

**The Bill Blackwood
Law Enforcement Management Institute**

**The Need for Internal Affairs Investigations
As It Relates to
The Development of A Policy**

**An Administrative Research Paper
Submitted in Partial Fulfillment
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ABSTRACT

Society's views change periodically, and police departments need to be able to recognize and adapt to these changes to remain in step with society. One of the biggest problems police departments have had in the past has been the reluctance to change with society norms. The basic philosophy was that departments would and should be able to police themselves better than someone from the outside could. However, since the inception of the first American police departments, history has indicated that as society views change, citizen demands for accountability of the police also change. This research project views the development of internal investigations by police departments and obtains research data useful in developing a plausible and acceptable internal investigation policy.

The research of internal investigations produced two basic concepts, the reactive and proactive approaches. The reactive approach is based on the concept that a problem is dealt with only after it becomes a problem. The proactive approach is based on the concept of preventing potential problems before they occur. Research indicates the proactive approach is more widely acceptable to both police management and society as a whole. There are more positive results found when utilizing the proactive approach as opposed to the reactive approach.

In conclusion, research indicates the law enforcement community should become more responsible, both morally and ethically, for its own conduct. This dictates a certain need for departments to have in place, a clear and understandable policy and procedure for investigating internal complaints.

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INTRODUCTION

The title for this Administrative Research Paper is "The Need for Internal Investigations As It Relates to the Development of A Policy." It addresses the need for further development of the department's complaint investigation process. This will be accomplished through this research paper.

The Alvin Community College Police Department currently has a policy that addresses complaints and grievances. The current policy outlines a process for filing a complaint. However, the policy is only in a brief synopsis form and does not clearly define the process in a clear and understandable manner. A survey of 24 police departments was conducted which revealed that 19 of the departments surveyed have existing internal investigation policies. Only 6 out of the 19 departments with a investigation policy reported having a penalty violation category. This information assisted in formulating the question that will be addressed in this research project, "Why do departments need an internal investigation policy that is clearly defined and understandable to all members of the department"?

The intent of this project, is to reflect on the history of police departments from around the country and reasons that brought about the need for departments to establish guidelines and procedures for conducting internal affairs investigations to "Police the Police." Additionally, this can be utilized in the development of policy. This type of policy will help insure that a clearly defined and thorough investigation process is in place.

Due to many changes in societal issues and laws in recent years, law enforcement agencies have had to adopt changes in many of their policies and procedures in order to remain in line with both societal issues and changes in laws. Law enforcement can benefit from this type of research by reviewing the available data on the subject of internal investigations. Police departments have come under a much closer, watchful eye from the public and therefore, must

have in place, policies and procedures that allows the department to operate more efficiently under public scrutiny. Police departments should also realize that a clearly defined and understandable internal investigation policy is just as important to the employees of the department. Employees are usually the one's most affected by such an investigation.

The intended outcome of this research project is to collect information that will later be utilized in developing an Internal Investigation policy for the Alvin Community College Police Department. Once the policy has been written, it will be submitted to the Chief of Police for review and acceptance. Upon approval, the policy will then be implemented.

REVIEW OF LITERATURE

Following the inception of the first American police departments in the 1840's, police organizations have been in disagreement about what their job as officers is and how that job is to be done (Ohlin, 1974). As long as everything is working to everyone's satisfaction, disagreement issues usually will not surface. However, with the first sign of disagreement comes the issue of perception and with that, the potential for scandal develops. A crisis such as scandal signals a breakdown in what is called the "structure of accommodation." (Ohlin, 1974). Police departments that do not have formal procedures to accompany and support a policy can easily fall into this "structure of accommodation." In order to be fair in the assessment and punishment of a particular violation of a policy or procedure, a formal structure should be in place so as not to create confusion among the employees of a department. Consistency is a key factor in the successful development, implementation and enforcement of policy and procedures. Once precedence has been set, it is important to stay consistent with that precedence because making a change outside of the established guidelines would mean that a compromise to the process has been made, which would invalidate the process.

In 1971, an analyst employed by the New York City Police Department, began a three-part study of four separate police departments (Sherman, 1978). Part I of the study was to provide a theoretical framework for studying social control or deviant organizations and a detailed analysis of these type organizations. Part II was to describe the internal and external control of corrupt police departments, including the control by administrative policy. Part III was to measure the effects of social control on corruption by describing changes over time (Sherman, 1978). The four departments selected by Sherman were New York City, New York; Oakland, California; Newburgh, New York; and a pseudonym city, Central City. The pseudonym Central City was used because the actual city was in the process of post-scandal reform at the time the study was conducted, and the use of a pseudonym was a condition for access to confidential sources. This study by Sherman looked at the differences in population, department size, years under study, the form of government and the geographic region of each city. The basic conclusion to the study indicates that of the four cities, only Oakland and Newburgh showed a decline in the number of corruption allegations filed, as well as actual reduction of existing corruption, following reform. New York City and Central City, although showing a slight decline in the number of corruption allegations being filed, continued to indicate corruption still existed. The study on Central City indicated a slight decline in widespread corruption, but data collected indicated a strong potential for re-birth of widespread corruption. Of the four cities studied the more successful cities, Oakland and Newburgh, both reformed under a city manager/city council form of leadership. New York City and Central City were both under strong mayoral control. A summary of this study would possibly indicate a stronger potential for misconduct and less

likelihood of positive reform under a singularly controlled form of government such as mayoral only leadership. The study of Oakland and Newburgh indicates the potential for reform is greater under a manager/council style of leadership.

An effective system of control is necessary to the successful management operation. “Any control system, if it is to be effective, must consist of three basic parts – a standard expected performance, a means of assessing actual performance and relating that to the standard, and a process by which corrections may be made” (Edmonds, Dwight M, 1992).

There must be a measurement instrument in place that is directly related to objectives and goals. Without this instrument, there is no real plausible way of measuring the true success of the process. While police are responsible for enforcing the laws and the standards of right and wrong, police must keep in mind that because of this power given to them, they also are under the constant, watchful eye of the public (Felkenes, 1978). Police officers are given the authority and right to carry weapons. They have the right under certain circumstances to restrict the freedom of the public, to use force when necessary, and are allowed to break certain laws when performing specific duties. These are rights that the ordinary citizen does not have. “It is because police are charged with enforcing standards of right and wrong, their own behavior comes under public scrutiny and judgment which adds more police role pressure” (Felkenes, 1978).

A study was conducted through research on “Police Attitudes Toward Their Professional Ethics,” (Felkenes, 1978). In this study, a random questionnaire was sent to a large number of police officers. The intent of the questionnaire was to solicit a measurement of particular attitudes of the officers toward professional ethics. The questionnaire was conducted in four parts, dealing with a breakdown of ethics. The first part dealt with the issue of officers’

understanding of concepts and principles. The second part asked a question concerning the officer's belief as to whether he or she thought the Code of Ethics should be viewed as an abstract pledge or a concrete guide for officer behavior. The third part consisted of general questions concerning agreements or disagreements with key issues and concepts. The last part asked what constraints the officers felt these ethical issues put on them while performing daily tasks. The results reflected that 80% of the officers responding to the questionnaire were in agreement that the Code of Ethics was clear and unambiguous. Approximately 20% were in disagreement. An important result from the questionnaire indicated that over half of the officers responding "rely on their personal ethics rather than law enforcement ethics to guide them in their professional activities" (Felkenes, 1978). The questionnaire also revealed that one of the foremost dangers in this type of belief is the potential for officers to totally disregard the Code of Ethics and integrate his or her personal beliefs or judgment. In complex situations, this could easily cause problems if an officer's individual beliefs and standards do not fit the given situation and the accepted norms at that time. This research questionnaire should indicate that ethics, as a whole, plays a very important role within the law enforcement community.

Social backgrounds somewhat dictate a variance in ethics that are adopted by individual officers and departments. A change in the social structure during the 1960's caused police departments to revamp the structure of their internal affair investigation process. Initially, these units' primary function was to investigate corruption (Caldwell, 1996). During the 60's, citizens not only demanded these types of investigations, but also began demanding investigations on the day-to-day operations of police activities, especially regarding the use of force (Krajick, 1980). The focus now was turned to investigating citizen complaints and violations of department policies, in addition to corruption. This caused departments to re-evaluate their way of thinking

and expand the investigation unit's responsibilities. This also required a new set of rules, regulations and procedures to assist the investigating unit in accomplishing their new goals and objectives. It did not matter whether complaints on officers came from inside the department or outside the department. All investigations had to be investigated. Initially, these complaints were reactive in nature (Caldwell, 1996). Members of the department that were not part of the internal affair

unit were at first skeptical and somewhat afraid of the unit. The fear felt by officers resulted in the establishment of the police "bill of rights" (Krajick, 1980). Departments felt their internal affairs unit "had to be trusted and respected by members of the department and the citizens" (Smith and Territo, 1976). In order for them to better accomplish this goal, it was decided to become a more proactive unit than a reactive unit, as internal investigation units were first viewed. Departments were aware that small portions of "career criminals" were responsible for a majority of crimes committed. A study was conducted to document this hypothesis, and departments took the basic concepts of the study and applied them to a study of their own to try and find out the percentage of officers in a department that were responsible for the majority of citizen complaints. The study concluded with similar findings. They found "a similar result in that a small number of officers within the department were responsible for a disproportionate share of complaints, allegations, and problems within that agency" (Berkow and Rothlein, 1994). Departments utilized the findings of this study and began employing methods to look for signs of potential problems before they actually became a problem. Some of the risk factors departments looked for are as follows:

1. A propensity to use unnecessary, unreasonable or excessive force.
2. Citizen contacts which tend to be abusive.

3. Over-aggressiveness which causes injuries or equipment damage.

(Berkow and Rothlein, 1994)

Since the inception of American police departments, internal affairs investigations have made numerous changes in the investigative methods used. Research indicates that as society issues and demands change, internal investigation methods will also change.

METHODOLOGY

Is there a need for police departments to establish guidelines for investigation of complaints, both internal and external? Can these established guidelines and procedures aid in supplementing an existing policy or developing a new policy?

This research project establishes that the answer to both of these questions is yes. There is a need for a policy that gives direction to agencies for internal investigations of complaints and allegations.

In researching this project, information was obtained from books, previous research articles, established investigation policies and a survey from several police agencies within the State of Texas. The survey reflects a varying range in department size from 1 officer to 1,000+ officers. The geographical area of the agencies surveyed covers the north, south, east and west boundaries of Texas. The survey also indicates which departments have established internal investigation policies, which departments have established procedural guidelines for these investigations, and which departments have an established severity classification for violations of policy or procedures.

There were a total of 24 different departments that were surveyed. All departments surveyed responded to the questionnaire. The survey covered the areas of established complaint

policies, established policy stipulating penalties or sanctions for varying degrees of violation severity, and the size and name of the responding department.

The information was analyzed and separated by the different components to formulate different categories that will be needed in further development of my department's policy and to establish procedural guidelines for the investigation of policy violations as well as other types of complaints. In addition, this information will determine the feasibility of establishing a penalty table that will stipulate an appropriate penalty assessment for a specific category violation, based on the severity of a violation.

FINDINGS

Regardless of the size of a department or the number of personnel employed by a department, research indicates that for the most part, the percentage of complaints should reasonably be similar to each other. Generally, the more employees a department has the larger the number of complaints it has to deal with, while the number of complaints for smaller departments will usually be much lower. However, when calculating percentages of complaints, the percentages tabulated will usually be similar to each other.

In this research project, both the reactive and proactive approaches to internal investigations were studied. In the early years of internal affairs investigations, the approach primarily used was reactive. Departments simply waited for a problem to surface, then dealt with it at that time. This approach created several problems for the departments utilizing this method. A vast majority of the investigations dealt with were external in nature. As one researcher wrote, "This oversight led them to deal with what was the proverbial tip of the iceberg" (Broadway, 1974). Once an officer has become corrupt or has violated some policy or procedure, the damage has been done. When this occurs, it may be too late to rectify the problem.

The internal affairs unit was often referred to as a “watchdog or headhunting group” (Rothlein, 1996), which was not the primary purpose of the internal affairs unit. This reputation caused most officers to avoid the internal affairs unit. The officers’ feared persecution from within their own department. Initially, the only time officers had any association with the internal investigation unit, was when something had gone wrong. This most often caused the officers to react in a negative manner. This continued reaction caused departments to eventually take an in-depth look at their complaint investigation process. Departments wanted and needed better cooperation from their officers during these investigations. They soon realized that certain changes needed to be made in their investigation process in order for officers to more freely cooperate with an investigation. While reviewing their process, many departments recognized a need to address potential problems before they occurred instead of waiting until a problem had been created. They felt this method would assist in curtailing the number of complaints they were receiving. This concept was viewed as a necessity because the officers were feeling that internal investigations usually resulted only in punitive damages (Caldwell, 1996), so they began developing a proactive approach to the problem.

There appeared to be a misconception on the intent of the internal investigation unit. Further examination into this issue revealed an apparent lack of communication between the administration, the internal investigation unit and the line personnel of the department. “A lack of department commitment to educate all personnel in the operating procedures and mission of the internal affairs unit exists and has caused a devastating effect” (Williams, 1992). Once officers began to understand the intent and the process of the internal affairs unit, attitudes toward the unit began changing. The officers began to understand that the principle idea and

basic concept of the internal affairs unit was to “prevent ethical transgressions from ever occurring, rather than to punish officers after the fact (Huddleston and Sands, 1995).

Through the reduction in the number of complaints being investigated, the workload of an internal affairs unit can be better focussed on the more severe issues or cases. “An officer’s career may be salvaged, which saves the department money by not having to replace a veteran officer with a recruit who has to be trained” (Caldwell, 1996). Once the proactive approach was viewed as the most logical choice for the internal affairs investigation process, decisions had to be made on how the investigations should be conducted and who should be given the responsibility to investigate misconduct or other types of complaints. As time passed, society views changed in many areas, including those that dealt with issues such as police having the power and certain discretion in being able to take away citizens’ freedom. As these views changed, citizens began demanding that police conduct these internal investigations in a fair and impartial manner. Many of the issues considered when deciding how these investigations would be conducted were based on established Supreme Court cases. One of the first factors to be determined in an investigation is whether the investigation is criminal or not. The issue of custodial interrogation in a criminal investigation was decided in *Miranda v. Arizona*, 384 U.S. 436 (1966). *Miranda* ruled that when conducting a criminal investigation, you must read any suspect or potential suspect, their statutory warning (*Miranda*). *Miranda* does not allow you to compel or force a suspect to tell you what you want or need to hear. This differs in non-criminal investigations. Where the investigation involves a violation of policy or procedure, under certain circumstances an officer may be compelled to answer specific questions. In *Garrity v. New Jersey*, 385 U.S. 493 (1967), the Supreme Court ruled that an officer could be forced to answer job related questions or face possible discipline by the department. This was allowed as long as

the officer was advised that any answer given would not be used against them in a criminal proceeding. Many times officers testify before a grand jury. In *Gardner v. Broderick*, 392 U.S. 273 (1968), an officer was forced to testify before a grand jury, and when he invoked his 5th Amendment right against self-incrimination, his department terminated his employment. The Supreme Court in *Gardner* ruled that people may be forced to testify before a grand jury, but cannot be terminated just for invoking their 5th Amendment right.

One researcher, Joseph R. Davis, made a statement that serves as a summation to the stated Supreme Court decisions:

“There are two competing and sometimes conflicting interests. The first interest is the need of government to require its employees to account fully for their actions in the course of official duties. The second interest is the right of a public employee, guaranteed by the 5th and 14th Amendments of the Constitution, not to be compelled to answer questions or make a statement which could be used against the employee in a subsequent proceeding” (Davis, 1980).

Once the guidelines are established, the issue of “who will investigate” has to be addressed. In a study conducted by The Police Executive Research Forum in 1992 for the Tyler Police Department, recommendations were made concerning the development of an internal affairs policy (Swindle, 1997). It was recommended that someone of the rank of at least a Sergeant be assigned to conduct these investigations and report only to the Chief of Police. In addition, PERF also recommended that in a case where criminal and administrative issues are being simultaneously investigated within the same investigation, two different investigators should be assigned (Greenberg, 1992).

The size and rank structure of a department will somewhat dictate the basic structure for developing an internal affair investigation policy that best fits an individual department. Regardless of the size or structure, it is important that a policy be developed that will be appropriate. It is made clear through research that a policy should “clearly define the entire

process so everyone that may be involved will have a clear understanding of not only the process, but what the expected and intended outcome will be". (Gambrell, 2000)

CONCLUSION

Throughout the history of American policing, the changes in society's general opinion and perception has forced many changes in law enforcement and how we "police the police". Over recent years, police misconduct has been brought to the public's attention at an alarming rate. Police misconduct is usually considered as "headline news" with the media. Over time, this has caused somewhat of a public outcry and demand for changes. "The public demand for the accountability of law enforcement to police themselves has never been greater than today" (Berkow, 1996). Based on the trend indicated in the research material and on my personal belief, a proactive approach is the most logical choice. This not only applies to internal investigations, but to law enforcement as a whole.

All police departments need some type of policy concerning the investigation of internal and external complaints. However, a policy alone, without procedure, most often creates additional problems for a department. Developing a policy without clear direction or procedure helps to create an atmosphere of confusion among personnel within a department. The personnel will most likely not be sure of where they stand on particular issues and how they may be impacted by the results of an internal investigation.

The purpose of this research project was to review the available information on the subject of internal investigations and make an assessment as to the need for such a process. Ultimately, the information will assist in developing an internal investigation policy for the Alvin Community College Police Department. In reviewing this information, this research paper shows

need for police departments to have a clearly defined and defensible internal investigation process.

Through this research project, it is apparent that issues concerning the reactive and proactive approaches have been thoroughly researched and documented. The reactive approach does reflect a positive point, in that it deals with the punishment issue for misconduct and violation of policy and procedure. However, the primary problem with this approach is that it deals with the violation only after the violation has occurred. This creates greater difficulty for management to correct a problem after the fact, than to take action before something becomes a problem. The general concept and most widely used method today is a proactive approach. The reason for utilizing this approach is based on the concept of the need for recognizing the potential for a problem before it actually occurs. "The proactive approach is the only ethical choice, since to ignore misconduct is to condone it" (Rothlein, 1996).

Some of the published information on the subject of internal investigations on corruption and police misconduct appears to be based more on biased opinion than on factual data. While this type of information may be used in a research project, conclusions should be based more on factual data rather than just opinion.

The study of police procedures and misconduct violations will always be relevant to law enforcement because of changing trends through ethical and societal perception. This research project is relevant to law enforcement because it reflects a trend dating from the inception of the first American law enforcement departments to the present day law enforcement. The study depicts a few of the changes made in the law enforcement community over the last 150 years. Managers and leaders in law enforcement must understand that as long as society issues and public perceptions change, they too must be ready to adapt to those changes.

In conclusion, it is important for police departments to have policies and procedures that are aligned with current and legal issues. Anyone involved in an internal investigation will be the ones most affected by the investigation, regardless of the outcome.

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APPENDIX 2

APPENDIX 1

Complaint Policy Survey

1. Does your agency currently have a complaint policy? Yes _____ No _____

2. If no, what process is used when someone wishes to file a complaint?

3. If yes, does the policy stipulate specific penalties or sanctions for violations, depending on the severity of the complaint? Yes _____ No _____

4. What is the current size of your department? Sworn _____ Civilian _____

5. Agency Name: _____

APPENDIX 2

24 Agencies Surveyed

- ☒ Have complaint policies
- ☒ No complaint policies
- ☐ Have specific penalty violation category

