



NACOLE

Review

NATIONAL ASSOCIATION FOR CIVILIAN OVERSIGHT OF LAW ENFORCEMENT

www.nacole.org

Summer 2016

Roy L. Austin, Jr. to Deliver Keynote Address at NACOLE Conference

NACOLE IS HONORED TO HAVE Roy L. Austin, Jr. as its keynote speaker during the 2016 Annual Conference in Albuquerque, New Mexico. In March 2014, Austin joined the White House Domestic Policy Council as Deputy Assistant to the President for the Office of Urban Affairs, Justice, and Opportunity. In this position, Austin coordinates the formulation and implementation of policy covering criminal justice, civil rights, housing, labor, human services, and initiatives such as Promise Zones. Austin is also a member of the My Brother's Keeper Task Force.

Austin began his career as an Honors Trial Attorney with the Criminal Section of the Civil Rights Division investigating and prosecuting hate crime and police brutality cases around the country. After approximately five years, he joined Kecker & Van Nest LLP in San Francisco, as an associate working on complex civil and white-collar criminal cases, including a successful pro-bono civil lawsuit aimed at preventing racial profiling by the California Highway Patrol. In 2002, he joined the U.S. Attorney's Office for the District of



Roy L. Austin, Jr., 2016 NACOLE Conference Keynote Speaker

Columbia where he prosecuted domestic violence, adult and child sexual assault, human trafficking, homicide and fraud and public corruption cases. He left in 2007 to become a partner at McDermott, Will & Emery working primarily on white collar criminal cases. In 2009, Austin returned to

the D.C. U.S. Attorney's Office as a Senior Assistant United States Attorney and Coordinator of the D.C. Human Trafficking Task Force.

In January 2010, Austin was appointed Deputy Assistant Attorney General (DAAG), Civil Rights Division, U.S. Department of Justice. As a DAAG, Austin supervised the Criminal Section, and the Special Litigation Section's law enforcement (police departments, corrections, and juvenile justice) portfolio. In addition, he supervised work under the Religious Land Use and Institutionalized Person Act (RLUIPA) and Freedom of Access to Clinic Entrances (FACE) Act. Among numerous other matters, Austin worked on cases involving the New Orleans Police Department, Missoula (MT) law enforcement and the Maricopa County Sheriff's Office.

Over his career, Austin has tried thirty jury trials to verdict. He served as an adjunct trial advocacy professor at George Washington University Law School from 2007–2013. Austin received his B.A. from Yale University and his J.D. from The University of Chicago and he grew up in State College, Pennsylvania. •

Register Now!

The 22nd Annual NACOLE Conference

September 25–29, 2016 • Albuquerque, New Mexico

Click HERE to Register!

HURRY!

**Early Registration Deadline
is July 31!**

In This Issue

Message from the President	2
Building Public Trust: NACOLE'S 2nd Annual Symposium Unites Research and Practice	3
12th Cross-Straits Conference on Public Administration in Taiwan	3
Albuquerque Civilian Police Oversight Agency	4
Conference Summary	5

Conference Daily Schedule	6
Conference Hotel Information	8
Civilian Oversight of Law Enforcement As Less Lethal Technologies Advance	9
BOOK REVIEW: <i>Ferguson's Fault Lines: The Race Quake that Rocked a Nation</i>	10

President's Message

Thank You, NACOLE

THIS WILL BE MY LAST PRESIDENT'S Message in *The NACOLE Review*. My term is up this fall, having served three full terms as President. At this year's annual meeting, the membership will elect a new president, who will take over at an exciting time in the nation's history, as well as in NACOLE's own history.

I am truly humbled by the opportunity you gave me to serve as NACOLE president. Since my election in 2013, NACOLE and oversight have both experienced tremendous growth, as the nation's attention was suddenly thrust upon our work and us. To set out a new pathway forward, we launched NACOLE in 2020, a comprehensive strategic planning process earlier this year. I'm excited to see where it takes us.

I am reminded daily that our recent growth has not been ours and ours alone. Communities have risen up, confronted injustice, and demanded answers, and action. Elected leaders from small towns to big cities have removed once-thought-untouchable chiefs of police. State legislatures across the country are debating bills that would allow greater access to police records, and ensure greater transparency in police investigations. Body cameras are becoming a standard accountable tool in policing. Voters are replacing prosecutors who do not file criminal charges in police-involved shooting cases. And the President of the United States took action to redefine policing in the 21st century, elevating the role of civilian oversight in the process.

I assumed the NACOLE presidency at a time when much of this was thought to be improbable. Over these last three years, I watched as NACOLE assumed its proper role as a leading national voice. None of it could have happened without my fellow Board members, our dedicated staff, and volunteers who meet and exceed expectations year after year. I will always remember and cherish the opportunities I had to meet and work with so many wonderful colleagues and communities across the nation. I am leaving with a much greater appreciation of the righteous struggle you each endure daily, and I am optimistic about the future of police oversight.

We will explore many of these same issues and more during the 22nd Annual Conference in Albuquerque. The theme of this year's conference, *Confronting Systemic Injustice*, challenges us to broaden our efforts and perspective to include a focus on larger and more endemic issues within policing. It challenges us to gather and analyze more data—and then to make those data available to the public. It challenges us to move beyond discipline and investigations or reviews of individual cases of police use of force or alleged misconduct, though there will always be an important role for oversight in evaluating these individual cases. We must look more broadly at the institution of policing and how we can remedy patterns or practices that lead to ineffective or discriminatory policing.

This year's attendees will be able to choose from a large and diverse selection of workshops. The program includes such topics as de-escalation and police use of force, policing the mentally ill and crisis intervention training, bringing together police and communities, the impact of oversight on juvenile justice reform, procedural justice, emerging technology in policing, and strategies and techniques for monitoring protests.

The conference Keynote Speaker will be Roy Austin, Jr., Deputy Assistant to the President for Urban Affairs, Justice and Opportunity at the White House Domestic Policy Council. Mr. Austin has been a principal architect of many of President Obama's police reform initiatives, including helping to establish the Task Force on 21st Century Policing and the White House's Police Data Initiative. He has attended and spoken at a number of NACOLE events over the years, and has been a tremendous supporter of, and advocate for, civilian oversight and NACOLE. His leadership, both in the White House and in his former role at the Civil Rights Division of the U.S. Department of Justice, has helped to advance constitutional policing and other criminal justice reforms. We're honored to welcome him back in such a prominent speaking role at the conference!

Following through on our commitment to continually expand the breadth and depth of con-



Brian Buchner, NACOLE President

tent at our training events, the conference schedule will feature a special daylong track addressing issues within civilian oversight of corrections. Correctional oversight has emerged over the last several years as a rapidly growing professional field of practice. In recognition of that fact, NACOLE has chosen to help incubate this growing field of professionals and offer training and networking opportunities at our conferences.

The 22nd Annual Conference has many more exciting and informative sessions and workshops in the program. The program can be viewed by clicking [here](#) or in the Annual Conference section of this newsletter.

Thank you for everything. Thank you for sharing your stories and struggles with this organization and me. We tried to help wherever and whenever possible, and pushed ourselves beyond what we believed our capacity to be. I have learned a lot from those around me. I am forever grateful that you placed your trust in me, and for the wonderful opportunity you gave me. I look forward to seeing you in Albuquerque! •

Brian Buchner is the President of NACOLE and Policy Director for Los Angeles Mayor Eric Garcetti's Office of Public Safety.

The NACOLE Review

The NACOLE Review is produced under the supervision of the NACOLE Newsletter Committee Chairs **Kelvyn Anderson** and **Mark Smith**, as well as the NACOLE Board of Directors. The Board thanks those individuals who contributed to this issue of the newsletter and extends a special thanks to the Newsletter Committee: **Loan Le**, **Marielle Moore**, and **Karen Williams**.

Additionally, the Board is grateful to **Cameron McElhiney** and **Liana Perez**, who provide contracting services to NACOLE. We would also like to extend our gratitude to **Jerri Hemsworth** of NewmanGrace (www.newmangrace.com) for providing layout and publication services to the NACOLE Review.

NOTICE

2016

NACOLE Annual Membership Meeting

Wednesday, September 28, 2016
at 3:00 p.m. MDT

Albuquerque
Convention Center

Building Public Trust: Generating Evidence To Enhance Police Accountability And Legitimacy

NACOLE'S 2nd Annual Symposium Unites Research and Practice

By Marielle A. Moore

“IN THE WORLD OF POLICE ACCOUNTABILITY, THERE ARE AS MANY different approaches to the use of data and research-based evidence as there are models of oversight.” Phil Eure, Inspector General for the NYPD, delivered the opening remarks at this year’s Annual Academic Symposium, which focused on how oversight agencies can effectively generate and leverage research and data in their work. Oversight practitioners and researchers from all over the country came together at the John Jay College of Criminal Justice to discuss the application of research to oversight practice, as well as to share research findings, methodologies, and best practices.

The program consisted of four panels on the topics of “Integrity in Procedural Justice,” “Examining Issues Regarding Use of Force,” “The Challenges of Implementing Body-Worn Camera Programs,” and “Accountability and Legitimacy Through Data.” A civilian law enforcement practitioner moderated each panel, leading the panelists in discussions about their research related to each topic. The panelists represented a wide range of disciplines, including academic research, law, statistics, law enforcement oversight, and state and federal policy.

The program also included two featured speakers. During the morning session, Tom R. Tyler, Ph.D., spoke on the importance of police legitimacy and how notions of legitimacy vary between stakeholders. Dr. Tyler is the Macklin

Fleming Professor of Law and Professor of Psychology at Yale Law School.

The afternoon session featured a presentation by Lorie A. Fridell, Ph.D., on the topic of fair and impartial policing through science-based training for police officers. Dr. Fridell is an Associate Professor of Criminology at the University of South Florida.

Inspector General Eure; Margo Frasier, Police Monitor for Austin, Texas; Heath Grant, Ph.D., Assistant Professor at John Jay College of Criminal Justice; and Daniel L. Stageman, Director of Research Operations at John Jay College of Criminal Justice co-chaired the Symposium. For a list of panelists, speakers, and their professional biographies, as well as the Symposium schedule, visit the NACOLE website. Materials relating to each panelist’s research or symposium presentation also appear on the NACOLE website.

The day concluded with suggestions from members of the audience on balancing demands for transparency and open data against the need for confidentiality, ways for NACOLE to help bridge the gap between research and practice, and ideas for ongoing partnerships. While unique in their needs and functions, all of the attendees and the institutions they represented were able to exchange tools and strategies to apply to the growing field of police oversight. With NACOLE leading the way, this exchange promises exciting developments in the year to come! •

12th Cross-Straits Conference on Public Administration in Taiwan

ON APRIL 28, 2016, NACOLE PAST President Ilana Rosenzweig provided a keynote speech regarding civilian oversight of police at the 12th Cross-Straits Conference on Public Administration. The speech explained the models of oversight used in the United States, and their strengths and weaknesses. Ms. Rosenzweig also moderated a panel titled “Legitimacy and Independent Oversight of Law Enforcement.” A scholar from Hong Kong discussed his research regarding perceptions of police legitimacy held by university students in Hong Kong. A scholar from Taiwan discussed stakeholder experiences with their first civilian review board in New Taipei City.

The conference was attended by academics from Taiwan, The People’s Republic of China, Macau, Hong Kong, and Korea. In addition to increasing awareness of civilian oversight through her participation in the conference, Ms. Rosenzweig was able to build relationships and spur further connections with academics in the hope of increasing academic research and writing about oversight.

The conference was hosted by Taiwan’s Central Police University (CPU). CPU is

Taiwan’s highest level police training facility issuing undergraduate and graduate degrees. Its graduates are assigned directly to a supervisory role in one of Taiwan’s law enforcement agencies. •



Albuquerque Civilian Police Oversight Agency

A Brief History of Oversight in Albuquerque

IN JUNE, 1978 AFTER ALLEGATIONS of police brutality within the Albuquerque Police Department (APD), City Council created the first Police Advisory Board (PAB) to provide some civilian oversight. In 1987, the City Council created the Office of Independent Counsel due to dissatisfaction with the PAB and adopted the Independent Council Ordinance expanding oversight to include civilian review of police internal affairs investigations. In 1989, the independent Counsel Ordinance was amended, renaming the PAB to the Public Safety Advisory Board. The Public Safety Advisory Board expanded its oversight of APD internal affairs investigations, as well as the oversight of fire and corrections departments. Concern over insufficient civilian oversight remained and prompted City Council to order an independent study in March 1996, which resulted in the Walker-Luna report.

A Task Force on Police Oversight was created in November 1997 to review and analyze the Walker-Luna evaluation report. The task force completed their report in May 1998 and submitted recommendations, which prompted the City of Albuquerque to take action. In 1998, City Council overhauled the oversight system and passed the Police Oversight Ordinance creating the Police Oversight Commission (POC) to provide oversight of the APD and all of the civilian complaints. The new ordinance established an Independent Review Office that was directed by an Independent Review Officer (IRO). The IRO position required a law degree and five years of experience in criminal investigations. All citizen complaints and claims directed against the APD and its employees were received by the Independent Review Office. The IRO reviewed the complaints for assignment to either APD internal affairs or an independent civilian investigator. The POC was responsible for reviewing the work of the IRO and submitted all findings to the Chief of Police, who had final disciplinary authority. Three major components were established to Albuquerque's oversight system: Internal Affairs (IA), the Independent Review Office, and the Police Oversight Commission (POC).

United States v. City of Albuquerque—Settlement Agreement

In November 2012, the United States Department of Justice (DOJ) launched an

investigation into APD to determine whether APD engaged in a pattern or practice of excessive force. Less than a month after the highly controversial shooting of James Boyd, a homeless man who suffered from schizophrenia, the DOJ issued a public findings letter to the City on April 10, 2014. This letter as part of its findings concluded that the City's oversight system contributed to the overall systemic problems with the Police Department's use of force in encounters with civilians. As a result, the DOJ and City of Albuquerque joined in a collaborative effort to promote the goals of the Settlement Agreement. The DOJ Settlement Agreement was signed by Judge Brack and finalized in June 2015.

What Police Oversight Looks Like Now in 2016

On September 18, 2014, City Council abolished the Police Oversight Commission (POC) and replaced it with the Civilian Police Oversight Agency (CPOA). The Albuquerque CPOA is an independent agency of City Government, not part of either the City Administration or City Council that consists of a Police Oversight Board (POB) and an Administrative Office led by the CPOA Executive Director, whose qualifications remained the same as the previous IRO. In addition to the Executive Director, the CPOA is a team made up of a Senior Administrative Assistant, four Independent Investigators, a Community Engagement Specialist, and a Data Analyst. The POB consists of nine volunteer community members and oversees the CPOA. The POB members come from various areas of the city and are selected by City Council to effectively represent the diversity of the community.

The new City Ordinance requires independent funding equal to, at minimum, ½% of APD's annual operation budget, administers its own budget and supervises its own staff. Additionally the CPOA may retain or employ independent legal counsel on a contractual basis to advise and represent the POB. The CPOA is responsible for civilian police oversight and has the following powers and duties: Community Outreach, Promotion of Accountability, Investigations, Disciplinary Recommendations, Reports to Mayor and Council, and Policy Recommendations. As we continue to grow in Oversight, the City Ordinance continues to be amended to support Oversight efforts. •

Stay Connected With NACOLE

Click on each of the platforms to stay connected and up to date!



YAHOO!
GROUPS

NACOLE Board of Directors

Officers:

President

Brian Buchner, Los Angeles, CA

Vice President

Ainsley Cromwell, Detroit, MI

Founder

Donald L. Casimere, Pinole, CA

Secretary

Karen Williams, Kansas City, MO

Treasurer

Avice Evans Reid, Knoxville, TN

Members at Large:

Kelvyn Anderson, Philadelphia, PA

Brian Corr, Cambridge, MA

Margo Frasier, Austin, TX

Nicholas Mitchell, Denver, CO

Dawn Reynolds, Dallas, OR

Mark P. Smith, Los Angeles, CA

Director of Training and Education:

Cameron McElhiney, Indianapolis, IN

Director of Operations:

Liana Perez, Tucson, AZ



Confronting Systemic Injustice

Albuquerque, New Mexico • September 25–29, 2016

The 22nd Annual Conference of the National Association for Civilian Oversight of Law Enforcement

Summary

INCIDENTS OVER THE PAST SEVERAL YEARS HAVE brought attention to the mistrust and broken relationships between police and the communities they are sworn to serve and protect. It is one of the most pressing challenges facing our nation. In communities of color particularly, policing practices that are perceived to be overly harsh, unjust, or unfair, regardless of whether those practices are deemed lawful, can undermine police legitimacy. When the members of one racial group are significantly more likely to be stopped, searched, arrested, or even shot by the police, maintaining trust becomes immensely more difficult.

In order to rebuild this broken trust we must first look to mechanisms that will allow us to begin the process of confronting a history that has fostered the same systemic injustice that we see on the front page of newspapers and on the news daily. Civilian oversight is one of these mechanisms. It brings together the many stakeholders involved in supporting trusted, respectful, and effective law enforcement efforts. It breaks down the walls between police and the public and enhances the understanding by both parties by reminding police that they ultimately serve the public's interests, and by educating

the community on the unique and difficult challenges officers encounter every day.

Join us this September as we bring together the ever-growing community of civilian oversight practitioners, community members, law enforcement officials, journalists, elected officials, students and others working for greater accountability and trust. Be a part of the conversation as we explore the different ways civilian oversight can work to confront the systemic injustices that have plagued our country for far too long.

The city of Albuquerque, New Mexico, will serve as our host and, in the midst of a schedule full of training and the discussion of current and emerging topics, they will share with us their work as a community to rebuild trust between the police and the communities they serve.

This year's conference hotel is the DoubleTree Hotel which is connected to the Albuquerque Convention Center where our conference sessions will be held.

Additional information regarding our Annual Conference may be found on our website, www.nacole.org or by emailing our Director of Training & Education, Cameron McElhiney at mcelhiney@nacole.org.



Daily Schedule

Sunday, September 25th

1:00 p.m. – 2:30 p.m.	Albuquerque Community Meeting: Advancing Community Trust
2:45 p.m. – 4:00 p.m.	An Introduction to NACOLE, its Founders, and Civilian Oversight of Law Enforcement
3:00 p.m. – 6:00 p.m.	Open House to Welcome Conference Attendees Join fellow attendees for registration, refreshments, and time to reconnect.

Monday, September 26th

8:30 a.m. – 9:00 a.m.	Welcoming Remarks	
	Current & Emerging Issues	
9:00 a.m. – 9:45 a.m.	Featured Speaker, Invitation Pending	
10:00 a.m. – 11:30 a.m.	Community Model for Moving Law Enforcement Reform Forward: Essential Elements of APD Forward	
11:30 p.m. – 12:30 p.m.	Lunch on Your Own	
	Current & Emerging Issues (Concurrent Session)	Current & Emerging Issues (Concurrent Session)
12:45 p.m. – 2:15 p.m.	Procedural Justice, Part I: The Cambridge, Massachusetts Experience	Using Technology & Open Data for Better Oversight
2:30 p.m. – 4:00 p.m.	Procedural Justice, Part II: Implementing Change, Improving Policing and Challenges to Legitimacy	Monitoring Protests: A New Role for Civilian Oversight
4:15 p.m. – 5:30 p.m.	NACOLE in 2020 Join us as we discuss the future of NACOLE	
6:30 p.m. – 8:30 p.m.	NACOLE Annual Conference Scholarship Fundraising Dinner (Additional Ticket Required)	

Tuesday, September 27th

	Beginner/Intermediate Track (Concurrent Session)	Advanced Track (Concurrent Session)	Correctional Oversight Track (Concurrent Session)
8:30 a.m. – 10:00 a.m.	Legal Updates	Six Years of Jamaican Oversight: Investigation of Police-Related Killings	Models of Correctional Oversight
10:15 a.m. – 11:45 a.m.	Policing and Communities of Color: Confronting Systemic Injustice		
12:00 p.m. – 1:30 p.m.	Keynote Luncheon and NACOLE Awards Ceremony		
1:45 p.m. – 3:15 p.m.	Basic Investigative Skills	Police and De-Escalation: Culture, Training, and the Use of Force	Jail Safety
3:30 p.m. – 5:00 p.m.	The Cyclical Nature of Civilian Oversight	Policy Analysis in Law Enforcement Oversight: Using Research and Data to Improve Accountability and Practice	Corrections Oversight Workshop
8:00 p.m. – 10:00 p.m.	Special screening of <i>Killing Them Safely</i> , a documentary that examines the history of Tasers.		

Wednesday, September 28th

	Beginner/Intermediate Track (Concurrent Session)	Advanced Track (Concurrent Session)	Current & Emerging Issues (Concurrent Session)
8:30 a.m. – 10:00 a.m.	The Imperative of Bringing Community Stakeholders to the Table	Oversight's Role in Understanding and Managing Use of Force in LA	Understanding the Role of the U.S. Department of Justice Special Litigation Section
10:15 a.m. – 11:45 a.m.	Building Bridges to Better Communication with Law Enforcement	Tackling Use of Force Issues through Systemic Review	Living Under a Consent Decree: the Role of Civilian Oversight
12:00 p.m. – 1:00 p.m.	Lunch on Your Own		
1:15 p.m. – 2:45 p.m.	Crisis Intervention Team Training	Scrutinizing Investigations	Democratic Policing and the Policymaking Function of Civilian Oversight
3:00 p.m. – 5:00 p.m.	NACOLE Annual Membership Meeting and Elections		
6:30 p.m. – 8:30 p.m.	NACOLE's Annual Sankofa Reception		



Daily Schedule, continued

Thursday, September 29th

	Current & Emerging Issues (Concurrent Session)	Current & Emerging Issues (Concurrent Session)
8:30 a.m. – 10:00 a.m.	The Transparency-Litigation-Liability Connection	Opportunities for Oversight to Impact Juvenile Justice Reform
10:15 a.m. – 11:45 a.m.	Restoring Public Trust in Law Enforcement through Civilian Oversight	
11:45 a.m. – 12:00 p.m.	Closing Remarks	

*This schedule is subject to change.

Hotel Information

Double Tree by Hilton
201 Marquette Avenue, NW
Albuquerque, NM, 87102

NACOLE has arranged for a block of rooms at a special rate of \$103.00 per night for those attending the NACOLE Conference at the Double Tree located in downtown Albuquerque, New Mexico. This hotel will serve as our host hotel. Reservations may be made by calling the reservation line at **800.584.5058**. In order to receive this special rate, **please make your reservations prior to September 11, 2016 and let them know that you are part of the NACOLE 2016 Annual Conference.**

Please note that although we will make every effort to assist, NACOLE cannot guarantee the group rate after the room block has sold-out or after the special rate cut-off date of September 11, 2016, whichever comes first.

Room rates in Albuquerque, New Mexico are currently subject to applicable taxes of 13.1875%. Please note that this is used as a tool to help you budget for possible expenditures and not meant to be used as a guarantee of actual expense.

Don't forget to sign up for the

Annual Scholarship Fund Dinner

The Annual NACOLE Scholarship Fundraising Dinner is an evening of food, friends, and celebration. On September 26th, from 6:30 p.m. - 8:30 p.m., attendees will get to know each other while enjoying a dinner on top of the Downtown Lofts just a few short blocks from the Albuquerque Convention Center. In addition to New Mexican cuisine and an amazing view, attendees will also be treated to a mariachi band. Come and show your support, while at the same time enjoying an evening with your friends and colleagues. The NACOLE Scholarship Fund is an important way to support current and future leaders in the field.

Monday, September 26, 2016

Visit

<https://www.eventbrite.com/e/22nd-annual-nacole-conference-confronting-systemic-injustice-tickets-22222359676>

Civilian Oversight of Law Enforcement As Less Lethal Technologies Advance

By Dr. Loan K. Le, Institute for Good Government and Inclusion

I. Introduction and Growth of Interest in Less Lethal Technologies

Professor Eugene O'Donnell from the John Jay College of Criminal Justice stated in the *New York Times*, "The one truly indispensable military technology the police should hurry into service is reliable nonlethal weaponry—like the Pentagon's so-called pain ray. It is hard to believe that in the year 2014, police officers have to take lives just to enforce the law." He adds that of foremost importance is the role that "robust oversight" must play in the implementation of these sophisticated weapons.² The National Institute of Justice (NIJ), the research and development arm of the Department of Justice, delineates seven categories of less lethal technologies including conducted energy devices (CEDs commonly known by the brand name Tasers), directed energy devices, vehicle-stopping technology, distraction tools, chemicals, barriers, and blunt force, with some mixed category devices.³ Proponents who advocate for increased implementation of less lethal technologies in policing do so because they believe that police and suspect lives can be saved and injuries minimized. Nevertheless, we must weigh the significant risks that accompany the utilization of these weapons and ensure our commitment to accountability going forward.

In 2013, local law enforcement agencies were granted almost half a billion dollars of military equipment, which consisted of excess supplies and equipment from the Pentagon through the Department of Defense (DoD) 1033 Program.⁴ Recently, the White House modified its policies and banned law enforcement agencies from obtaining some forms of military equipment including weaponized aircraft and high-caliber weapons but the "vast majority of the military-style equipment distributed by 1033 would still be available to local agencies."⁵ In addition, law enforcement agencies are obviously able to acquire a variety of equipment directly from private manufacturers.

Among a diversity of less lethal weapons types, the DoD's Joint Nonlethal Weapons Program,⁶ the NIJ,⁷ and private contractors such as Raytheon Company⁸ develop technologies for the military and law enforcement agencies that provide access to increasingly sophisticated energy weapons that can be discharged at targets from a distance. New models of CEDs will not require wires or barbs to stun.⁹ A less lethal weapon that can direct millimeter-based energy at targets and cause them to feel intense heating and pain sensations is the Active Denial System (ADS).¹⁰ Domestic law enforcement agencies such as the Los Angeles County Sheriff expressed an interest in like technology.¹¹ Raytheon and the NIJ have worked on handheld ADS equivalents for domestic law enforcement.¹² The Long Range Acoustic Device (LRAD) is another less lethal weapon that can be used to send focused sound waves that create painful deterrent tones or to issue commands to targets.¹³ In 2008, the San Diego County Sheriff's Department procured an LRAD 500X, which it notes "can cause temporary or permanent hearing damage" under maximum intensity conditions.¹⁴

II. Risks with Less Lethal Weapons

With ongoing developments in less lethal technologies and concomitant new risks for undetected abuse, civilian oversight into appropriate uses of force will face increasingly complex demands. How can civilian oversight practitioners, public officials and members of the general public identify and analyze potential risks with evolving less lethal weapons technologies? CEDs are already employed nationally and may provide key insights. Existing CED technology is distinct from the ADS and other directed energy weapons, but it is similarly subject to concerns about excessive force as well

as health and safety effects. Steve Wright, a security expert at Leeds Metropolitan University, depicts the new weapons as "torture at the touch of a button."¹⁵ Although the ADS appears safe when used properly, risks posed by excess firing are significant as experts such as Dr. Jürgen Altmann of University of Dortmund noted that the ADS imparts the technical capability of producing second and third degree burns. Still others note that, "[because] the distinguishing feature of the Taser, compared with other forms of enforcing compliance, is that it can be used with one finger...perhaps this makes it more prone to abuse."¹⁶ Whereas traditional weapons such as guns leave behind bullets, casings and entry-exit sites for forensic analysis, new technologies based on the electromagnetic spectrum can be fired at targets from a distance. Like CEDs, they often do not leave marks behind for auditing of deployment.

Dr. Loan Le of the Institute for Good Government and Inclusion and Maitria Moua of UCLA Law School—in their analysis of the Police Executive Research Forum (PERF) dataset, *2011 Evaluation of Less-Lethal Technologies on Police Use-of-Force Outcomes in 13 Sites in the United States, 1992-2007*¹⁷—evaluated patterns from use of force reports across CED-deploying agencies. Findings from Le and Moua are as follows.¹⁸ First, the study investigators found that although no force is warranted in cases where the suspect poses no imminent risk to public safety,¹⁹ CEDs are unnecessarily deployed in a significant number of cases even when suspects are either passive or not resistant (13% of cases in which the subject was passive or not resistant, a conservative estimate). Furthermore, CEDs are used in a substantial portion of cases in which the officer perceives that the subject has displayed verbal resistance (21%) or attempted to flee (26%). Controlling for factors such as suspect age, race, gender, and whether the subject had a weapon in a multivariate analysis, Le and Moua found that deployment of CEDs was positively associated with perceptions of suspect violence. All else equal, the relative risk ratio of an officer choosing to deploy a CED (versus no weapon) for the category of suspects who are perceived as violent (versus non-violent) is 2.64 ($p < .001$). Hence, CEDs are indeed employed consistent with their intended use most of the time.

III. Recommendations

Because the risk of overuse is real, however, implementing hard-to-detect and easy-to-deploy weapons is ill-considered without a proactive and scrupulous oversight structure in place. Le and Moua²⁰ recommend that civilians gain experience submitting public records requests so that they can gain relevant information and assess use of force policies across weapon types with an eye toward factors affecting adherence versus abuse. CEDs provide insight into anticipated risks for increasingly sophisticated less lethal weapons based on the electromagnetic and acoustic spectrums, which are invisible to the naked eye and pose risks such as abuse of power without detection. Civilian oversight practitioners should gain access to new training in detection and forensics for new less lethal weaponry such that they can keep pace with developing technologies. Le and Moua also recommend that new weapons be designed such that each discharge is automatically recorded for later review. Furthermore, oversight practitioners should seek auditing powers such as randomized lie detector tests for stakeholders including informants and officials (recognizing officer rights to refuse as appropriate, but even the potential to be audited down the line may be enough to deter some abuses). Finally, Le and Moua recommend that whistleblower protections be strengthened within agencies, as abuses with these weapons will be even harder to

Please turn to "Less Lethal Technologies Advance" on page 11

Book Review

Ferguson's Fault Lines: The Race Quake that Rocked a Nation

By Kimberly Jade Norwood, Ed.; Chicago: American Bar Association, 2016

Reviewed by Karen Williams

WHY FERGUSON? WHAT MADE the shooting of Michael Brown the catalyst for a national discussion on policing, police policies, race, and socioeconomic status? “The questions that arose in the wake of Michael Brown’s death, in some respects, were less about the chain of events than about their location. Why Ferguson? How and why were episodes of police violence and community response, unfortunately commonplace in modern American urban history, moving to the suburbs?”¹ This is just one of the questions that is asked and explained from numerous angles in *Ferguson’s Fault Lines: The Race Quake that Rocked a Nation*, edited by Kimberly Jade Norwood. Throughout the 13 chapters, each written by a different contributing author, attempts are made to explain the societal, governmental, economic, and other factors that thrust a quiet St. Louis suburb of around 21,000 people into the center of a national spotlight, and some solutions to the identified problems are offered.

Best read in tandem with a copy of the various Department of Justice reports that came out in the aftermath of the Michael Brown shooting and the lack of a grand jury indictment, the authors identify numerous reasons why this event happened in Ferguson. Citing things such as the lack of social capital for certain groups, poverty, housing issues, sub-par education systems, unemployment, governmental laws both old and new, discrimination and inequality in all forms, and policing for profit, each chapter attempts to identify a particular issue that faced Ferguson or the St. Louis metropolitan area as a whole, and how that issue serves as part of the larger issue of race and inequality.

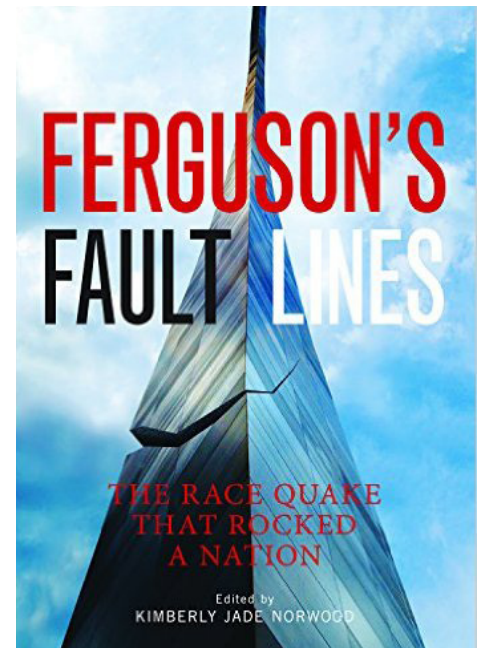
The first few chapters of the book deal with the history of African-Americans and the evolution of black society from slavery and Jim Crow laws to the present. There is a discussion of various lawsuits that originally served to separate and marginalize groups, and the lawsuits that attempted to remedy those situations. Additionally, a brief discussion of the role of policing, from community policing to stats-driven policing, is addressed and offers the idea that community policing “could potentially mitigate the violence associated with implicit dehumanization, stereotype threat, and masculinity threat.”²

Next come several chapters dealing with St.

Louis and Ferguson specifically, relating to the court system, housing, education, employment, and public health. These chapters lay the groundwork for understanding the odds that young African-American males face within the community that appears to work against their ability to succeed. A large segment of the court system chapter focuses on the concept of “policing for profit” where residents of St. Louis County do the “muni shuffle,” paying fines and moving from one municipality to the next when prosecuted for petty crimes. Statistics such as there being 700,000 active warrants in an area of 1.2 million people³ provide a shocking picture of the situation. Discussions of housing and education increases the bleak picture being painted, with information regarding the wealth gap, self-segregation, unaccredited school systems, and public health issues comprising the following chapters.

All of the issues brought forth in the chapters, plus the overall discussion of criminal justice, race, inequality, and implicit bias direct the reader to understand that these intricate phenomena created the perfect atmosphere for a critical incident such as the Michael Brown shooting to rock a community to its core. As addressed in Chapter Nine, the media plays a critical role in incidents like these, with the information about Michael Brown after the incident categorizing him in many different ways, from a “gentle giant” with hopes of attending college and starting a music career, to a lawless “thug” known on the day of his death as a thief, to a drug user after toxicology reports were done postmortem. How the media frames an event can impact the public’s perception, and the authors maintain that public perception of African-American males has been skewed for years and that media outlets have “framed” and “spun” how blacks and whites are viewed, whether intentionally or not.

The final chapters of the book focus on the relationship between police shootings and occurrences of PTSD, particularly for those immediately involved in Michael Brown’s shooting and the subsequent protest activity. Additionally, a chapter is devoted to the similarities between Michael Brown and the protestors, to include being told to get out of the street and walk somewhere else, a struggle and use of force by officers, lack of reliable video, differing perceptions



regarding blame, the secrecy of the grand jury and one-sidedness of the prosecution, and the prevalence of aggressive policing tactics. Another chapter is devoted to the use of police body cameras and what video can bring to the discussion.

The final chapter, written by Tracey Meares, discusses policing in the 21st century and President Obama’s establishment of the Task Force on 21st Century Policing shortly after the Ferguson incident. A section is devoted to the idea of police effectiveness and police lawfulness. Meares notes, “There are at least two issues with a potential relationship between levels of public trust and police commitment to lawfulness. The first is an objective measure of the extent to which police obey the relevant law *over time*.⁴ While likely unlawful incidents repeatedly shown in the media might cause people to question the extent to which police obey the law with respect to police use of deadly force, there is wide scholarly consensus that over time the level of unlawful police killings has decreased significantly. The second issue is the public’s perception of the extent to which police actually obey the law. Research suggests that, unsurprisingly, the public is not very good at making such assessments. In short, public judgments of police legitimacy connected to public trust and confidence are not very sensitive to whether or not police behavior is

consistent with constitutional law. The public does not understand lawfulness or determine sanctioning in the same way that police and other legal authorities do.⁵

Colin Gordon, the author of Chapter Five, sums up the book and puts it best: "...The death of Michael Brown may have struck the match in Ferguson, but it was these conditions of sustained and localized inequality, segregation, and discrimination that kept the tinder dry and ensured the fire would catch. As long as patterns of economic inequality remain intact, the contrast between a largely black populace and overwhelmingly white political and police rule is jarring—but largely symbolic."⁶ There is work to be done—not just in Ferguson, but across the United States. This book identifies the problems in Ferguson—but they can be extrapolated to many areas in the United States. •

Karen Williams holds the position of Secretary on the NACOLE board and is based in Kansas City, MO.

1. Gordon, Colin. *Making Ferguson: Segregation and Uneven Development in St. Louis and St. Louis County* (Chapter 5, p. 75).
2. Richardson, L. Song and Phillip Atiba Goff. *The Psychology of Racial Violence* (Chapter 2, p. 27).
3. Harvey, Thomas and Brendan Roediger. *St. Louis County Municipal Courts, For-Profit Policing, and the Road to Reforms* (Chapter 4, p. 64).
4. Emphasis in original
5. Meares, Tracey L. *Policing in the 21st Century* (Chapter 13, p. 239).
6. Ibid, Gordon, p. 88

Less Lethal Technologies Advance

Continued from page 9

detect than those with weapons that are broadly implemented to date. Certainly, advances in less lethal technologies have a place in law enforcement; however, we must rigorously guard against abuses and underscore accountability. •

1. This article summarizes the arguments and findings of Loan Le and Maitria Moua, *Civilian Oversight and Developments in Less Lethal Technologies: Weighing Risks and Prioritizing Accountability in Domestic Law Enforcement*, 14 *Seattle Journal for Social Justice* 101, 101-144 (2015).
2. Eugene O'Donnell, *Military Training and Technology May Actually Cut Risk*, N.Y. Times (Aug. 28, 2014, 6:20 PM), <http://www.nytimes.com/roomfordebate/2014/08/14/are-police-forces-excessively-armed/military-training-and-technology-for-police-may-actually-cut-risk>.
3. Nat'l Inst. Of Just., *Less-Lethal Weapon Types*, available at <http://www.nij.gov/topics/technology/less-lethal/pages/types.aspx> (last visited Aug. 9, 2015).
4. Christopher Ingraham, *The Pentagon Gave Nearly a Half a Billion Dollars of Military Gear to Local Law Enforcement Last Year*, Wash. Post (Aug. 14, 2014), <http://www.washingtonpost.com/blogs/workblog/wp/2014/08/14/the-pentagon-gave-nearly-half-a-billion-dollars-of-military-gear-to-local-law-enforcement-last-year/>.
5. Eyder Peñalta & David Eads, *White House Ban On Militarized Gear For Police May Mean Little*, NPR (May 21, 2015), <http://www.npr.org/sections/thetwo-way/2015/05/21/407958035/white-house-ban-on-militarized-gear-for-police-may-mean-little>.
6. U.S. Dep't Of Defense, *Non-Lethal Weapons Annual Review 1, 14* (2013), available at http://jnlwp.defense.gov/Portals/50/Documents/Press_Room/Annual_Reviews_Reports/2013/DoD_Non-Lethal_Weapons_Program_Annual_Review_11.19.2012_HTML_format_v1.pdf.
7. David Hambling, *Police Toy with 'Less Lethal' Weapons*, New Scientist (May 2, 2005), <https://www.newscientist.com/article/dn7326-police-toy-with-less-lethal-weapons/#bx249758B1>.
8. *Research and Markets: North American Non-Lethal Weapons Market by Type, by Technology, by Application, by Country Analysis and Forecast (2014-2019)*, Bus. Wire (Apr. 24, 2015, 1:46 PM), available at http://www.businesswire.com/news/home/20150424005787/en/Research-Markets-North-American-Non-Lethal-Weapons-Market#VcExyVlp_wO. "The key companies operating in this market include NonLethal Technologies, Inc. (U.S.),

TASER International, Inc. (U.S.), Raytheon Company (U.S.), Lamped less Lethal Inc. (Canada), LRAD Corporation (U.S.), and AMTEC Less-Lethal Systems, Inc. (U.S.)." Id.

9. David Hambling, *Wireless Taser: Whole New Kind of Weapon*, Wired (July 6, 2007, 6:58 AM), <http://www.wired.com/2007/07/taser-goes-wire/>.

10. Weapons & Protective Sys. Tech. Ctr., *A Guidebook For Less-Lethal Devices: Planning For, Selecting, And Implementing Technology Solutions 18* (2010), available at [https://www.justnet.org/pdf/Wpstc-Guide-Final-\(2010.05.07\)-Complete.pdf](https://www.justnet.org/pdf/Wpstc-Guide-Final-(2010.05.07)-Complete.pdf).

11. In 2010, the Los Angeles County Sheriff's Department reported an interest in using a nonlethal, directed energy Assault Intervention Device to stop or lessen the likelihood of assaults among inmates Thomas Watkins, *LA Authorities Plan to Use Heat-Beam Ray in Castaic Jail*, L.A. Daily News (Sept. 25, 2012, 12:01 AM), <http://www.dailynews.com/20100826/la-authorities-plan-to-use-heat-beam-ray-in-castaic-jail>.

12. David Hambling, *Infra-Red Pain Beams For Police, Military*, Wired (Dec. 24, 2008, 9:28 AM), <http://www.wired.com/2008/12/pain-beams-go-il/>.

13. Natasha Lennard, *Chicago Cops' New Weapons*, Salon (May 14, 2012, 8:54 AM), http://www.salon.com/2012/05/14/chicago_cops_new_weapon/.

14. San Diego County Sheriff's Dep't, *Long Range Acoustic Device (LRAD)*, available at <http://www.sdsheiff.net/newsroom/lrad.pdf> (last visited July 1, 2015).

15. David Hambling, *U.S. Police Could Get 'Pain Beam' Weapons*, New Scientist (Dec. 24, 2008), <https://www.newscientist.com/article/dn16339-us-police-could-get-pain-beam-weapons/>. The article also quotes Amnesty International's arms control researcher Helen Hughes as stating, "We have grave concerns about the deployment and use of any such devices, which have the potential to be used for torture or other ill treatment." Id.

16. David Hambling, *Courts to Cops: Stop Tasing People into Compliance*, Wired (Jan. 4, 2010, 9:33 AM), <http://www.wired.com/2010/01/court-dials-back-taser-use-cops-cant-zap-to-force-behavior/>.

17. Bruce Taylor & Chris Koper, *Evaluation Of Less-Lethal Technologies On Police Use-Of-Force Outcomes In 13 Sites In The United States, 1992-2007 ii* (2013), available at <http://doi.org/10.3886/ICPSR27561.v1>.

18. LE & MOUA, supra note 1

19. See *Brown v. City of Golden Valley*, 574 F.3d 491, 497 (8th Cir. 2009). More broadly, see *Graham v. Connor*, 490 U.S. 386, 388 (1989).

20. LE & MOUA, supra note 1

Also by Howard Rahtz . . .

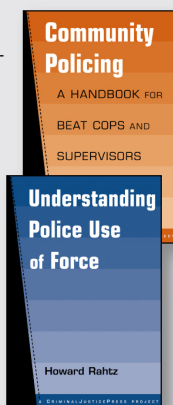
Community Policing: A Handbook for Beat Cops and Supervisors

"This work speaks to those working the streets in a manner that they will welcome—no lofty or ambiguous ideals, just down-to-earth plain talk loaded with common sense.... Rahtz points out the roadblocks that can hinder or even kill an effort to sincerely implement the tenets of community policing."

—Carole Saari, *Criminal Justice Review* • pb \$22

Understanding Police Use of Force

"Should be read by all officers to better understand what the gap is between the community and law enforcement." —Joe Truncale, *The Use of Force Journal* pb \$22.50



Race, Riots, and the Police

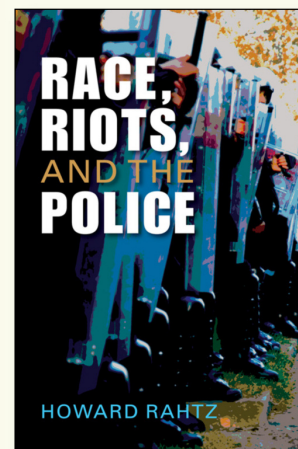
HOWARD RAHTZ

"An excellent book! It covers fresh ground and offers hope of not endlessly repeating the painful mistakes of the past."

—RICHARD BIEHL, Chief of Police, Dayton, Ohio

"*Race, Riots, and the Police* shows how our tough-on-crime strategies have perpetuated structural racism in our criminal justice system and also changed the nature of law enforcement away from guarding our communities. But Rahtz does not just point out what has gone wrong; he provides a compelling vision of what policing can look like if law enforcement leaders have the political will and the courage to change."

—DIANE GOLDSTEIN,
Executive Board, Law Enforcement Against Prohibition



hc \$59.95 • pb \$25



LYNNE RIENNER PUBLISHERS
CELEBRATING 32 YEARS OF INDEPENDENT PUBLISHING

1800 30TH STREET, SUITE 314 • BOULDER, CO 80301
TEL: 303-444-6684 • www.rienner.com