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Police Discipline: A Case for Change

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Introduction

Police disciplinary procedures have long been a source of frustration for nearly everyone involved in the process and those interested in the outcomes. Police executives are commonly upset by the months — and sometimes years — it takes from an allegation of misconduct through the investigation and resolution. Their frustration is even greater with the frequency with which their decisions are reversed or modified by arbitrators, civil service boards and grievance panels. Police officers and their unions generally feel discipline is arbitrary and fails to meet the fundamental requirements of consistency and fairness. Unless it is a high-profile case or one is directly involved, few in the community are interested in the police disciplinary process. Those interested are mystified by both the time involved in dealing with complaints of misconduct and the various steps in a lengthy, confusing and overly legal process. The one area about the administration of police discipline where there is general agreement: it is a frustrating experience that leaves everyone with a sense that it has fallen well short of the primary purpose of holding officers accountable for their actions and encouraging behavior that falls

within departmental expectations and values. News accounts reinforce the overall dissatisfaction with police discipline:

- **United Kingdom.** Publishing the *Review of Police Disciplinary Arrangements,* Ms. Hazel Blears said: "I am grateful to William Taylor for his thorough review. There is clear agreement… that police disciplinary arrangements need to move away from being lengthy, costly, heavily regulated and punitive" (Taylor, 2005).
- **Newark, N.J.** "The Newark City Council launched an investigation today into the police department's disciplinary procedure after African-American and Hispanic officers complained supervisors were disproportionally punishing them" (Adarlo, 2009).
- **San Francisco, Calif.** "Police Commission President John Keker says he hopes the uproar over the panel's vote not to fire Officer Marc Andaya will spur the city to revamp the 'broken' police disciplinary system" (Zamora, 1997).

  Twelve years later: "Almost six years after San Francisco voters gave civilians unparalleled power over police officers, the city's discipline system is beset by delays of months and sometimes years, officials in charge of it say" (Cote, 2009).
- **Madison, Wis.** "Two lawmakers are proposing a statewide solution to the problem of how to establish a system for disciplining and dismissing law enforcement officers and to end pay for those who are fired" (Forster, 2007).
- **Montgomery County, Md.** "In 2008, one out of nine officers found by the department to have committed a serious offense received the punishment originally recommended by Police Chief J. Thomas Manger, according to Assistant County Attorney Chris Hinrichs" (Suderman, 2009).
- **Cincinnati, Ohio.** "The most severe punishments for police misconduct in Cincinnati are the least likely to stick. Police officers disciplined for major violations — from breaking policies to breaking laws — get their penalties reduced nearly three times more often than officers accused of minor violations" (Anglen and Horn, 2001).

These news accounts, and others from the past few years, clearly reflect widespread concern with the processes used by police to discipline errant officers. The disciplinary process is supposed to help address police misconduct while supporting officers who have exercised their discretion appropriately and within the framework of law and policy. Unfortunately, the approaches police generally use fall well short of achieving their primary purpose and leave the department, employees and the community with concerns. There is significant dissatisfaction with the discipline approach: it is predominately punishment oriented, it takes an excessive amount of time,

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many decisions are overturned on appeal, and the entire process leaves one with a sense that there should be a better way to help officers stay within the boundaries of acceptable behavior and learn from the mistakes made in an increasingly difficult and challenging job.

This paper focuses on discipline process issues and purposes within the context of the organizational challenge of managing and modifying officer behaviors. It begins by discussing the task of creating an environment in which officers understand expectations and avoid the formal disciplinary process altogether. It then describes the issues with traditional approaches to discipline and reviews different approaches that some police agencies are trying. These include the Charlotte-Mecklenburg Police Department's discipline philosophy, now used for almost 10 years, and the Education-Based Discipline approach recently implemented by the Los Angeles County Sheriff's Department and others. The paper will also offer a way forward for police to implement more effective approaches to discipline.

Creating the Right Environment

The best situation for a police department, its employees and the community is to create an environment in which the formal disciplinary process to deal with employee mistakes and misconduct is both the last option and the one least used. Creating that environment requires the department's leadership to pay close attention to several essential elements that play central roles in an effectively managed organization. These areas include:

- **The Hiring Process.** Finding and employing the right people is the foundation for creating an organization that effectively serves the community. Employment standards must be clear. For example: How is prior illegal or prescription drug abuse handled? What is the standard for driving and arrest records? What are the educational requirements? Do candidates have the right personality and character? With clear standards the selection process can identify and screen out candidates that may have difficulty maintaining the conduct and ethical behavior expected of a police officer.

- **Training.** Officers must have the skills and knowledge to effectively do their jobs. High-quality, entry-level, field and in-service training programs are key to ensuring that officers not only understand the department's expectations but have the skill level to meet them. Police departments and their employees must commit to a regimen of lifelong learning.

- **Clear Expectations.** Training is an important aspect of ensuring that officers understand the department's expectations, but more is required. The department's mission, vision, values and ethical standards convey essential messages to employees, as do formalized departmental goals and objectives. The policies and procedures the department has developed to guide decisions provide a framework for acceptable performance. These must not only be written in clear, understandable language but must also be reinforced in daily operations. For example, a pursuit that begins in conflict with the department's policy

but for which no disciplinary proceeding ensues because of a positive outcome sets the stage for confusion and contributes to questions about consistency and fairness in the disciplinary process. Likewise, a policy that prohibits gratuities in an organization where a substantial number of people at all levels routinely accept them sends confusing messages and undermines all efforts at accountability.

- **Effective Supervision.** One of the most important steps in creating a healthy work environment is the frontline supervisor and the level just above. These are also the most challenging jobs in police organizations as these levels have the most direct interaction with frontline employees and the community. These front-line supervisors are largely responsible for translating the department's mission, vision, values, policies, rules and regulations into operational practice. By emphasizing some things and not others, they establish the organizational expectations for officers and shape the culture. Effective supervision is critical to creating an environment in which coaching, not the threat of discipline, helps mold officers into professionals.

- **Performance Standards and Review.** Officers need to know what the work standards are and periodically review with their supervisor how they are doing. This is a difficult process for most police agencies. Setting standards is very challenging given the workload and types of problems officers encounter in different parts of the community and at different times of the day. Some officers are assigned to areas where the only work they are able to do is handle calls for service while others must self-initiate the majority of their work. Whatever the standards and review processes are in the department, it is important that officers understand them and that supervisors are helping to achieve them.

- **Complaint Reception and Investigative Procedures.** The department must have effective complaint reception protocols and investigative procedures. It should not be overly difficult for a citizen to lodge a complaint against a police employee. Like employees, citizens should be informed of the steps that will be taken to follow up on the complaint and should also be informed of the outcome. The investigative process should also have defined time frames for completion, with complainants notified of any delays.

- **Technology.** Police agencies have increasingly turned to technology to help deter misconduct and investigate it when it occurs. Automatic vehicle locators and in-car camera systems have become standard equipment in many police agencies in America. Some agencies are testing head-mounted cameras that record what officers see and hear when they are away from their vehicle handling a call. Although this technology has not been subjected to rigorous evaluation as an investigative aid or deterrent to misconduct, most police agencies believe that it serves that purpose.

- **Code of Silence.** The "code of silence" has been a significant issue for policing for many

years. Creating the right environment to discourage misconduct requires that police executives confront this issue. Even with indications that things may be improving, research suggests the code of silence is alive and well in policing (Rothwell and Baldwin, 2007). The code severely hampers a police department's ability to learn about and investigate misconduct. It also undermines credibility in the eyes of the community.

Paying attention to all of these elements will help department leaders reduce employee mistakes and misconduct and contribute to creating the right environment, even though it will not eliminate the need for effective disciplinary processes that have legitimacy both internally and externally.

Effective disciplinary processes serve a number of important functions in a police agency. They punish, change behavior, signal organizational expectations internally and externally, respond to citizen complaints and serve as an early warning tool about potential problem behaviors and tensions in the community. Ineffective processes do the same things except they have a tendency to punish without an appropriate behavior change, send the wrong signals and frequently leave the public with a sense that its complaints have not been taken seriously. Persistent problems with current disciplinary processes have limited their effectiveness.

Disciplinary Process Issues

In a nation where citizens have always valued individual liberties and have been reluctant to grant too much authority to government, police officers are given significant powers and are expected to use them judiciously. Citizens also expect that the police will be held accountable for the manner in which they use their authority and that any misconduct will be dealt with appropriately. The disciplinary process plays an important role in holding police officers accountable for their behavior. It also helps sort out situations in which officer misconduct has been alleged but in fact the officer acted appropriately. Obviously, there is a lot at stake for the community, for the officers and for the department. Effective policing depends on a disciplinary process that is capable of serving the interests of all three parties in a fair and equitable manner. In many cases the current disciplinary systems fail to do this, reducing police legitimacy and effectiveness. Some current issues with police disciplinary processes include:

The disciplinary process is an ongoing source of conflict with employees and unions. The majority of police officers will not be the subject of an internal affairs investigation or significant disciplinary action during their careers. Yet, because of the potential for complaints or innocent mistakes, they are always concerned about the possibility of being investigated by Internal Affairs. Officers are influenced by the locker room talk about Internal Affairs investigations and general perceptions of not being treated fairly in the process[1] (Curry, 2004).

The disciplinary process is a source of mistrust and tension for some in the community, particularly in minority communities where many believe too many police decisions are influenced by race. Although there has been improvement, minority communities report

lower levels of confidence in the police and their honesty and integrity than white communities[2] (Bureau of Justice Statistics, 2009). Obviously, many factors contribute to citizens' views of the police, but one that has substantial influence is a sense that police officers are not always held accountable for their behavior. A 2006 *Seattle Post-Intelligencer* editorial board poll revealed that 66 percent of respondents did not believe that complaints against the police were handled fairly and openly (*Seattle Post-Intelligencer* Editorial Board, 2006).

The focus of discipline is predominately punishment, not behavior change. Most police executives would say the purpose of punishment is to deter future misconduct by the officer involved and send a message to others that such behavior will not be tolerated. Alternative courses of action that would lead to behavioral change are seldom part of the sanctions imposed on officers who have had sustained misconduct charges. Punishment for misconduct is appropriate at times, and it may lead to behavioral change, but it also brings resentment and at times contributes to the sense of unfairness that many officers have about how discipline is handled. In an Op/Ed piece, Ted Hunt (2009), the former president of the Los Angeles Police Protective League, noted:

> One of the things that officers often complain about when they are disciplined is the way it was done. "I was not treated with respect," said one officer. It wasn't long until that officer's humiliation turned into anger and then to resentment. An angry, resentful officer is not good for the organization.

For the most part, the disciplinary process fails to deal adequately with the small group of officers who are the source of a disproportionate share of complaints received and use-of-force situations. It is common knowledge that a small number of officers account for an inordinate number of complaints and use-of-force situations. The Independent Commission on the Los Angeles Police Department (1991) found 44 officers with extremely high rates of citizen complaints who could have been identified from department records. Journalists have noted departments in which 2 percent of the officers accounted for as much as 50 percent of the complaints (Walker, Alpert and Kennedy, 2000). This realization has resulted in the establishment of early intervention systems to help identify problem officers.

Inconsistent messages are sent to officers by the department heads handling complaints and misconduct allegations. A common myth in policing is that aggressive officers working in high-crime areas can expect to receive a higher number of complaints and encounter a greater number of situations where they will have to use force. Supervisors and managers often reinforce this belief in the way they handle complaints and reviews of use-of-force situations from these areas of the community. In police agencies where officers are required to file a report when they use force, supervisors are expected to investigate the circumstances under which force was used. Too often, these are pro forma investigations that focus on whether the degree of force used was within policy, not whether force should have been used. This tends to reinforce officers' behavior and misses

an opportunity to provide coaching on how these encounters might have been handled differently.

The disciplinary appeal processes often weaken the purpose of discipline. Police executives' disciplinary decisions are frequently overturned or reduced by review boards and arbitrators, undermining the impact of the discipline. Anglen and Horn (2001) found that in Cincinnati,

> Nearly 37 percent of cases involving more than three days of discipline were reduced, compared to 14 percent of cases with lesser punishments.... Part of the reason is that officers who get the stiffest punishments are more likely to appeal. And when fired officers appeal to an outside arbitrator, they get their jobs back every time.

In both Chicago and Houston, arbitrators reduced the initial sanction imposed by the chief in 50 percent of the cases (Iris, 2002). Are police executives wrong half of the time when they determine sanctions for misconduct or do those hearing the appeal just disagree with the sanction? What is the impact of the frequency with which disciplinary decisions are overturned? Do officers in the organization believe this shows the process works, or are they more likely to believe this shows that the sanctions imposed were harsh and inappropriate? In high-profile cases, what is the impact on community confidence and trust when officers in the department are known to have been involved with misconduct?

Processes generally take an excessive amount of time to complete. In large departments, it takes about six months to complete a complaint investigation, reach a finding and determine the disciplinary action if the allegation is sustained. In the most serious cases this time can be increased significantly and, when discipline is appealed, it can take well over a year or longer to completely resolve the matter. An article in the *Atlanta Journal-Constitution* described a police officer who had been on administrative leave for four years for a criminal allegation before he was charged with a felony sexual assault. He was only one of 26 officers who had been placed on administrative leave for a long period of time pending case investigation (Torpy, 2009). The impact of discipline on the officer and the messages to the department and to the community are severely compromised the longer it takes from the time the misconduct occurred to its resolution.

Processes and outcomes often do not appear to be fair to employees. Several factors contribute to the impression held by many employees that the disciplinary process is not fair. First, discipline is a personnel matter and in many states and cities personnel issues are confidential.[3] In these locations, departments cannot disclose the discipline or the circumstances that led to the decision. Second, there may be real or perceived variations in the punishment for similar offenses. These variations most often arise when different people are making the decisions. A commander in one part of the department may view the misconduct differently than another, producing different outcomes. Third, the amount of time that has elapsed from the time the misconduct occurred to when the sanctions are imposed sometimes influences employees' opinions about

fairness. For example, an officer suspended a year after the misconduct, but who has performed well in the interim, is likely to resent the imposition of the sanction; in such instances, the officer's colleagues frequently believe that imposition of the sanction is unfair. Finally, there are instances in police agencies where an officer is commended for his or her actions yet is disciplined for the same incident. Officers almost always see this as unfair disciplinary action. "Fair" is a tricky standard to establish in the best of circumstances and almost always requires some careful explanation.

Processes and outcomes may be influenced by the amount of publicity the alleged misconduct receives. A high-profile incident of officer misconduct may affect the investigation and the outcome of the discipline process. In some cases the process is expedited while others are slowed down considerably by all the attention. In a case in Portland, Ore., that received extensive news media attention, it took more than three years for the chief to reach a decision in an incident where a Taser was used and the person being arrested died. The chief determined the officer acted within policy but the officer was suspended because he did not send the victim to the hospital soon enough (Bernstein, 2009). In another case three years later, the same officer was placed on administrative leave for shooting a 12-year-old girl with a bean bag shotgun because she was resisting arrest. Union leaders claimed the suspension was more about the visibility of these cases than the behavior of the officer (Pitkin, 2009).

High-profile cases are particularly difficult for police executives and the community. The news media may disseminate information, video or photo images provided by citizens before the departmental hierarchy even knows something has happened. Executives then have to make statements as soon as possible with very limited information, and what they say may change (and often does) as the investigation gets under way and progresses. The community struggles with sorting out what happened as they hear conflicting statements or see segments of videotapes that include only part of the encounter with officers.

Discipline in some states is very public (e.g., Florida and Texas) but in most, it is a personnel matter protected by privacy laws (e.g., North Carolina). Debate continues about whether discipline of police officers should be open to public scrutiny. Some believe that open records serve as a deterrent to police officers and other public officials. They also believe the transparency that comes from being open improves confidence and trust in the police. In an article written to help gain access to disciplinary records, communications lawyers Steven Zansberg and Pamela Campos (2004) argue that: "Public access would help assure citizens that their complaints are taken seriously, investigated thoroughly in an unbiased fashion, and that officers who are found to have violated departmental policies are appropriately sanctioned."

Others believe it is unfair to officers to have personnel records completely open to the public — particularly internal affairs records. They believe that being a police officer does not mean they have to give up their right to privacy. They are concerned that unsubstantiated misconduct

allegations could damage their reputations and careers if open to the public. They point out that officers are sometimes the subject of false allegations made by people trying to get back at them simply for doing their job.

Policies on openness are far from settled and vary significantly from state to state. Florida's public records law is among the most open in the nation. It makes Florida one of two states where access to these records is a right protected by the state constitution. Passed in the late 1970s, Florida's law makes most police records open to the public, including personnel records and internal affairs records (after an investigation has concluded).

The police chief's authority to administer discipline varies widely even though it is a critically important responsibility in the overall operation of the department. An important aspect of leading and managing a police agency is the authority to ensure that law, policy, procedures and organizational expectations are carried out by employees. Disciplinary authority is an important aspect of that authority but surprisingly, it is limited for many police executives. In a 2006 report to the Board of Supervisors on police disciplinary procedures, a survey of 25 California police departments, including the state's eight largest, revealed that the chief's authority to implement disciplinary sanctions ranged from none at all to officer termination. In most cases, the authority was limited to suspensions of less than 10 days with greater sanctions requiring the city manager's or some type of board approval (Van de Water, 2006).

The administration of discipline in police departments has taken on the characteristics of a criminal process in the way the investigation is conducted, testimony and evidence are considered and, in many respects, the way sanctions are imposed. This observation applies to policing within and beyond the United States. The *Review of Police Disciplinary Arrangements Report* (Taylor, 2005) noted the adoption of legal system procedures for handling discipline as an impediment to effective discipline. Following are excerpts from the report:

> The language and environment for handling police discipline should be open and transparent. It should be much less quasi-judicial. Investigations need not be centered on the crime model, the style of hearing should be less adversarial and similarities with a 'military court martial model' avoided (p. 5).

> The language in which the regulations are written and the processes operated is often viewed as inaccessible and the judicial style creates a formality which does not aid understanding, openness and simplicity. This is particularly so for the member of the public who becomes embroiled in the process (p. 19).

The report also encourages that involvement of lawyers in the process be limited except in the appeal stage. The new procedures in the United Kingdom are designed to provide a fair and open way of dealing with misconduct and performance problems, creating an environment in which the

emphasis is on learning and development, both for the employees and for the organization.

The overall impact of the issues described above will vary from one community to another, but all are affected by at least some of these issues. It seems clear that police disciplinary processes are in need of revision, but what is not clear is *what* should be done or *how*.

Alternative Police Discipline Processes

Recognizing the shortcomings of current approaches to police disciplinary practice, and in an effort to respond to concerns, some police departments have begun to explore alternatives and make changes. Some of the alternative approaches are relatively new, while others have been tried in some places, abandoned and then tried again in other places. Because of the complexity of the processes and the range of influences, most alternate approaches are not complete revisions of the process. Rather, they are designed to address one or more issues that cause major concern for individual departments.

Discipline Matrix

Although not a new idea, a number of departments have developed matrices that spell out the options for sanctions when there is a sustained violation of the rules of conduct or other policies. These departments believe that in addition to letting employees know in advance, a matrix will help make the sanctions applied both fair and consistent. In late 2003, the Oakland Police Department and the University of Nebraska at Omaha cosponsored a conference on the use of a disciplinary matrix as an effective accountability tool. The matrix was described as follows (Walker, 2004: 2):

> A discipline matrix is a formal schedule for disciplinary actions, specifying both the presumptive action to be taken for each type of misconduct and any adjustment to be made based on an officer's previous disciplinary record.
>
> The primary purpose of a discipline matrix is to achieve consistency in discipline: to eliminate disparities and ensure that officers who have been found to have committed similar forms of misconduct will receive similar discipline.

Conference participants concluded that a matrix has the potential to improve accountability and consistency. They also cautioned that successful implementation is not guaranteed, as many of the precise details of using a matrix to guide disciplinary decisions remain to be worked out (Walker, 2004).

Several police departments are moving forward in an effort to work through the details required to put a discipline matrix in place. Denver's efforts represent one of the most comprehensive revisions of the disciplinary process that includes a matrix.[4] The Denver Manager of Safety appointed an 80-member Disciplinary Advisory Group to review the entire process in an effort to administer discipline in a fair and timely manner. It was a diverse group that represented all of the stakeholders. The members worked for more than three years to understand the process that

was in place and develop a process that included spelling out sanctions in a matrix.

The Washington State Patrol adopted a discipline matrix in January 2002 that contains three different levels of misconduct from minor to major and defines sanctions for each level based on the number of offenses. The resulting process provides an opportunity for officers to "admit their mistake and move on." Officers can choose to acknowledge their mistake and accept the sanction from the matrix without a lengthy investigation and hearing. In 2002, the patrol resolved 43 percent of its complaints without a formal investigation and most were resolved in less than 14 days. The process also facilitated resolution of level 3 (minor) complaints at the first line supervisory level rather than through a full-scale investigation as required by the old system. The first full year of implementation saw a reduction in lengthy investigations, reduced costs, a reduction in citizen complaints and considerable cost savings (Serpas, Olson and Jones, 2003).

More recently, the Tucson Police Department adopted a matrix to guide disciplinary decisions. Union President Jim Parks said, "While no disciplinary system will ever be foolproof, I believe that we at the Tucson Police Department took a step in the right direction" (Parks, 2006). Tucson followed the lead of the Phoenix Police Department, which began using the matrix several years before.[5] Table 1 is an example of a discipline matrix recommended to the Vancouver (Wash.) Police Department (Matrix Consulting Group, 2009). The "Offense Class" represents the seriousness of the offense.

Overall, matrices have become a more commonly used device for improving disciplinary decision-making processes for police agencies, and it seems many officers see this as an improvement.

Table 1. Vancouver Discipline Matrix

	First Offense		Second Offense		Third Offense	
Offense Class	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
1	N/A	Memo of Correction	N/A	Written Reprimand	Memo of Correction	1-Day Suspension
2	Memo of Correction	Written Reprimand	Memo of Correction	Written Reprimand	1-Day Suspension	3-Day Suspension
3	Memo of Correction	1-Day Suspension	Written Reprimand	3-Day Suspension	1-Day Suspension	5-Day Suspension
4	Written Reprimand	3-Day Suspension	1-Day Suspension	5-Day Suspension	3-Day Suspension	15-Day Suspension
5	1-Day Suspension	5-Day Suspension	3-Day Suspension	15-Day Suspension	10-Day Suspension	Termination
6	5-Day Suspension	Termination	15-Day Suspension	Termination	Termination	N/A
7	Termination	N/A	N/A	N/A	N/A	N/A

They provide a better sense of what the range of sanctions might be for classes of misconduct, which officers generally believe is a positive step. Even so, in some cases, the old system has been re-arranged to fit in a matrix and the punishment orientation remains. Although a discipline matrix provides a range of sanctions, it does not remove discretion entirely (nor should it) and leaves the department open to the criticism of inconsistent application of discipline when the luster of a new approach begins to fade.

Education-Based Discipline[6]

Education-Based Discipline (EBD) is the creation of Sheriff Leroy Baca and the Los Angeles County Sheriff's Department (LASD). It represents the most significant departure from traditional police disciplinary practice in the United States and perhaps the world. As the name implies, the process is designed to focus on behavioral change through education rather than punishment. The process gives the individual the option of voluntarily participating in a personally designed remedial plan that can include education, training or other options designed to address the misconduct issue, including writing a research paper. Moreover, all of the activities related to the plan are conducted during on-duty time. The option to participate is open to employees who are facing a one- to 30-day suspension. One mandatory component of the program is an eight-hour training session developed specifically for EBD called the Lieutenants' Interactive Forum for Education (LIFE) Class. It is conducted by lieutenants and middle managers from LASD and focuses on understanding the influences that affect decision-making. In a Leadership Message from Sheriff Baca (2007), he said:

> Our leadership values require us to believe that until a Department member leaves our service, he or she will always be our responsibility. We must always care for all of our personnel, work closely with those who are experiencing problems, and be straightforward in building a trustworthy relationship.
>
> We must care and give to those in need whether they like us or not. Ineffective discipline is when we fail to be fair. Not listening to why Department members have acted in violation of a policy is widely believed to be unfair, especially by me.
>
> The focus of discipline should be on creation of a corrective action plan rather than punishment for punishment's sake. The plan should emphasize training and remediation along with more creative interventions designed to correct deficits in performance and maximize the likelihood of the Department member and his or her peers responding appropriately in the future.

EBD is just getting under way at LASD but has attracted the interest and encouragement of union leaders across the country — traditionally the loudest critics of punishment-based practices. Sheriff

Baca has clearly demonstrated considerable leadership and courage in implementing a system that is likely to have as many critics as supporters.

Mediation

Although not widely used, some police agencies have turned to mediation between officers and citizens as a way of resolving complaints. A national survey identified 16 police departments with mediation programs (Walker, Archbold and Herbst, 2002). Some suggest that the approach has had value in helping both officers and citizens understand their own actions during the encounter. Mediation is often used as an alternative to the formal disciplinary process and usually it is the officer's decision to participate. This approach is most suitable for complaints involving discourtesy, insensitivity and minor procedural issues.

The Denver (Colo.) Police Department has made mediation a part of its overall approach to handling citizen complaints and discipline. A complaint is dropped if officers involved volunteer to participate in mediation regardless of the outcome. With professional mediators, officers and citizens meet at a neutral location to discuss the circumstances of the complaint. The satisfaction level of both officers and citizens in the way complaints have been handled in the three years the program has been operating has increased from 10-15 percent to 75-85 percent (Proctor, Clemmons and Rosenthal, 2009).

An evaluation of the mediation approach used by the Pasadena (Calif.) Police Department in 2005 indicated that it had great promise for improving understanding and trust between the police and the community (Police Assessment Resource Center, 2008).

Peer Review

In the early 1970s, the Oakland and Kansas City Police Departments implemented a peer review process based on work that social psychologist Dr. Hans Toch did in a correctional setting with corrections officers. The process involved experienced senior officers reviewing the behavior of officers who received a complaint or reached a predetermined threshold volume in areas such as use of force, resist arrests and vehicle collisions. Identifying officers, through analysis of variables of this type, represented one of the first forms of early intervention.

Officers could elect to participate in peer review rather than the formal disciplinary process if they were facing charges or exceeded the thresholds. The peer review panel considered the circumstances and suggested behavior changes they believed would help minimize further complaints. In one situation, the panel conducted a role play session with the officer and learned he was violating the personal space of people during the interaction, which tended to intimidate them. The panel suggested he move back a few feet to put him in a safer position and to reduce the potential for intimidation. He complied and had no further difficulty in his interactions with citizens.[7]

A project evaluation determined that officers who participated in peer review when compared to a control group were not significantly different in

their behaviors, attitudes and peer ratings (Pate et al., 1976). The idea was not adopted on a permanent basis by either department following the trial, nor is there any indication it has been tried by other agencies — a disappointing outcome given the overall power of peer influence on officer conduct and the focus of the program on behavior change rather than punishment. It seems that peer review is worthy of further exploration as a formal — or perhaps informal — initiative aimed at encouraging and reinforcing positive attitudes and behavior.

Early Intervention[8]

Early intervention systems are designed to track various indicators and provide early identification of officers whose performance indicates emerging problems and then intervene in a useful way. In large departments, these are often complex database management systems that track a wide variety of performance indicators, including citizen complaints, use of force, sick leave, performance evaluations, training, failure to appear in court and car stops, among others. Thresholds are established that let the officer and supervisor know there may be a problem that needs correction before it becomes a disciplinary issue. These systems are not a part of the police disciplinary process, although they are closely connected as they help resolve potential performance issues before an officer reaches the stage where the disciplinary process is engaged. They also serve as one important way of addressing the challenges presented by that small group of officers who account for a large number of citizen complaints and other misconduct issues. Such officers can be identified sooner and steps can be taken to address the behavioral problems.

Police agencies that have adopted early intervention systems believe they have value. The U.S. Department of Justice frequently includes in its consent decrees or memoranda of understanding the requirement to put such systems in place.[9] Although they have not been the subject of rigorous evaluations to determine their effectiveness at dealing with problematic behavior, these systems continue to evolve as more police agencies adopt them. A closer look at early intervention systems may provide greater insight on the most appropriate behavioral indicators, suitable thresholds and most effective intervention strategies.

The Charlotte-Mecklenburg Police Department Discipline Philosophy[10]

In 2000, the Charlotte-Mecklenburg Police Department (CMPD) restructured its internal affairs investigative process in response to concerns about the length of time involved and officers' concerns about the consistency and fairness of discipline. It adopted the disciplinary philosophy developed and implemented in St. Petersburg, Fla., in 1993. The original philosophy was devised by the then-chief of the St. Petersburg Police Department[11] for several reasons. The first purpose was to inform the department and the community about how disciplinary decisions would be made. Florida's public records law made the outcomes known in St. Petersburg, but the decisions were made behind closed doors and neither the public nor police employees knew what was considered in determining sanctions for misconduct. The philosophy contributed to

a better understanding of how these decisions would be made.

The second purpose was to provide operational definitions of "consistency" and "fairness." For employees and their unions, these are the two most frequently voiced concerns with discipline. Officers and their representatives want to know that similar misconduct will receive the same sanctions regardless of who violated the rules. Employees are particularly concerned that supervisors, managers and favored people in the organization might be treated more leniently than they would be. This helps explain the favorable view unions often hold toward the use of a disciplinary matrix because the sanctions are spelled out for various levels and types of misconduct.

For the Charlotte-Mecklenburg Police Department, **consistency** is defined as holding everyone equally accountable for unacceptable behavior and **fairness** is understanding the circumstances that contributed to the behavior while applying the consequences in a way that reflects this understanding (Charlotte-Mecklenburg Police Department, 2001).

This definition formally introduces the notion that "fairness" includes an understanding of the circumstances in which the misconduct took place. A violation of a rule or policy can take place because the officer made an honest mistake in judgment. It also can occur when the officer is fully aware of the rule but goes forward with the conduct anyway. The officer in both cases should be held accountable for the violation, but the two cases beg for different treatment.

The third purpose was to provide guidance to supervisors and managers participating in the disciplinary process on the factors they should consider when making their decisions. Factors to be considered, with brief explanations, are as follows (Charlotte-Mecklenburg Police Department, 2001):

- **Employee Motivation.** The police department exists to serve the public. One factor in examining an employee's conduct will be whether or not the employee was operating in the public interest. An employee who violates a policy in an effort to accomplish a legitimate police purpose that demonstrates an understanding of the broader public interest inherent in the situation will be given more positive consideration in the determination of consequences than one who was motivated by personal interest. Obviously there will be difficulty from time to time in determining what is in the public interest. For example, would it be acceptable for an employee to knowingly violate an individual's First Amendment right to the freedom of speech to rid the public of what some might call a nuisance? Or is it acceptable as being in the public interest to knowingly violate a Fourth Amendment right against an unlawful search to arrest a dangerous criminal? Although it would clearly not be acceptable in either case for an employee to knowingly violate a Constitutional right, these are very complex issues that officers are asked to address. The police have a sworn duty to uphold the Constitution. It is in the **greater public interest** to protect those Constitutional guarantees in carrying out that responsibility

even though it might be argued the public interest was being better served in the individual case. But if an employee attempts to devise an innovative, nontraditional solution for a persistent crime or service problem and unintentionally runs afoul of minor procedures, the desire to encourage creativity in our efforts at producing public safety will carry significant weight in dealing with any discipline that might result.

- **The Degree of Harm.** The degree of harm an error causes is also an important aspect in deciding the consequences of an employee's behavior. Harm can be measured in a variety of ways. It can be measured in terms of the monetary cost to the department and community. An error that causes significant damage to a vehicle for example could be examined in light of the repair costs. Harm can also be measured in terms of the personal injury the error causes such as the consequences of an unnecessary use of force. Another way in which harm can be measured is the impact of the error on public confidence. An employee who engages in criminal behavior — selling drugs for example — could affect the public confidence in the police if the consequences do not send a clear, unmistakable message that this behavior will not be tolerated.

- **Employee Experience.** The experience of the employee will be taken into consideration as well. A relatively new employee (or a more experienced employee in an unfamiliar assignment) will be given greater consideration when judgmental errors are made. In the same vein, employees who make judgmental errors that would not be expected of one who has a significant amount of experience may expect to receive more serious sanctions.

- **Intentional/Unintentional Errors.** Employees will make errors that could be classified as intentional and unintentional. An **unintentional** error is an action or decision that turns out to be wrong, but at the time it was taken, seemed to be in compliance with policy and the most appropriate course based on the information available. A supervisor for example, might give permission for a vehicle pursuit to continue on the basis the vehicle and occupants met the general description of one involved in an armed robbery. The pursuit ends in a serious accident, and it is learned the driver was fleeing because his driver's license was expired. Under these circumstances, the supervisor's decision would be supported because it was within the policy at the time it was made. **Unintentional** errors also include those momentary lapses of judgment or acts of carelessness that result in minimal harm (backing a police cruiser into a pole for example, failing to turn in a report, etc). Employees will be held accountable for these errors but the consequences will be more corrective than punitive unless the same errors persist.

An **intentional** error is an action or a decision that an employee makes that is known to be in conflict with law, policy, procedures or rules (or should have [been] known) at the time it is taken. Generally, intentional errors will be treated more seriously and

carry greater consequences. Within the framework of intentional errors there are certain behaviors that are entirely inconsistent with the responsibilities of police employees. These include lying, theft, or physical abuse of citizens and other equally serious breaches of the trust placed in members of the policing profession. The nature of the police responsibility requires that police officers be truthful. It is recognized however, that it is sometimes difficult to determine if one is being untruthful. **The department will terminate an employee's employment when it is clear the employee is intentionally engaging in an effort to be untruthful. Every effort will also be made to separate individuals from the department found to have engaged in theft or serious physical abuse of citizens.**

- **Employee's Past Record.** To the extent allowed by law and policy an employee's past record will be taken into consideration in determining the consequences of a failure to meet the department's expectations. An employee who continually makes errors can expect the consequences of this behavior to become progressively more punitive. An employee who has a record of few or no errors can expect less stringent consequences. Also, an employee whose past reflects hard work and dedication to the community and department will be given every consideration in the determination of any disciplinary action.

Laying out these factors helps police commanders think through the circumstances involved in the misconduct. The philosophy explicitly points out that unintentional mistakes are to be treated differently from intentional misconduct and that officers who run afoul of policy while genuinely trying to serve the public good should be given consideration in determining sanctions. Although thoughtful chiefs and commanders undoubtedly consider these factors when faced with the responsibility of making discipline decisions, it is important to put them in writing as a part of the department's directive system. Not only does this let employees know how they will be treated, the transparency also adds legitimacy to the process inside and outside of the organization.

However, laying out these factors in writing within the directives system is not, by itself, enough. In Charlotte–Mecklenburg, the philosophy was presented to both the civil service board and the citizens review committee before it was adopted. This also provided the opportunity for news media review. The philosophy was presented and discussed by the chief before supervisory and command staff, officer-in-service training, promotional classes and every class of recruit officers. In July 2005, the department published a widely circulated guidebook titled *Employee Conduct: Investigations and Discipline* that was aimed at audiences inside and outside the department. The disciplinary philosophy was also addressed in the guidebook. All of these steps served to ensure that both employees and the community were informed of the department's approach to discipline.

Other Alternatives

Conversations about improving police disciplinary processes often turn to the use of civilian

review or approaches that professional associations of lawyers, doctors and others use to guide and control members. Civilian review is widely used in the United States with the hope that it will improve the legitimacy of handling, investigating and resolving citizen complaints. The closest equivalent within the police profession is where state-level police standards boards have the authority to revoke an officer's certification, effectively taking away his or her ability to work in the state as a sworn officer. There are as many variations of civilian review as there are cities that have implemented this process. Some review boards receive complaints and forward them on to the police department for investigation and resolution. In other communities, an appointed group of civilians conducts the investigation. Some review boards have the authority to recommend disciplinary action. Many such review boards come into play after an investigation is complete, and some are focused on specific misconduct categories like use of force. Some act only when a citizen appeals directly to them. Civilian review boards are certainly an important ingredient in disciplinary processes and constitute one of many possibilities that ought to be considered when reviewing alternatives to traditional discipline. The models that other professions use to sanction their members do not seem to offer much promise. One of the most significant obstacles is that they do not offer any greater legitimacy — perhaps less — than the processes currently in use in policing.

None of the alternatives discussed above represent complete departures from the traditional police disciplinary processes. They represent efforts to change the things that can be changed within the plethora of constraints imposed by law, contracts and tradition. They represent steps toward what may potentially be more effective methods of handling discipline.

A Way Forward

In a perfect world, employees would fully understand the organization's expectations, report to work on time and always do the right thing. In such a world, employees would manage their own behavior with little need for elaborate disciplinary processes. Although that perfect world does not exist in policing today, a large majority of employees have no experience with the formal disciplinary processes because they do understand the expectations, treat people respectfully and consistently do their jobs in an acceptable manner. In exchange, these employees expect to be treated in a fair and consistent manner should they run afoul of a policy, rule, or regulation, or are the subject of a citizen complaint. Given all of the issues and concerns with disciplinary processes, how do police executives create systems that address mistakes and misconduct fairly while meeting the expectations of the community and employees? What would that process look like? Is it a matter of implementing one of the approaches described above? Is it a matrix that specifies sanctions, or an education-focused approach, or creation of a philosophy that guides how sanctions are determined? Is it some combination of these approaches, or something that has yet to be invented?

There are no definitive answers to these questions. As one works toward answering them, the complexity of the administration of discipline in

a police organization must be taken into account. A police chief does not have complete control of all the factors that influence disciplinary outcomes, but they should all be considered. Court decisions, state law, local ordinances, union contracts, civilian review, civil service, arbitrators, politics, complaint processes, investigative practices and organizational culture are all in play when disciplinary actions are taken. With all of this complexity, police executives might understandably shy away from a complete overhaul of the disciplinary process and focus on those parts over which they have some control or influence and that they believe might, with a little persuasion, be acceptable to stakeholders.

One approach to improving discipline might be the use of a problem-solving process to engage as many of the stakeholders as possible in examining how discipline is handled. It might also be of value to identify specific characteristics of a discipline process that would respond to the agreed deficiencies of current approaches and therefore be regarded as priorities for any changes made.

Problem Solving

Problem solving offers great potential as a way to approach the development of better disciplinary processes and a helpful way of looking at misconduct and other disciplinary problems at both the organizational and individual levels. Police officers in many parts of the world have received problem-solving training over the past 25 years and often apply their knowledge to crime and other problems. One of the more commonly used approaches is the SARA[12] model developed by Police Executive Research Forum staff and members of the Newport News (Va.) Police Department in the mid-1980s (Eck and Spelman, 1988). SARA guides officers through a four-step process to problem solving:

> **S**canning: Identifying and selecting problems for further study.
>
> **A**nalysis: Breaking the problem down and looking at all aspects.
>
> **R**esponse: Developing responses based on the analysis.
>
> **A**ssessment: Determining if the response had the desired impact.

It can be used to look at disciplinary problems from a number of perspectives. The SARA model is applied to discipline problems in table 2 (p. 20). Problem solving seems to be helpful in looking at specific areas where policies or procedures are frequently violated.

Disciplinary Process Characteristics

Even an organization with all the right policies, training and effective supervision needs a disciplinary process that deals with mistakes and misconduct in the most appropriate manner. Given the vast differences in police agencies, state laws, union contracts, forms of government and communities, it is unlikely that one model would meet the requirements of all agencies. Rather than try to focus on one or two approaches, it seems more helpful to identify characteristics that will contribute to an effective disciplinary process:

Table 2. SARA Model

	Scanning	Analysis	Response	Assessment
Discipline Problems	• Complaints – Citizens – Officers/supervisors – Other agencies • Use-of-force reports • Arrest reports/charges • In-car camera screening • Early intervention criteria • News stories • Division/unit statistics • Internal investigations	• Individual with multiple complaints/misconduct • Types of complaints (e.g., discourtesy, excessive force, court absences) • Concentration of complaints (e.g., midnight patrol shift, narcotics, particular supervisor) • Frequency of complaints/ misconduct • Demographics of complainant/ officer (e.g., race, gender, age, experience) • Department policy, procedures • Training	• Warning • Counseling • Training • Policy/procedure change - • Mentor/coach • Reassignment • Suspensions/fines • Employment termination	• Complaint/ misconduct reduction • Satisfaction survey improvements • Commendations • Media coverage

- **Early intervention at the lowest level possible.** A key part of effective discipline is recognizing mistakes and misconduct as soon as they occur and taking appropriate corrective action. It is not unusual for police officers to say on learning an officer has been severely disciplined or terminated that it was about time the department addressed the behavior. Officers are often aware of the misconduct of others but fail to see that bringing it to the attention of supervisors is one of their responsibilities. The best intervention, and likely the most effective, comes from peers and first line supervisors. Peers can and do influence behavior in both positive and negative ways. An environment that encourages employees and supervisors to take corrective action on minor mistakes helps create a culture in which everyone takes responsibility for their own behavior and for the behavior of others who may need guidance from time to time. It should also be clear, at the same time, that serious misconduct will be handled and properly documented through the formal investigative and disciplinary processes.

- **Fair and consistent application of discipline.** One of the most difficult challenges for discipline in a police organization is ensuring both the perception and reality of fairness and consistency. Employees who experience the discipline process must understand the reasons for the actions taken by the department and how they can avoid similar problems in the future. They must have the sense that everyone in the organization is held accountable for their behavior, and if the sanctions are different for similar behaviors, that they are appropriate for the circumstances.

Developing a sense of fairness and consistency among employees is difficult to achieve. It requires that department and hopefully union

leadership will spend time in recruit and in-service training explaining the complaint, investigation and disciplinary processes. Chief executives must invest time in these forums explaining their perspective on discipline. They must also be ready to explain their decisions to employees and the community within the framework allowed by state and local law.

- **Behavioral focus.** The primary focus of discipline should be on changing unacceptable behavior. If the behavior can be changed by a supervisor cautioning the employee or showing the proper way to handle a situation, that should be all that is required. If the disciplinary decision includes sanctions, the employee is entitled to an explanation of the reasons for the sanctions and their connection to the behavior problem. Training should be an option for addressing honest mistakes. It is one thing for officers to make judgmental errors because they do not know the correct procedure or have the right knowledge. It is quite another for them to know what to do but intentionally fail to follow policy and procedures. The latter may require more severe sanctions to reinforce departmental guidelines. Even punishment must be carried out with a view toward behavioral change.

- **Timely.** Both internal investigations protocol and the disciplinary process must have established completion deadlines. To ensure these deadlines are met, a monitoring component that tracks progress on the case from the initial complaint to its resolution is an important piece of the process.

- **Transparent.** While respecting individual privacy rights and staying within the framework of the law, police agencies must be as open as they can possibly be to their employees and the community they serve. Transparency increases the community's confidence that mistakes and misconduct are treated seriously. Transparency helps employees see that the department leadership supports employees but is also willing to publicly acknowledge mistakes. Openness helps contribute to an environment in which accountability is an important individual and organizational value.

  This means that police agencies must, at a minimum, share statistical data with the community on police misconduct, sustained complaints and disciplinary action. Many police departments do this by publishing an annual report that is made available to the news media and the public. It also means that complainants receive timely feedback on the outcome of their complaint.

  Consideration should be given to including a peer on disciplinary review boards so a street officer's perspective is considered when arriving at the decision. Some agencies have citizens sit in on the board hearings either as observers or as voting members of the board.

Disciplinary processes that contain these characteristics are likely to have greater legitimacy in the eyes of the employees and the community.

Both are wary of a process that they do not understand, that is not transparent in many communities and that takes an inordinate amount of time to complete.

Conclusion

The purpose of police discipline is to help employees serve the public while staying within the framework of law, policy, procedures, training and organizational expectations for their behavior. Effective discipline requires that employees understand these boundaries and expectations. When officers stray, measured consequences are consistently and fairly applied to hold them accountable and to change their behavior. Ideally, employees clearly understand the relationship between their behavior and the consequences, and naturally make the appropriate adjustments. In this ideal system, the complainant and the general public know employees will be held accountable for their behavior, and this assurance contributes to their confidence in the police. It seems police discipline should be a straightforward process that everyone understands. Clearly it is not.

In reality, police discipline is a messy, complicated and controversial process. It takes a long time from the misconduct to the outcome and, more often than not, the outcome is appealed and the sanctions are reversed. In the majority of communities, the feedback that complainants receive is limited to the investigative outcome: quite commonly a finding of "not sustained" that they struggle to understand.

This is a process that could do with a great deal of improvement. It is encouraging to see that some police agencies, such as the Los Angeles County Sheriff's Department, are pursuing cutting-edge changes. But far too many agencies are unwilling to take the risks involved in engaging stakeholders in a sincere effort to relieve the frustrations in a process that frequently fails to achieve its core purposes.

Endnotes

1. In a study of the Lansing (Mich.) Police Department, researchers found that officers believed that discipline was unfairly and inconsistently applied. They felt that command-level personnel were treated differently than officers and that publicity, rather than behavior, dictated the disciplinary outcome.

2. See the *Sourcebook of Criminal Justice Statistics* section on public opinion, http://www.albany.edu/sourcebook/toc_2.html (accessed August 11, 2009). On honesty and ethical standards in 2003, 56 percent of white respondents rated the police as "high/very high" while only 31 percent of black respondents did. In 2008, white ratings were 55 percent while blacks increased to 46 percent. On confidence in 2004, 70 percent of whites indicated "a great deal" or "quite a lot," while blacks were at 41 percent. In 2009, ratings by both whites and blacks dropped to 63 percent and 38 percent, respectively.

3. A case in Charlotte, N.C., involving a 15-month employee goes to this point. The officer has been criminally charged with sexually assaulting six women while on duty and the case has attracted

enormous public attention and concern. News reports indicate the officer had been the subject of disciplinary action on two occasions and the media wanted access to the file which, with the approval of city council, is permissible under certain circumstances. The city council decided not to review or open the file to the public, which effectively ends the matter unless attorneys in the civil or criminal trials are able to convince the court to open the file.

4. For a detailed account of the Denver effort, see *Report on the Manager of Safety's Disciplinary Advisory Group* and the companion *Denver Police Department Discipline Handbook: Conduct Principles and Disciplinary Guidelines* at http://www.denvergov.org/PoliceDisciplineHandbook/tabid/432137/Default.aspx.

5. A growing number of police and sheriff's agencies have been working on improving their disciplinary processes. The few named here are generally reflective of the changes that have been made by others.

6. See the Los Angeles County Sheriff's Department website, http://www.lasd.org/divisions/leadership-training-div/bureaus/ebd/about.html, for detailed information on the Education-Based Discipline program. Information about the concept comes from this site unless otherwise noted.

7. Author's recounting of a conversation with the officer involved when the author was a police officer in Kansas City.

8. For a good overview of early intervention systems, see *Early Intervention Systems for Law Enforcement Agencies: A Planning and Management Guide* (Walker, 2003). The Charlotte-Mecklenburg Police Department (2005) publication *Early Intervention System: A Tool to Encourage & Support High Quality Performance,* is also a good example of reaching out to the public to explain the system.

9. The Department of Justice's use of the Pattern and Practice legislation has been very limited during the past 10 years. There are indications that these investigations will be pursued more vigorously in the future.

10. The full CMPD Discipline Philosophy can be found at CMPD.org under the "Directives" tab: http://charmeck.org/city/charlotte/CMPD/zstorage/InsideCMPD/Documents/100004DisciplinePhilosophy.pdf.

11. The chief was Darrel W. Stephens, author of this paper. Parts of the philosophy have been adopted by other agencies. Recently, the Milwaukee (Wis.) Police Department incorporated the entire philosophy in its procedures.

12. The Center for Problem-Oriented Policing provides a detailed discussion of the SARA model: http://www.popcenter.org/about/?p=sara.

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