

**The Bill Blackwood
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**Ethical Guidelines for the Acceptance of Small Gratuities Vs. A “No
Acceptance” Policy**

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ABSTRACT

Should departments entrust their officers to make decisions regarding the acceptance of gratuities with guidelines, or bind them with a “no gratuities” policy? The researcher will compare two types of acceptance policies with the more traditional “no acceptance” policy. These policies are: the acceptance through chain of command and a policy of ethical guidelines.

It is anticipated that the research will yield the following answers to the research questions: Yes, officers should be entrusted to make their own decisions to accept a small gratuity by departments giving them guidelines instead of a “no gratuities” policy. To accept or to not accept gratuities has been an ethical dilemma for law gratuities by officers in every department. Policies on the acceptance of gratuities leave officers with no room for discretion. Ideally, officers should never solicit gratuities. However, if the gratuities do not alter the way in which police officers carry out their duty, then it is ethical for officers to receive such gratuities.

The methodology used in the research will include: a review of literature from several forms of published professional documents, law enforcement journals and books, and will focus on a survey. The anticipated findings will demonstrate that most officers prefer a policy of acceptance through guidelines, and departments with a “no acceptance” policy do not enforce it and send a mixed message.

The survey will consist of Texas police officers from over 46 different Texas agencies. The survey results show that the largest policy implemented among the agencies surveyed was a “no acceptance” policy with twenty-one agencies. Next, was a policy with guidelines for the acceptance with twenty-one agencies? The average population

for a department surveyed with a “no acceptance” policy was 38,900.

Many departments in the past had no policies or limited policies on the acceptance of gratuities. In recent years, the policy focus has shifted and departments started tying the hands of agencies with “no acceptance” policies. The researcher offers a third approach to the stated problem, which suggests the acceptance of small gratuities through ethical guidelines. These guidelines should reflect ideals of ethical behavior and ask their officers to be up-front when a gratuity is accepted. Also, the guidelines should address whether or not the gratuity is given in the correct ethical spirit. The department, community and officers all benefit from policies that are written by informed policy makers. John F. Kennedy (1964) stated, “Every society gets the kind of criminal it deserves. What is equally true is that every community gets the kind of law enforcement it insists on.”

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INTRODUCTION

The law enforcement profession is given a large amount of trust from the community it serves. In return, the community also expects them to make ethical and un-bias decisions, which directly affect their lives. Examples of this include; the power of taking away their freedom, enforcing the laws of the local, state and federal governments, and ensuring liberties set forth in the US Constitution and Declaration of Independence. The commonality of these three examples is the fact that the community has entrusted these officers with the ability to make these powerful decisions even in the face of life or death. With this being said, some departments still do not entrust their officers to make simple ethical decisions. The smallest of which, is the acceptance of small gratuities from the same community that entrusts them with so much more.

The purpose of this research is to examine and research these questions, such as: should officers be allowed to make their own decisions of whether to accept a small gratuity? Also, should departments entrust their officers to make these decisions with guidelines, or bind them with a "No gratuities" policy? These two questions will be the main focus of the research. The final area of research will be to identify what guidelines should be in such a policy, and do departments with a "No gratuities" policy strictly enforce it? What is a gratuity? What is a slippery slope? Do police administrators who have accepted gratuities feel that it lead them down the slippery slope of corruption. Also, two separate policy approaches will be compared to "No acceptance" policies. The policies are: acceptance through chain of command and a policy of ethical guidelines. The researcher anticipates the research will give a solid base for the answers to these questions, as well as shed light on any other questions that arise.

The researcher's methodology will include several methods of inquiry during the research phase. The first step will be to review a variety of books and chapters on this topic. The second step will be to review several articles from professional law enforcement journals. These two methods of inquiry will provide a standing knowledge of the issue and accepted viewpoints and policy approaches. The primary source of research, which will be directly relevant to this paper, consist of surveys. The surveys will be formatted to answer the research questions.

It is anticipated the research will yield the following answers to the research questions: Yes, officers should be entrusted to make their own decisions to accept a small gratuity by departments giving them guidelines instead of a "No gratuities" policy. These guidelines should reflect ideals of ethical behavior and ask their officers to be up-front when a gratuity is accepted. Also, the guidelines should address if the gratuity is given in the correct ethical spirit. Also, departments that have a "No acceptance" policy on a large scale do not enforce this policy and have active practices that supercede their own policy.

When a policy of a department undermines the community it serves and the officers it employs, the policy should then be revised. The field of law enforcement will benefit from this research by showing the need for policies of guidelines that are positive for both, instead of a policy of avoidance that is good for neither.

REVIEW OF LITERATURE

To accept or to not accept gratuities has been an ethical dilemma for law enforcement from its inception. August Vollmer, who is often recognized as a founding father of today's professional law enforcement movement, was instrumental in the

development of the first Law Enforcement Code of Ethics. In 1905, the Berkley California Chief enacted his Code of Ethics which strictly forbid the acceptance of gratuities by officers in his department. "... I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never implying unnecessary force or violence and never accepting gratuities." Chief Vollmer was very clear about his policy on the acceptance of gratuities and left officers with no room for discretion. Chief Vollmer was obviously in favor of the first of three different types of policies or schools of thought for the acceptance of gratuities. But first, we must define the term gratuity. A gratuity is any goods or services, which are given to law enforcement officers, which are not part of their regular remuneration (Michael Feldberg, 1985). The ambiguity of which is generated by two factors: the intent of the giver, and the impact of the gratuity on the behavior of the recipient (Feldberg, 1985). Corruption can be defined as the acceptance of goods or services for performing or failing to perform duties which are a normal part of one's job (Feldberg, 1985). Simply, what makes a gratuity is the reason it is given, and what makes it corruption is the reason it is taken. Given the nature of the country and the infancy of law enforcement in the early 1900's, the question of what Chief Vollmer meant by gratuity arises. Was his definition of a gratuity a free cup of coffee or a discounted meal, or more along the lines of a bribe or a gift given for corruption? Again, given the time frame was near the infancy of modern law enforcement it would seem logical that Chief Vollmer was more concerned with the latter of the two.

The first policy we will exam is the complete non-acceptance of gratuities. This policy is an attempt to take all discretion from officers and alleviate any slippery slope

issues. The slippery slope is the slope to corruption that once an officer start down will slide into serious inevitable corruption, or at least is very difficult to stop (Coleman, 2004). A common reason a "no gratuities" policy is often implemented is to curb public perception that police are corrupt, or even appear corrupt, whether or not it is true (Coleman, 2004). Many writers on police corruption see the acceptance of even the smallest gift or benefit as the beginning of the end of an honest officers career. Others suggest that the acceptance of a gratuity does little harm, and that there may in fact be positive benefits in the practice, not just for the officer involved, but also for society as a whole (Coleman, 2004). A study in 1995 of a large police department in Australia was conducted after a massive corruption scandal engulfed the department. It found that even with the negative public perception of the department as one that was corrupt, only thirty-one percent of respondents were opposed to police accepting gratuities in any situation (Coleman, 2004). Does a "no acceptance" policy really curb the public's perception in a favorable direction, or does it curb the departments' administrator's perceptions? Banning gratuities almost certainly will not guarantee an end to corruption (Coleman, 2004). One suggestion to answer these questions and other's associated with a "no acceptance" policy is to create a policy that allows officers to exercise their own judgment about the acceptance of gratuities (Coleman, 2004). Such a policy would specify the gratuities that should be refused and outline the situations they might be accepted. Since the major problem with the acceptance of gratuities is their hidden nature, this policy might also include a check and balance system (Coleman, 2004).

Which brings us to the second type of policy the researcher will review? A policy for the acceptance of gratuities through the chain of command. Such a policy would

make the acceptance of gratuities acceptable, only if the officer relies strictly on the ethical decisions made by his superiors. This would be through a set of guidelines and ethical balances set by the command staff and left up to the supervisors to make an ethical decision. Some also set a minimum and maximum dollar amount. This amount will vary from department to department, but is often around ten to fifteen dollars. The problem with such a policy is by not entrusting officers who are already given such significant powers and public trust; the officer's view of the public is then swayed. The exact opposite of what the policy's intent is. Also, the public would still have a perception that even the department itself doesn't trust its own officers. Why not simply give the officers the same power. The power to make these decisions on their own through the guidelines and parameters set by the command staff. Like all policies in a Police Department the trust is put into the officer to follow the rules and to follow policy. Why does this policy have to be any different? Which leads us to our final policy, the acceptance of gratuities through ethical guidelines? The best way to deal with the problem of gratuities is to provide police with ethical guidelines, and let them exercise their own judgment (Coleman, 2004). It is the researcher's intent to show that this type of policy is best for both the public and the officers who must abide by it. One argument for such a policy is if a gift, reward, or discount is freely given with no intent to deflect or prejudice an officer in the course or performance of his duty; and if in fact the gratuity has no significant impact on the willingness of an officer to fully perform his duty, then the gratuity would appear harmless, or would have no corrupting influence on the officer (Feldberg, 1985). Some consider the official attitude towards gratuities unrealistic, hypocritical, and insulting to a police officer's intelligence (Feldberg, 1985). They are

unrealistic because the great majority of gratuities, such as free coffee, half priced meals, and other discounts come from honest merchants who attach no strings or expectations (Feldberg, 1985). Officers rarely, and should never solicit gratuities. They should be freely offered by the merchant, and officers should see them as a gesture of kindness as it would be super-human for an officer to not enjoy stopping in a store or restaurant that made him feel especially welcome (Feldberg, 1985). Officers are often not welcome in many places in the very community they serve, and are said to be the last person a citizen wants to see when they don't need them and the first person they want to see when they do need them. Gratuities serve functions beyond the improper personal enrichment of corrupted officials, such as agency solidarity and good public relations (Kania, 2004). If the gratuities do not alter the way in which police officers carry out their duty, then it is ethical for officers to receive gratuities.

Mayor Rudolph Giuliani wrote a book in 2002 after the September 11th attacks in New York City about leadership. In this book Mayor Giuliani discussed gratuities and how his non-acceptance became more of an issue than his acceptance of them. In the book, Mayor Giuliani outlines a principle of setting the example and how he would often apply this principle when he ate at restaurants. In one such example, Mr. Giuliani realized that a free cup of coffee and cheeseburger from a diner owner who voted for him was unlikely to compromise his integrity. The owner knew that he wasn't going to get preferential treatment just because he treated the Mayor to a meal, and arguably there's nothing immoral - certainly nothing illegal - about accepting a gift from someone who expects nothing in return. Also, one late night after Mr. Giuliani had first run for mayor in 1990, an election that he lost, Mr. Giuliani and a close friend went out for a late

diner in New Jersey. When it came time to pay, the owner refused to give him a check. Mr. Giuliani wasn't in any public office, elected or otherwise. This was also, in New Jersey not New York, so what could the restaurant owner possibly expect to gain. In the end Mr. Giuliani admitted that he should have just accepted the gratuity, because the situation became very embarrassing. Mr. Giuliani argued with the large Greek restaurant owner about paying for his meal. After much debate, the now irate owner reluctantly handed him a check for twenty-five dollars. But, when Mr. Giuliani reached into his pocket to pay, he realized that he forgot his money and wallet back at the hotel. His friend had to pay for the meal that Mr. Giuliani worked so hard to pay for. Afterward, he realized that he was carrying his objections too far. "A cup of coffee from a grateful diner owner wouldn't have compromised my principles and would have given him a lot of pleasure" (Giuliani, 2002, pg 210). This is a good example of a "no acceptance" policy being carried to ridiculous lengths.

Another example would be when such a policy would inhibit an officer from doing his job. Imagine an officer who goes to the home of a victim of a violent crime for a statement. The victim is badly shaken, and asks the officer to have a cup of coffee or tea with her while she gives the statement. The "no acceptance" policy would mean that the officer must refuse the cup of tea, which is likely to put the victim offside, immediately (Coleman, 2004). Another argument often discussed is for law enforcement to be recognized as a "true profession" it must not accept gratuities like other professions. Nothing could be farther from the truth (Kania, 2004). Practitioners of the more "traditional" or "true" professions such as ministry, higher education, medicine, and law are regularly and routinely given gratuities (Kania, 2004). Lawyers

receive gifts from their happy clients, and judges and magistrates are given a gratuity in addition to a legal fee when performing a civil marriage service (Kania, 2004). Night magistrates are frequently brought coffee and snacks by the police and attorneys that are bringing them “business” (Kania, 2004). Physicians do not only receive free drug and equipment samples from medical suppliers and pharmacological “drummers”, they often also receive true gifts from grateful patients (Kania, 2004). Christian ministers are often invited to dinner with the members of the parish, and they are customarily given a gratuity for performing a marriage or baptism ceremony (Kania, 2004). Professors get free desks, chairs, and examination copies without a loss of professional status or standing (Kania, 2004). Professors also receive large fees to indorse manuscripts or books by publishing companies, which seems akin to an “expectation” rather than a gratuity (Kania, 2004). This practice is widely accepted among this profession, and they are not unethical in accepting them, as long as they do not also acquire an inappropriate sense of obligation (Kania, 2004).

Which brings us to a final point for the acceptance of gratuities in law enforcement through ethical guidelines? Those who wish to offer gifts which are given to other professions free of improper expectations or obligations, sociable, and moral in nature should let the police also be professional by following the actual practices of other professionals by letting police accept unconditional gratuities, just as most professional do (Kania, 2004). If all of this is corrupting, then all of society is hopelessly corrupt (Kania, 2004).

METHODOLOGY

The questions the research and data will attempt to answer will include; should officers be allowed to make their own decisions of whether to accept a small gratuity? Should departments entrust their officers to make these decisions with guidelines? What guidelines should be in such a policy? Should they bind them with a “No gratuities” policy? Do departments with a “No gratuities” policy strictly enforce it? Should officers only accept gratuities through chain of command? What is a gratuity? What is a slippery slope? Do police administrators who have accepted gratuities feel that it lead them down the slippery slope of corruption? These are the questions that the researcher intends to answer through the following described methodology. The researcher will first review literature from several forms of published professional documents, law enforcement journals, and books. The researcher will also conduct a survey. The anticipated findings will show that most officers prefer a policy of acceptance through guidelines, and departments with a “No Acceptance” policy do not enforce it and send a mixed message. Also, officers who are surveyed will overwhelmingly answer that their acceptance of a gratuity did not send them down a “slippery slope of corruption”. Texas Police Officers will submit the survey from over 46 different Texas agencies. The agencies will range from very small to very large municipal police departments, and medium to very large county sheriff’s agencies. Also, some specialized law enforcement agencies such as school district police, hospital district police, college police, and airport police will be encompassed in the survey. The officers surveyed will all be supervisors ranking from sergeant to chief of police, or county sheriff. Out of the forty-nine surveys instruments issued, all were completed and

returned for a one hundred percent return rate. The information will be analyzed by the researcher and compiled into a spreadsheet for processing. The extrapolated data will then be made visual with the use of pie charts, line graphs, and bar graphs.

FINDINGS

Once the forty-nine surveys from administrators from various sized and diverse departments from across Texas was compiled, the data was extrapolated and organized. The survey shown that the largest policy implemented among the agencies surveyed was a “no acceptance” policy with twenty-one agencies. Next, was a policy with guidelines for the acceptance with twenty-one agencies. Eighteen of these twenty-one agencies had policies with guidelines for officers. Three had guidelines through the chain of command. Five of the forty-nine agencies had no written policy at all. Eight of the twenty-three agencies with a “no acceptance” policy thought that a policy of guidelines was more appropriate. Only one of the 21 surveyed with a policy of guidelines thought that another policy was more appropriate. However, all of the forty-nine surveyed stated that they had accepted gratuities in their career and none felt that it led them down a “slippery slope of corruption.” The survey further revealed that eleven respondents stated that the acceptance of a gratuity had ever been an issue; in comparison to the twenty-one who stated that the non-acceptance of a gratuity had been an issue. Only one of the forty-nine surveyed felt that if something small in value that was given to an officer in a correct ethical light should still be considered a gratuity. Twenty-eight of those surveyed felt that if you were up front with a business about your acceptance of their gratuity it would alleviate the problem. Twenty-one of those surveyed, also felt that there is a difference between a gratuity and an honorarium.

Seventeen stated there is not a difference between a gratuity and an honorarium.

Eleven did not answer the question. Nine of the seventeen who answered there is not a difference between a gratuity and an honorarium, also come from agencies who have a “no acceptance” policy. The average population for a department surveyed with a “no acceptance” policy was 38,900. This excludes the four agencies that were over half a million or more. The average population for an agency with a policy of guidelines was just over 64,000. This also excluded the three agencies that were over half a million or more.

CONCLUSION/DISCUSSION

To re-state the object of this research paper, the researcher intended to examine two major philosophies in law enforcement in relation to the acceptance of gratuities. The two policy approaches are very different approaches to the same problem. Many departments in the past had no or limited policies on the acceptance of gratuities. In recent years, the policy focus has shifted and departments started tying the hands of officers with “no acceptance” policies. The researcher offers a third approach to the stated problem. The acceptance of small gratuities through ethical guidelines. These guidelines should reflect ideals of ethical behavior and ask their officers to be up-front when a gratuity is accepted. Also, the guidelines should address if the gratuity is given in the correct ethical spirit. The researcher further hypothesized that departments that have a “No acceptance” policy, on a large scale, do not enforce such policies. The survey failed to adequately cover this question and the researcher has no data to confirm or disprove this point. The researcher must rely on reviewed literature only for this hypothesized point. The survey shown that eleven of the 49 surveyed stated that

the acceptance of a gratuity had been an issue; in comparison to the twenty-one who stated that the non-acceptance of a gratuity had been an issue. In short, an officers inability to accept a gratuity from a citizen was an issue for twenty-one of those surveyed, versus the eleven who had an issue from their acceptance. This directly corroborates the point that Kania made in 2004, that gratuities serve functions beyond the improper personal enrichment of corrupted officials, such as agency solidarity and good public relations (Kania, 2004). The researcher believes the survey and literature review showed that officers should be allowed to make their own decisions of whether to accept a small gratuity through guidelines set by the department that fit the acceptability of that community. Both a gratuity and slippery slope were defined through the literature review. The survey shown that officers prefer a policy of acceptance through guidelines. Officers who were surveyed overwhelmingly answered that their acceptance of a gratuity during their career did not send them down a “slippery slope of corruption”. Almost all of the literature the researcher reviewed whether the author was for or against the acceptance of gratuities, recommended that the best and sometimes only answer to this highly debated question, was to create a policy that allows officers to exercise their own judgment about the acceptance of gratuities, and should only be limited by ethical guidelines. The researcher presents this survey and literature review to law enforcement as a whole to educate policy makers and provide this alternative policy approach instead of simply shutting down officers and the public as a whole, and putting them both in sometimes impossible and awkward positions. The department, community, and officers all benefit from policies that are written by informed policy makers. John F. Kennedy (1964) stated, “Every society gets the kind of criminal it

deserves. What is equally true is that every community gets the kind of law enforcement it insists on.”

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