

**“YOU’RE GOING TO BE CRITICIZED NO
MATTER WHAT YOU DO; SO YOU MIGHT AS
WELL BE CRITICIZED FOR DOING THE RIGHT
THING:”**

PERSPECTIVES OF CIVILIAN OVERSIGHT OF LAW ENFORCEMENT PRACTITIONERS IN THE UNITED STATES

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INTRODUCTION

- Police Deviance & Use of Excessive Force impact public perceptions of the police & the ability of the police to be successful.
- Civilian oversight of the police has been proposed as a method to ensure effective and Constitutional policing.
- Civilian Oversight of Law Enforcement (COLE) programs are extremely diverse and have a need to identify systemic issues and solutions.

PURPOSE OF STUDY

- To compile the different experiences of a “successful” group of oversight professionals to assist future oversight professionals in avoiding missteps and better ensure the sustainability and overall success of their programs.
- To assist government officials in identifying the traits and characteristics needed to successfully run an oversight agency.
- To assist government officials in understanding the tools necessary to ensure the success and sustainability of a civilian oversight of law enforcement agency.

SIR ROBERT PEEL'S PRINCIPLES OF LAW ENFORCEMENT (1829)

1. The ability of the police to perform their duties is dependent upon public approval...and the ability of the police to secure and maintain public respect.
2. The degree of cooperation of the public that can be secured diminishes proportionately to the necessity for the use of physical force...in achieving police objectives.
3. The police seek and preserve public favor...by ...demonstrating impartial service to the law...without regard to...race or social standing...
5. The police should use only the minimum degree of physical force which is necessary for achieving a [legitimate & lawful] police objective.
6. **The police are the public and the public are the police.**
7. The police should never usurp the powers of the judiciary by...authoritatively judging guilt or punishing the guilty.
8. The test of police efficiency is the absence of crime and disorder, not the visible evidence of police action in dealing with them.

POPULATION TO BE USED

To be included in this study –

- 1) a participant must have either:
 - 1) Been hired to lead a U.S. oversight agency after having led a prior agency;
 - 2) Have longevity in their position as a U.S. oversight agency director; and/or
 - 3) Have been responsible for the creation of more than one oversight agency.
- 2) The involved agency must be designed to function on an indeterminate basis;
- 3) The involved agency must be designed to operate independently of a police executive.
- 4) The involved agency must have jurisdiction over a police agency which provides street policing services.

LITERATURE ON OVERSIGHT

- A large body of writing on police accountability and oversight
- Relatively little recent systematic, comparative social science research on the effectiveness of civilian oversight or definitions of “success” vis-à-vis civilian oversight.
- No qualitative research relating to the opinions and experiences of oversight directors.

LITERATURE REVIEW (BOOKS)

- Walker (2001) “Police Accountability: The Role of Citizen Oversight”
 - History of COLE in the U.S.:
 - Beginnings in 1920’s through 1950’s
 - Revival of police oversight in the 1970’s (Knapp Commission)
 - Oversight as a national movement in the 1980’s & 1990’s (Christopher, Kerner & Mollen Commissions)
 - Growth of oversight as sustainable and permanent fixtures at the end of the 20th century.
 - Walker (2001) “Police Accountability: The Role of Citizen Oversight”
- Goldsmith (1991) “Complaints Against the Police: The Trend to External Review”
 - Including “Shooting the Messenger: The Trial and Execution of the Victorian Police Complaints Authority (1986-1988)”
- Perez (1994) “Common Sense About Police Review”
- Prenzler & den Heyer (2016) “Civilian Oversight of Police: Advancing Accountability in Law Enforcement”
 - Recognizing “civilian oversight of police as an essential element of democratic reform.”

LITERATURE REVIEW

JOURNAL ARTICLES:

- Prenzler (2000) “Civilian Oversight of Police: A Test of Capture Theory
- Livingston (2004) “The Unfulfilled Promise of Citizen Review”
- Clark (2009) “Arrested Oversight: A Comparative Analysis and Case Study of How Civilian Oversight of the Police Should Function and How it Fails”
- Harris (2012) “Holding Accountability Theory to Account”
- DeAngelis, Rosenthal & Buchner (2016) “Civilian Oversight of the Police: Assessing the Evidence”

PUBLIC REPORTS:

- Ontario Ombudsman (2008) “Oversight of the Police: Oversight Unseen”
- Ontario Ombudsman (2011) “Oversight of the Police: Oversight Undermined”

RESEARCH METHODS

- 1) Systematic literature review of the academic and policy literature on civilian oversight of the police.
- 2) Identification of the population of COLE directors falling within study criteria.
- 3) One hour open-ended, audio-recorded interviews of the identified population.
- 4) Transcription of interviews: elimination of duplicative language and incomplete thoughts to assist in better identifying themes and patterns.
- 5) Coding of interview transcripts to identify significant themes and patterns.

RESEARCH METHODS (PARTICIPANT INFORMATION)

4 participants thus far, involved in leading:

3 investigation-focused agencies 5 auditor-monitor focused agencies 2 review-focused agencies	Served a variety of small, medium and large municipalities and jurisdictions.
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- 6 additional directors to be contacted.

ETHICAL ISSUES, CHALLENGES & LIMITATIONS

- Author as “post hoc observer” for 17 years.
 - Efforts taken to limit the impact of researcher experiences and make them more equal with other participants
 - But, themes that resonated with personal experiences will be highlighted in the study.
- Participant Diversity:
 - Mostly lawyers
 - Mostly white
 - Mostly male
 - All professionals – no community, government officials or police representation
 - Definition of “success” equates to more moderate perspectives on oversight.
- Participant needs for confidentiality.
 - Study does not speak in terms of unanimity = plausible deniability

RESEARCH QUESTIONS

- 1) How does one build and sustain a civilian oversight of law enforcement agency?
- 2) How does one define “success” with respect to a civilian oversight of law enforcement agency?
- 3) What are the experiences of civilian oversight of law enforcement directors in creating and running their agencies?

THEME IDENTIFICATION (DISCUSSED BY ALL PARTICIPANTS)

- 1) Defining “Success”
- 2) Descriptors for an effective COLE Director
- 3) The Need for Support – Community, Government Officials, Police Executive
- 4) Director Job Protection
- 5) Selflessness
- 6) Importance of Legislative Authority
- 7) Importance of Independence
- 8) The Need for “Unfettered” Access to Information
- 9) Transparency and Public Reporting
- 10) The Importance of Staff
- 11) The Need for Professionalism & Respect for the Agency
- 12) Budgetary & Resource Needs

FINDINGS – DEFINING “SUCCESS”

- “When the community views that the services that you provide (#1) have value and (#2) are legitimate.
- “It’s a question of building the trust of the community, not only in your work,...but also in the work of the police department.”
- “The ability to write fair and objective reports that pinpoint reforms and get the PD to implement those reforms”
- “The ability to enter just and fair determinations of police misconduct complaints in as timely manner as possible.”
- “When you can actually ensure that the PD is conducting fair, thorough and complete investigations, that the department is imposing discipline in a reasonable manner, and that the policies and practices of the PD are in accord with the reasonable expectations of the community.”
- “When the agency is holding the PD accountable for its failures [and unreasonable decision-making].”

FINDINGS – DESCRIBING A DIRECTOR WHO IS LIKELY TO SUCCEED

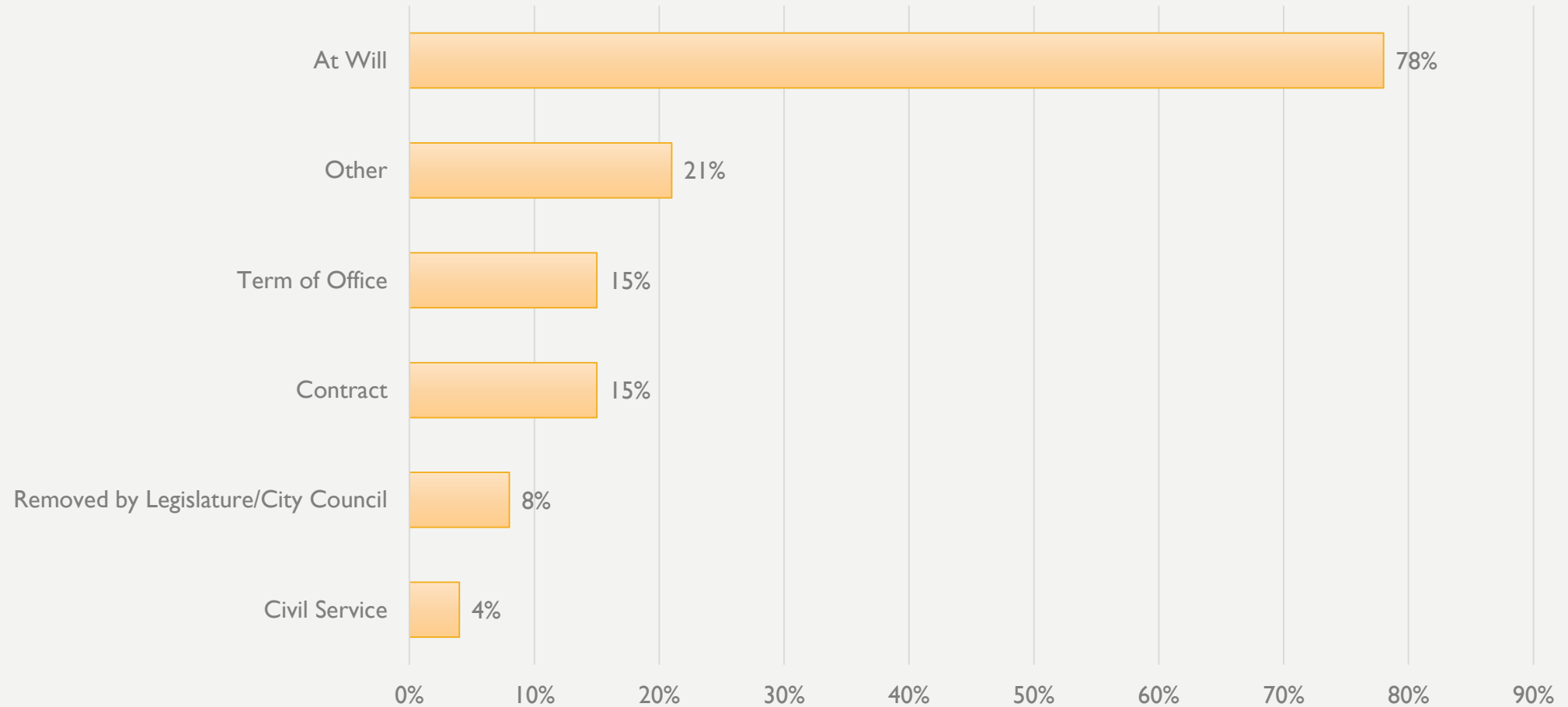
- Aggressiveness – tempered with tact
- Collaborative/Cooperative
- Community-Minded
- Courageous
- Creative
- Diplomatic (see Collaborative & Cooperative)
- Emotional Intelligence
- Empathetic
- “Good Communicator”
- Integrity
- Passionate
- Persistent
- Strategic/Tactical
- Thorough
- Unbiased & Fair

FINDINGS – SELFLESSNESS

- “Oversight is not for the feint of heart.”
- You have to be “willing to suffer the slings and arrows of [outrageous fortune].”
- “You’re going to be criticized now matter what you do; so you might as well be criticized for doing the right thing.”

DIRECTOR JOB PROTECTIONS

COLE Executive Job Protection – U.S. Agencies 2016



FINDINGS – DIRECTOR JOB PROTECTION

- Concern that “at will” status negatively impacts agency independence.
- Less able to pursue significant but controversial issues
- Concern about close relationships between city leadership and the Chief of Police
- Need for a COLE Director to “be free from politics”
- Ultimately recognized that regardless: An agency director must be “willing and able to make a decision knowing that it could cost you your job.”

FINDINGS – THE NEED FOR SUPPORT

- COMMUNITY SUPPORT

- “One of the challenges is properly managing the expectations [for] the agency.”
- Ensuring “a sustainable base of support” as essential for long-term success.
- Community support as equating to political support.
- The need to overcome knee-jerk police support from the community.

- GOVERNMENT STAKEHOLDER SUPPORT

- The Need for government officials to be supportive of the COLE Agency’s need to be “transparent and publicly critical.
- Necessary to ensure appropriate budget and staffing.
- Necessary to obtain police executive support

- POLICE EXECUTIVE SUPPORT

- Chiefs are often reluctant.
- Often best to work collaboratively and cooperative
- When not possible; necessary to obtain cooperation through political and public pressure.
- Dangers of passive resistance.

- POLICE UNION SUPPORT

- Not so much...Once overcome to create the agency – future resistance is expected.

FINDINGS – THE IMPORTANCE OF LEGISLATIVE AUTHORITY

- **Independence**

- The need to be structurally independent of the police department and the police chief
- Concerns regarding reporting to the City executive
- The need to be able to work “without fear of political retaliation.”

- **Access to Information**

- The need for “unfettered” access to all police records
- The need to be able to compel cooperation from police employees

- **Transparency & Public Reporting**

- The “freedom to be publicly critical,” “enshrined in authority.”

- **Scope and Mandate**

- The need for authority to act on its scope and mandate. [Without having to resort to the courts.]

FINDINGS – THE IMPORTANCE OF STAFF

- “No one [can do] it alone.”
- Challenges in hiring and retention
- Challenges with civil service protection for staff
 - “Most people are not suited to oversight, but think they are...”

FINDINGS – THE IMPORTANCE OF RESOURCES/BUDGET

- The lack of an adequate budget was recognized as an obstacle almost impossible to overcome.
- Challenges in retaining qualified personnel due to low municipal and county salary ranges.
- Adequate budget essential to ensure
 - Appropriate office space
 - Tools & equipment
 - Staff & Training Opportunities

WHAT DOES THIS ALL MEAN?

- The current literature has identified multiple instances where COLE mechanisms have failed.
- The current literature has also identified significant tools needed to support an effective oversight program, to include:
 - Structural Independence
 - Adequate Resources
 - Access to information
 - Foundation in Legislation
 - Support from Government
 - Transparency through Public Reporting
- However, the literature has not evaluated the importance of the individual leaders to organizational success nor has considered how to define “success” from the POV of these leaders.
- This research can help identify those suited to fill these important positions and ensure that the tools they need for success are made available.

IMPLICATIONS FOR FUTURE RESEARCH

- Need more systematic, comparative research on **success**
 - How do government officials define “success?”
 - How do police executives define “success”?
 - How do police officers define “success”?
 - How do community members define “success”?