewing and making recommendations to boards that have investigative and subpoena powers. Each community establishes its own local parameters for independent citizen review.

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.
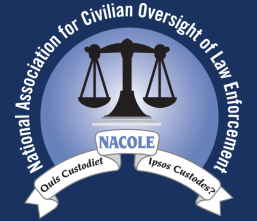
Respect & Quality of Treatment

- Receiving interpersonal treatment that is respectful and dignified.

Trust

- 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.

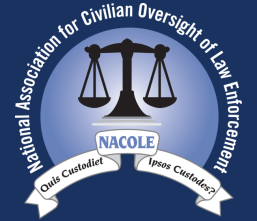- **Putting legitimacy into practice** involve sustained, deliberate thoughtful effort.

Legitimacy

What is legitimacy in policing? The belief that:

- The police are trustworthy, honest, and concerned about the well being of the people they interact with.

- Police authority ought to be accepted.

- People should voluntarily accept police decisions and follow police directives.

- They should comply with the law and cooperate with the police.

Legitimacy

What is legitimacy in *civilian oversight*? The belief that:

- The oversight agency is trustworthy, honest, and concerned about the well being of the people they interact with.

- Oversight and its authority ought to be accepted.

- People should accept oversight agency decisions and recommendations.

- They should comply with the law and cooperate with the oversight agency.

Procedural Justice and Legitamcy

- **Procedural justice** typically centers *how* authority is exercised. For oversight agencies whose authority is established by law, the recognition of their right to that authority and perceptions of how fairly that authority is exercised are crucial components of their legitimacy.

- Incorporating principles of procedural justice in complaints process increases complainant satisfaction.

- Officers who perceive their work environment to be unfair and unjust are more likely to engage in misconduct, use force, and less likely to support community policing.

Types of Authority

Statutory Authority:

- Local ordinances, state and federal law

Foundation:

- Reactive
- Authority-driven
- Problem-driven
- Focus on accountability and punishment
- Command and Control: the lawful use of authority
- Measuring numbers and results

Legitimacy-based Authority:

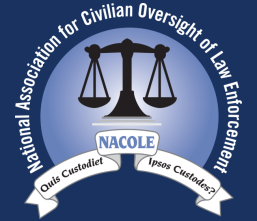- Community expectations and values

Foundation:

- Proactive approach
- Willing compliance
- Community outreach & engagement
- Quality of the process is as important than the outcome
- Changing the conditions that lead to police misconduct
- Measuring success and opinion

The Three Pillars of Civilian Oversight of Law Enforcement in the United States

Independence • Transparency • Accountability

Independence

Oversight must have the authority to act independently:

- Speaking with the media

- Interacting with other agencies and officials to gather information/evidence

- Producing and distributing reports

- Making recommendations for changes in police policies procedures

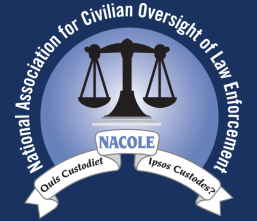- Making hiring decisions for key staff positions

Transparency
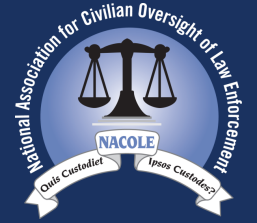
Promoting transparency is a *shared* responsibility:

- Enacting policies to improve citizen confidence such as access to police reports, video, radio transmissions, etc.

- Access to reports of findings resulting from citizen complaints

- The wider community can be reassured that discipline is being imposed when appropriate, while also increasing the transparency of the disciplinary process

- Tracking complaints to identify patterns and trends

- Promoting mechanisms that value civil and human rights in all encounters with the police

- Improve community relations by fostering communication between the community and police agency

- Collecting data on numbers and types of complaints filed

Accountability

Accountability must be demonstrated by *all* applicable stakeholders:

- Support the goals of community-oriented policing

- Oversight can help hold law enforcement accountable for an individual officer's actions.

- Improve the quality of the department's internal investigations of alleged misconduct

- When the oversight agency confirms a complainant's allegation(s), complainants and their communities may feel validated.

- When the oversight agency exonerates the officer, the officer may feel vindicated.

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.

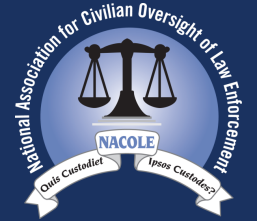# The Path to Civilian Oversight in the United States

History & Structure

Facts about the Field: *Law Enforcement*

- There are approximately 18,000 law enforcement agencies 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.

- They vary from small suburban or rural communities with a single officer to the New York City Police Department with almost 36,000 officers and the Los Angeles County Sheriff's Department with just over 10,000 sworn deputies – separate from the 9,500 sworn officers in the City of Los Angeles.

- Every state has different laws and within states, counties, cities, and towns have their own laws, ordinances, and bylaws.

Facts about the Field: *Civilian Oversight*

- There are more than 220 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 USDOJ settlement agreements.

- Increasingly, communities are establishing civilian oversight as part of reexamining public safety and policing.

History of Civilian Oversight in the U.S.

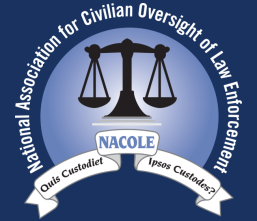1928: Committee on Constitutional Rights Formed

1931: Wickersham Commission Recommends Disinterested Agency to combat "Lawlessness in Law Enforcement"

1948: First Official Civilian Oversight Board formed (Washington, DC)

1953: First New York City Civilian Complaint Board Formed

1958: Police Advisory Board formed in Philadelphia, PA

History of Civilian Oversight in the U.S.

1970: Kansas City Office of Citizen Complaints Established

1980: 13 Civilian Oversight Agencies in Operation

2020: Over 220 Oversight Agencies with More under Development or Consideration

1973 : Police Review Committee Established in Berkeley, Calif. by City Ordinance

2000: More than 100 Oversight Agencies
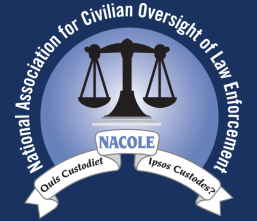
Evolution of Civilian Oversight

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

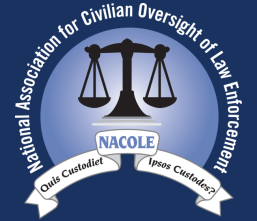*Photo: Kristopher Skinner/Bay Area News Group*

Common Goals of Oversight

To ensure the police COMPLAINT PROCESS IS ACCESSIBLE to all and to remove impediments to the filing of complaints

To ensure that INVESTIGATIONS ARE FAIR AND THOROUGH, that FINDINGS ARE REASONABLE and DISCIPLINE IS APPROPRIATE

To IMPROVE PUBLIC CONFIDENCE in the police

To enhance the TRANSPARENCY OF POLICE ORGANIZATIONS by publicly reporting on the department's efforts in holding officers accountable

Common Goals of Oversight

To IMPROVE law enforcement agencies by analyzing patterns in complaints and other police-related data to improve policies, practices, training and management

To DETER OFFICER MISCONDUCT through the creation of more effective and consistent investigation and disciplinary processes

To REDUCE LEGAL LIABILITY from officer misconduct

To improve the public's UNDERSTANDING of police policy, training, and practices

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.

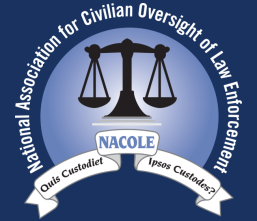# The Nature and Structure of Civilian Oversight in the U.S.

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.
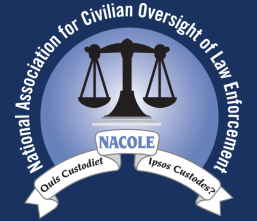
Common Models of Oversight in the U.S.

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

Review-focused Model

- Ensures the community has the ability to provide input into the complaint investigation process.

- Community review of investigations may increase public trust in the process

- An individual or a board/commission authorized to review completed internal investigations – can agree/disagree with findings
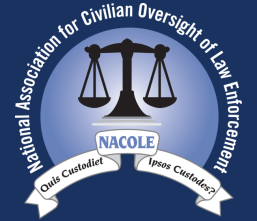
Investigation-focused Model

- May reduce bias in investigations into citizen complaints

- Full-time civilian investigators may have highly specialized training

- Investigations conducted by oversight agency-does not rely on investigators from within the police department

- Civilian-led investigations may increase community trust in the investigation process

Auditor/Monitor-focused Model

- Often have more robust reporting practices than other models

- May be more effective at promoting long-term, systemic change in police departments

- Generally less expensive than full investigative agencies

- Allow the agency to actively engage in many or all of the steps of the complaint process

Hybrid Models

- Contain elements from one or more of the three models

- Have been developed to address the needs of a specific community and conform to state or local laws

- May be modifications of a previous oversight agency

- Are increasingly common

Common Models of Oversight in the U.S.

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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
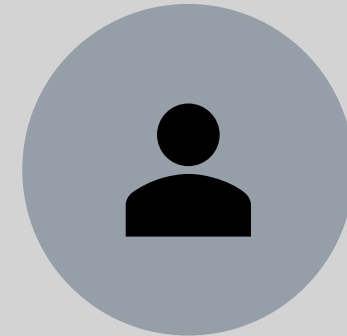
Training for Board or Commission Members and Staff

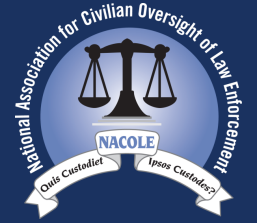POLICIES AND PROCEDURES OF THE LOCAL LAW ENFORCEMENT AGENCY

ESSENTIALS OF CIVILIAN OVERSIGHT

AUTHORITY AND RESPONSIBILITIES

Establishing Credibility:
Key Tasks for Oversight

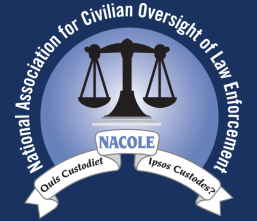**Training and Professional Development is Essential for Credibility:**

- Providing new members with the information they need to perform effectively is a critical step in the development of a strong board or commission.

- The responsibilities for developing and implementing an effective program of board orientation are shared between oversight practitioners and the board itself.

- There must be a commitment to developing a well-informed board, one with the knowledge needed to lead an effective organization.

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.

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Ethical and Professional Standards of Civilian Oversight
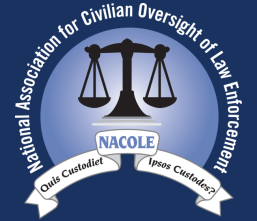
NACOLE's Code of Ethics

- 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

- Primary Obligation to the Community

Civilian Oversight of Law Enforcement:

Report on the State of the Field and Effective Oversight Practices

Civilian Oversight of Law Enforcement:
Project Deliverables
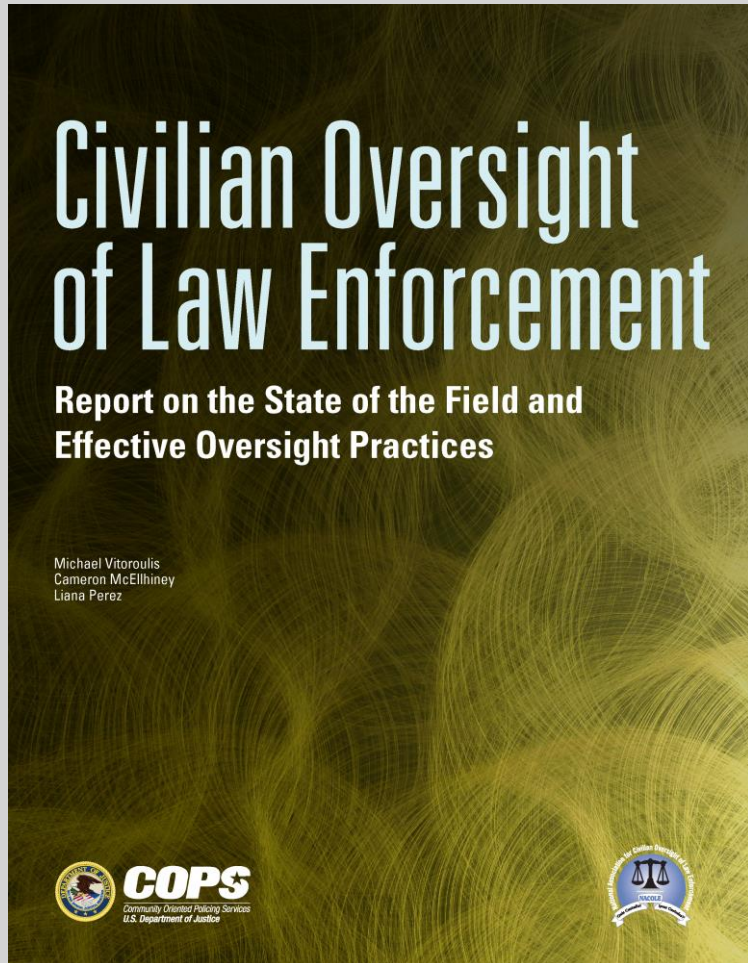
NACOLE and the U.S. Dept. of Justice released the following in July 2021:

- 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 at www.NACOLE.org/COAD
- All available at www.NACOLE.org/recent_reports

Civilian Oversight of Law Enforcement:
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

The Evolution and Growth of Civilian Oversight:

Key Principles and Practices for Effectiveness and Sustainability

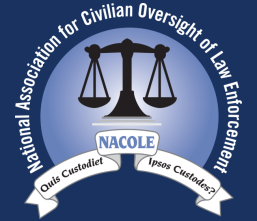# Executive Summary: The Evolution and Growth of Civilian Oversight
Key Principles and Practices for Effectiveness and Sustainability
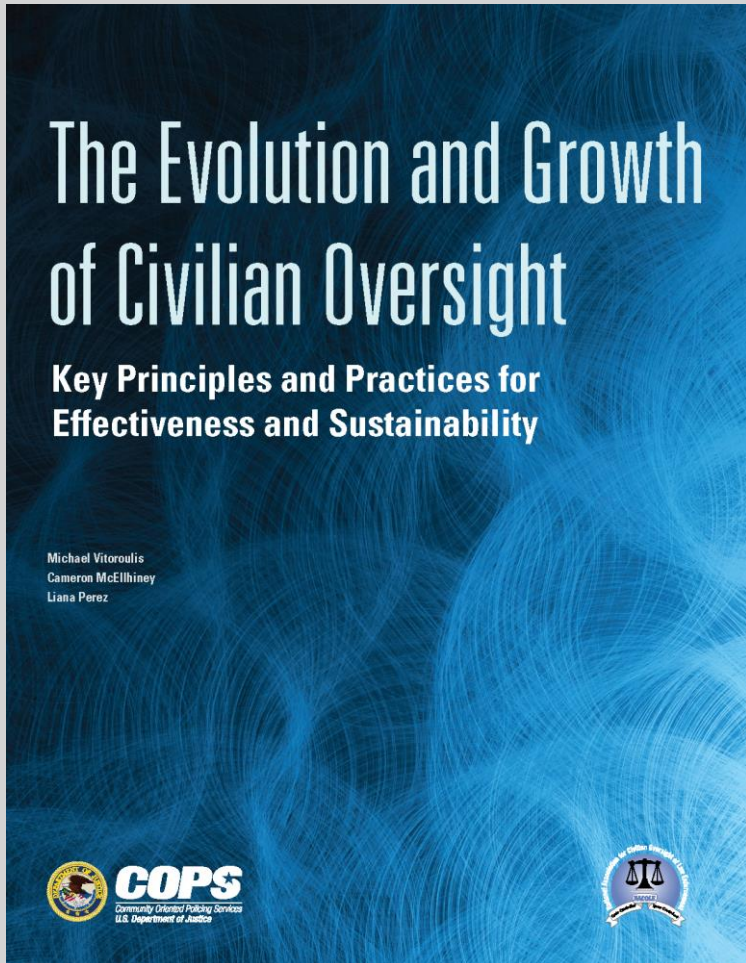
- The number of civilian oversight agencies continues to grow.

- 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.

Executive Summary: The Evolution and Growth of Civilian 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

Moving to an Effective Practice Framework:
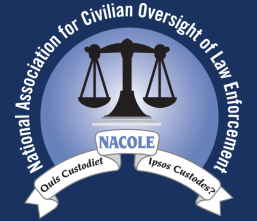*"Best practices" vs. "Effective practices"*

Limitations on the applicability of a "best practices" approach has led NACOLE to propose an "effective practices" approach based on thirteen principles that serve as a foundation for successful and effective oversight.

The form that oversight takes in a community should be one that is possible, feasible, and congruent with community expectations.

The "best" form of oversight will depend on the local circumstances of the jurisdiction.

Moving to an Effective Practice Framework:
Limitations of *"Best practices"*

The complexities of social and political contexts make identifying successful practices employed in one jurisdiction and transferring them to another a challenging and unreliable task fraught with potential errors of interpretation and extrapolation.

The goals of civilian oversight do not lend themselves to systematic, comparative measurement.

There is a lack of standardized definitions related to the data being collected and analyzed that make cross-jurisdictional comparison difficult, if not impossible.

No two civilian oversight agencies are the same.

Keys to an Effective Practice Framework

In the field of civilian oversight, there are several possible paths to success.
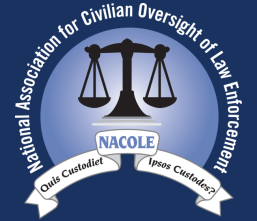
Development must allow for flexibility and context but still take into consideration criteria that is understood to be crucial to successful and effective oversight.

Oversight must take into consideration the core values and principles that should be satisfied to produce better outcomes.

The diverse perspectives and wisdom of experienced practitioners should be valued.

Stakeholder input and dialogue should be prioritized.

Thinking Strategically about the Thirteen Principles

How can you build on opportunities, while addressing and understanding the challenges?
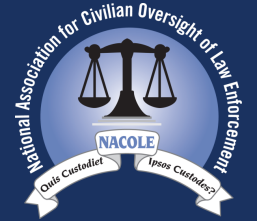
How will you build legitimacy with all stakeholders and goodwill for the future?

What are your priorities and what can go on the "back burner"?

How can you adapt to conditions in order to achieve your mission?

New, Emerging, and Revamped Oversight

Results and looking forward:
What do you hope to see in five years?

How will you set expectations and measure success?

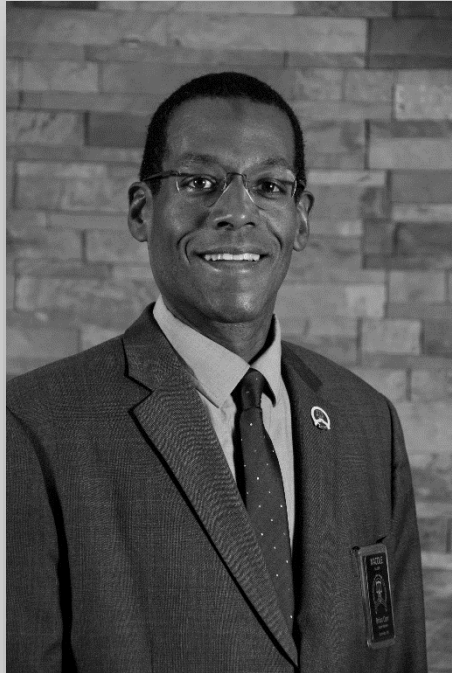How will you actively listen to and honor all voices, perspectives, and lived experiences?

© Ricardo Levins Morales

"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

For more information contact:

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