

**THE BILL BLACKWOOD  
LAW ENFORCEMENT MANAGEMENT INSTITUTE  
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***POLICE DISCIPLINE***  
Establishing Internal Affairs Units  
in Small Law Enforcement Agencies

A Policy Research Project  
Submitted in Partial Fulfillment  
of the Requirements for the Professional Designation  
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## TABLE OF CONTENTS

Section	Page
Abstract	
Introduction	1
Historical, Legal or Theoretical Context	2
Review of Literature or Practice	5
Discussion of Relevant Issues	8
Conclusions / Recommendations	11
Bibliography	
Appendices	

## ABSTRACT

Since the implementation of established law enforcement, corruption and discipline problems, have played a significant role in the agency's ability to serve those whom they are sworn to protect. All too often, due partly to a history of poor wages, but also to some individuals' inability to control an awesome power bestowed upon them, Police Officers lose sight of the very reason they entered into the profession. It is that which makes it necessary for policies, rules and laws to be developed which govern the conduct of Law Enforcement Officers, much the same as the laws are developed to control the activities of the people. Whether created by the agency itself or as the result of court rulings, agency administrators must have absolute control over those under their command.

Maintaining the integrity of a law enforcement agency is as critical to that agency's success as an efficient and effective patrol force, most commonly referred to as the backbone of an agency. Toward that end, it is vitally important that all law enforcement agencies have either a specialized unit or individual who oversees the adherence to the rules and regulations promulgated by the agency Administrator, as well as those established by the agency's governing body, i.e. City Council or Commissioner's Court. In the absence of appropriate personnel to allow for the designation of a separate unit, then a single individual should be assigned to the task of investigating complaints against police personnel to ensure that departmental integrity and discipline are maintained.

The purpose of this project is to identify problem areas prone to law enforcement, outline methods and strategies to avoid and overcome those problems and provide model policies which address both a Code of Conduct and Discipline/Complaints Against Police Personnel.

The methods used for this research include historical writings and the interview of successful Police Administrators.

## INTRODUCTION

The purpose of this project will be to identify the needs and to formulate a plan for the development and implementation of an Internal Affairs Unit or the assignment of a specific investigator in the smaller law enforcement agency. Because professionalism, ethics, integrity and accountability should be held the same standards, regardless of the size of the agency, model policies for a Code of Conduct and Discipline/ Complaints Against Police Personnel will be included.

Investigations of misconduct complaints made against your officers are some of the most difficult and sensitive investigations your department will ever have to do. You must carefully balance a thorough investigation with one that recognizes the officer's rights. How do you do that in today's society of police mistrust and civilian review boards ?

The internal affairs function is important for the maintenance of professional conduct in a law enforcement agency. The integrity of the agency depends on the personal integrity and discipline of each employee. To a large degree, the public image of the agency is determined by the quality of the internal affairs function in responding to allegations of misconduct by the agency or its employees. A point made by an instructor in a Police Ethics & Integrity class that I attended in June of 1997 pretty well sums up that point;

***“ There is NO Right Way to do a Wrong Thing.” (Dodson)***

While larger agencies may have a specialized organizational component, usually as part of the Chief's office, smaller agencies rarely have the luxury of establishing a specialized unit. However, the internal affairs function should be considered just as important a part of any law enforcement agency, even though investigations may have to be assigned to individual investigators or even be conducted by the chief executive officer.

Agencies having an internal affairs function consistent with known and accepted standards will have the capability to respond appropriately to allegations of misfeasance, malfeasance and nonfeasance by employees. Complaints about the agency's response to community needs can also be thoroughly addressed, thereby instilling public confidence in the law enforcement agency. This should be a priority issue for all police personnel, irrespective of the rank or office each individual may hold.

There are many sources from which ideas can be obtained to assist in the formulation of policies regarding Police Discipline and Complaints Against Police Personnel. From other agency policies to leading law enforcement publications to established case law, this project is intended to assist those agencies who have not yet established a sound internal investigation policy.

### **Historical, Legal or Theoretical Context**

From the Baltimore election frauds of 1875 to the beating of Rodney King in 1991, Americans have followed the misdeeds of their police with a complex mixture of disgust, fear and prurient pleasure. From the Lexow Committee of 1894 to the Mollen Commission in 1993, scholars, administrators and concerned citizens have produced suggestions for understanding, detecting, punishing and preventing police misconduct (Kappeler, pp.xiii). One of the more notable cases, no doubt, was the Rodney King beating which took place in Los Angeles, California in 1991. From that incident was born the Christopher Commission, a civilian review group designed to examine police brutality inside the Los Angeles Police Department, its cause and effect. In that examination, the commission discovered customs and practices that seemed to not only condone, but actually promoted racism, training and recruitment practices that carried into new generations of officers and an inadequate complaint procedure.

While it may not fit the description of a small law enforcement agency, the New York City Police Department is another agency which has had to overcome tremendous odds and has played an important role in the need for police agencies, of all sizes and types, to establish both departmental discipline policies and the Internal Affairs function. Though new and differing problems occur daily, this is an agency where police corruption is repetitive and cyclical and seems to produce other high profile cases. From scandal of the 1950's to Frank Serpico in the 1970's and Michael Dowd in the 1990's.

When you read the story of Frank Serpico, you may draw the conclusion that this was police corruption at its worst. Involving police personnel from the lowest ranked patrol officer to those holding administrative positions, one concludes that it could not get any worse than this, policemen being paid for the protection of drug dealers or to eliminate competition.

Incomprehensible to most at the time, the arranged shooting of Detective Frank Serpico only added to the horror and disbelief. Sadly, this was being perpetrated by cops for the sake of protecting the "dirty" side of their world, that side which they could not afford to have exposed.

In the late 1980's and early 90's comes the story of Michael Dowd, perhaps one of the worst individuals in recent history to have had the honor and distinction of wearing a badge. Beginning his escapades by stealing stacks of \$ 100 dollar bills at drug busts, Dowd soon developed an elaborate system which netted him upwards of \$ 15,000 dollars per week and had him dubbed as the kingpin of the "Losers Club," a band of dirty cops who eventually began selling stolen cocaine to kids on Long Island. One man, IAD Investigator Joseph Trimboli, tried to bring a halt to the Dowd empire for over five years. However, Trimboli received no assistance from police administrators who were more worried that another scandal would only damage the department image even more.

Because of these continuing trends, the NYPD has undergone structural changes aimed at bringing organizational integrity to the forefront. Following investigative reports from both the Knapp and Mollen Commissions, Police Commissioner William Bratton launched a program to redesign the department's organizational system. In 1994, the Cultural Diagnostic found that high level concern about avoiding scandal and criticism had created a culture of organizational fear, self protection, secrecy and exclusion - which existed alongside continuing, everyday heroic action by individual officers. As the Mollen Commission noted, this breeds cynicism and undermines morale (The Police Chief, pp.30-33).

No agency is immune to the occurrences which seem to plague the NYPD. This is inclusive of agencies right here in the State of Texas. The Dallas Police Department and other metro agencies have experienced their own trials of police mis-conduct involving everything from officers operating police vehicles while intoxicated to those attempting to arrange a murder for hire plot. Regardless of the size, one should always remember that the image of the department depends on the personal integrity and discipline of all Departmental employees. It is only through the development and implementation of policies and procedures that an agency administrator can begin this process. At the same time however, clearly defined policies of conduct and discipline must be developed and disseminated to agency personnel which clearly define that conduct which will not be tolerated, but also address measures that will be taken when those policies are violated by any member of that department. The citizenry expects their police not only to enforce the law, but to act as moral exemplars, to provide by their own behavior a model for the law abiding citizen (Kappeler, pp.xiii). The most distinctive feature of policing, perhaps the defining feature, is its authority and its monopoly on the legitimate use of force or threat of force. Brutality, coercion and theft all depend on the abuse of police authority.

Policies which incorporate and adhere to established case law that specifically addresses the internal investigation process will help to either avoid or successfully conclude civil litigation issues when employees are disciplined. Cases such as Garrity v. New Jersey, 385 US 493, Gardner v. Broderick, 392 US 273 and Edmonds v. McNeal, 596 S.W.2d 403, are landmark decisions which if followed, have allowed many agencies to be successful in their own internal investigative process and litigation that followed.

Garrity v. New Jersey and Gardner v. Broderick actually seem to intertwine with one another. In *Garrity*, the United States Supreme Court ruled that an employee's response during an internal investigation could not be used against him in a subsequent criminal proceeding. In *Gardner*, the court ruled the employee's 5<sup>th</sup> Amendment Right of refusal to answer on the grounds of self incrimination did not apply to internal, administrative investigations. *Edmonds* created the standard that proof beyond a reasonable doubt or a preponderance of the evidence is not required in administrative investigations. This case lowered the bar on the "standard of proof" to say that disciplinary action will be based upon "substantial evidence" or that which a reasonable mind might accept as adequate to support a conclusion.

### **Review of Literature or Practice**

The implementation of department wide accountability is perhaps the most key element in establishing an internal affairs process. Some Police Chiefs even like to refer to it as providing each one of their employees with ownership in the department, thus instilling the belief that if they cause harm to the department, they cause harm to themselves.

As a result of the Cultural Diagnostic performed in 1994, Commissioner Bratton and Mayor Rudolph Giuliani unveiled a policy change with regard to the Internal Affairs operations.



A *policy of inclusion* was initiated to force supervisory personnel to become more involved in the disciplinary process of the department. In sharp contrast to the past practice of intense secrecy surrounding internal affairs matters, the department is spreading accountability and responsibility for integrity issues wider than ever before, making its command staff and its precinct commanders integral parts and key allies of its integrity assurance system. In a July 1995 gathering of internal affairs specialists from across the United States and around the world, Commissioner Bratton said *"In the days when corruption in the department was pervasive and systemic, maybe it made sense to exclude commanders from any knowledge of on-going investigations in their precincts."* Bratton further noted *"It doesn't make sense anymore. It's time for an anti-corruption strategy based not on exclusion and secrecy, but on inclusion, shared responsibility and trust."* (The Police Chief, pp.30-33).

It is unknown whether or not these statements contributed to current philosophies of what is now referred to as providing ownership in the department, but it is certainly along that same theory. The secrecy which has surrounded most internal affairs operations has been the biggest contributor to the lack of distrust held by the rank and file. So typical was the response of police personnel from all levels to say that IAD investigations were simply subjective in nature, not objective and not taking into accountability the officer's past work record or the circumstance in which he may have been involved at the time.

Based upon these internal complaints, many agencies have gone to systems of using charts, tables, graphs or automated files to show how investigations follow an established plan and discipline is administered fairly. The Wheaton, Illinois Police Department is one such agency. In the table attached (*See Appendix A*), readers can easily review nine different categories which are taken under

consideration in the disciplinary review process. The categories include the event itself, whether it was done with intent or without, if the employee was actually at fault, if damage has already occurred, is there risk of future damage, employee attitude during incident review, employee history, any special circumstances and what action, if any, will be taken.

While most agencies labeled as medium or large sized departments in the State of Texas seem to have adequate policies in place, there is some variance in the disciplinary measures. In most agencies, the Internal Affairs Unit investigates complaints and prepares written reports which are then submitted to the agency executive for the determination of disciplinary action. In general, the Chief or other executive makes the decision for such action and the decision is final, with the exception of standard routes of appeal through the City Manager. However, agencies such as the Dallas Police Department have civilian review boards in place that the officer can appeal the disciplinary measure to and, quite often, get the decision reversed.

Such a procedure often ties the hands of the agency administrator and prohibits him from being able to effectively control police mis-conduct or corruption. As long as an effective, efficient investigative system is in place and has been utilized, the word of the agency administrator should be final. Review boards are typically comprised of citizens from the community who have no experience or background in the law enforcement profession. Therefore, to have them review and routinely reverse decisions made by a police administrator can cause an agency to suffer, by tearing at the very fabric that the internal investigation process is supposed to represent. So long as police officers go to work each day, prepared to do their "job" and nothing more, the Internal Affairs process is nothing to be feared. In contrast however, any officer leaning toward the propensity for mis-conduct should have the fear instilled in him that he could lose his job or, even worse, be arrested.

## Discussion of Relevant Issues

The issues I plan to discuss include, but are not necessarily limited to:

- ◆ Establishment of Policies and Procedures
- ◆ Contributing Factor to Police Mis-conduct/Punishment which is fair and equitable
- ◆ Confidentiality of Investigations
- ◆ Operating costs of an Internal Affairs Unit
- ◆ Administrative Control of the Internal Affairs Unit

At a conference in 1994, the Chief Legal Advisor of the Texas Department of Public Safety said that there is probably no more difficult area of management to deal with than personnel relations and discipline. First, he said, it is a volatile and emotional area. Second, there is a lot of developing law. Third, unlike most other employees, police officers have enough knowledge of the law to make them keenly aware of what can and cannot be done, with regard to their employment relationship. Peace Officers in Texas are generally well schooled and educated, as well as being an intelligent group of individuals who are aware of the parameters within which they can act. When they do deviate from those parameters, that is when discipline becomes appropriate ( West, pp.1).

The same points made by Mr. West at the Chief's Executive Conference in 1994 remain true today. Because of that knowledge identified by West, police officers routinely believe that they can apply personal interpretations of the rules and regulations to their own given set of circumstances and mistakenly or deliberately try and justify their actions. Clearly written policies, which leave no doubt as to the ramifications of unlawful or improper conduct, will help to dispel such beliefs. The implementation of policy alone however, is not enough. The administrator who has the foresight to develop such policies must also be willing to follow through with fair and equitable disciplinary measures when it becomes clear those policies have been violated.

All too often, those guilty of the type of atrocities committed by people like Michael Dowd, attribute their malfeasance to a history of poor wages and sometimes a lack of discipline, failing to admit their own individual weaknesses and propensity to become involved in such activity because of nothing more than greed. I submit however, that these are lame excuses which are clearly indicative of the lack of one's self-integrity. Police Officers are administered an Oath of Office upon being sworn in which, most likely, reads very similar from state to state and charges that officer with the responsibility to uphold the law, regardless of which legislative body enacted the law. Furthermore, I would also offer that if every police officer went to work each day with the intent to do no more than is required by the Law Enforcement Officer's Code of Ethics, police corruption in itself would be dramatically decreased if not completely stopped.

One of the biggest mistakes that any police administrator can make is to believe that merely, because of the size of his own agency, he is immune to the widely publicized occurrences of the police departments in New York City, Los Angeles, New Orleans, Philadelphia, Miami or just about any other metropolitan department one may care to examine. Corruption and discipline problems can arise anywhere, at anytime if the checks and balances are not put into place at the earliest possible time. One of the most efficient and effective ways to accomplish this is the establishment of an Internal Affairs Unit, Professional Standards Unit or the Inspectional Services Unit as it is known in many departments. In my own agency, the City of Allen Police Department, we refer to it specifically as the Inspectional Services Unit because of the multiple tasks assigned to personnel there assigned. These tasks include internal affairs investigations, background investigations as well as the research and development of new policies and procedures. In the latter, ISU personnel are required to solicit policy information from other agencies equivalent to or larger than the Allen Police Department to assist in the formulation of policies that will meet the demands of an agency that has

more than doubled in size within the last two years. The diversity of an established Internal Affairs Units provides many benefits to a police administrator. Because these personnel are assigned strictly to that function, they can focus their attention on the primary area so critical to the success of today's law enforcement agency, personnel.

The investigation of complaints against police personnel can do more to protect the agency's reputation with the community they serve by providing assurances that officer misconduct will not be tolerated. At the same time, departmental personnel need to be reassured that the main focus of the Internal Affairs Division is the protection of the department and its personnel. Thus information regarding any internal investigation should be highly guarded and the confidentiality maintained by anyone who has knowledge of such. Toward that end, departmental policies should include statements, that apply to all personnel, regarding the confidentiality of these investigations as well as sanctions that will be taken against those who violate that trust. In addition, an Administrative/Investigative Warning form (*See Appendix B*), sometimes referred to as a *Garrity* Warning, should be administered to all employees interviewed as a result of that investigation. That form, like the policy, should clearly order that employee not to make known or discuss the case with anyone outside their immediate chain of command, investigators assigned to the case, their attorney or immediate family.

The operational costs of an Internal Affairs Unit can be maintained at minimal levels. Unless an agency is already severely understaffed, an agency administrator can easily reassign existing personnel to that function. Office space can be arranged in most any place that will allow the investigator privacy in which to interview persons involved with the investigation. Then, probably of least importance is the assignment of a vehicle. Where many departments are restricted by budgetary constraints and unable to purchase additional vehicles, IAD personnel can always be assigned to an

older vehicle which has been replaced in the patrol fleet, a practice we utilize in my own agency.

Finally, having the knowledge of where an administrator wants to lead his agency , the Internal Affairs investigators conduct the research necessary to develop sound departmental policies based upon well founded principles of law enforcement. In an effort to be most effective in this as well as the investigative process, the Internal Affairs Unit should remain under the immediate direction and control of the chief executive. By doing so, the IAD investigator reports only to the Chief of Police and can maintain complete autonomy over the investigation, regardless of the offender's rank.

### **Conclusion / Recommendations**

It is the police executive's responsibility to first prevent conduct that might warrant complaints and to ensure that all such complaints receive appropriate, timely attention and disposition. Department administrators with sufficient personnel can afford to detail people to internal affairs units or divisions that, with some oversight and direction, deal solely with charges of misconduct. Smaller agencies, however, often do not have the resources to dedicate officers exclusively to internal affairs cases and must handle these delicate matters differently. (Courtney, Kevin M., pp. 12-15).

Furthermore, it should be the policy of any law enforcement agency that all allegations of misconduct be appropriately investigated and promptly adjudicated. All reports or accusations made against department members or the agency in general, from any source, should be thoroughly and completely investigated to ensure the integrity of the agency and its members remains intact. One should keep in mind however, that state and federal laws, departmental labor contracts and your department's rules and regulations may govern certain issues. (Quinlan, pp. vii).

Both the model policy developed by the IACP and CALEA have long established the necessity of having an effective and efficient method to receive and process all complaints of misconduct against law enforcement personnel. When scandal erupts, an agency's failure to properly accept and document the handling of complaints is not only potentially embarrassing , but also costly, since the impact of civil litigation in this area is substantial. (Rothlein and Lober, pp. 37).

Executives must not overlook the impact of the internal affairs process on the morale of the department and the good will of the citizenry. Officers working in smaller organizations usually have little understanding of the role and value of the internal affairs process simply because they have never been named in a complaint. It is important therefore, for the chief executive to explain the internal affairs process to the members of the department and the community to alleviate some of the mystery when complaints are filed. (Courtney, pp. 14)

This can be best achieved by the development and implementation of sound departmental policies which establish a Code of Conduct as well as procedures to be followed in the Discipline/Complaints Against Police Personnel. These policies should then be disseminated to all departmental personnel who would also receive thorough training to ensure their familiarity and serve to dispel the so called mystery of the process.

While it is not impossible for members of the public to obtain copies of departmental policy and procedure, creating a level of understanding within the community is probably better served by use of an informational brochure, (*See Appendix C*). Such a publication should address the executive's position on police misconduct, clearly advise the citizenry what steps are necessary to file a complaint, but also contain a warning to those who may have a propensity to file false claims against law enforcement personnel. Agency executives must be as willing to pursue those who make false accusations as they are discipline personnel under their immediate command.



Toward that end, I have included copies of the latest editions of General Order 200 - the Code of Conduct (*Appendix D*) and General Order 300 - Discipline / Complaints Against Police Personnel (*Appendix E*) from the Allen Police Department's Rules and Regulations Manual. While the Allen Police Department is not an accredited agency, these and all issued policies are written in accordance with the Commission on Accreditation of Law Enforcement Agencies (CALEA). Also contained, as integral parts of the Code of Conduct, is an adapted version of the Texas Department of Public Safety's *Ten General Orders*, the IACP Canons of Police Ethics and the Law Enforcement Officer's Code of Ethics. These policies are also reviewed and approved by the Department's Police Legal Advisor, prior to implementation, to ensure the requirements meet the most recent court decisions.

Also included as integral parts of an internal investigation file are the Investigative Worksheet (*Appendix F*) used to track the daily progress of the investigation, the Personnel Complaint Control Sheet (*Appendix G*) which is utilized as an all inclusive summarization of the case and a Personnel Incident Form (*Appendix H*) used to document complaints commonly referred to as level II violations which would not necessitate full internal investigations.



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