

FA - Rgw ABL5333
8/2/99 627

THE BILL BLACKWOOD
LAW ENFORCEMENT MANAGEMENT INSTITUTE OF TEXAS

Before Final Judgment

A Policy Research Project
Submitted in Partial Fulfillment
of the Requirements for the Professional Designation
Graduate, Management Institute

Notice: This material may be protected
by copyright law (Title 17 U. S. Code).

by

Captain Sally B. Nicholas

Texas Department of Public Safety
Austin, Texas
June 1999

RESERVE

#627

ABSTRACT

The imposition of disciplinary measures, both positive and punitive, is critical to the success of a police agency. The Texas Department of Public Safety (DPS) management is active in both measures. What manner of 'active' is the key question.

Is DPS proactive or reactive? Reacting to problematic situations when there were prior warning signs is, in itself, problematic. Being ever vigilant of warning signals indicating officer behavioral problems before that behavior requires formal punitive discipline is much more desirable both for the officer and the agency.

DPS is in a constant proactive state when addressing those services that achieve the agency's goals; however, somewhere along the way we forgot the importance of maintaining not only the physical abilities of our officers but their mental faculties as well. If we don't perform maintenance on our patrol vehicles, they won't perform well, will be unreliable and could even take a life. We take a proactive stance to our vehicle's need of repair, are we as vigilant with our officers? I would submit that we would tip the scale towards the reactive.

By establishing methods to become increasingly proactive, the DPS could meet agency objectives more efficiently, raise officer productivity and morale and reduce the number and severity of complaints against unethical behavior by our officers.

RESERVE

TABLE OF CONTENTS

SECTION	PAGE
Abstract	
Introduction	1
Historical and Legal Context	2
Review of Literature and Practice	5
Discussion of Relevant Issues	8
Conclusions and Recommendations	11
Bibliography	

RESERVE

BEFORE FINAL JUDGMENT

Introduction

The necessity to impose punitive discipline is quite possibly the least pleasant task any supervisor must perform, yet it could very well be the most important in terms of an officer's career, his/her personal success and safety as well as the internal and external reputation of both the officer and the agency. Career ending discipline has many times been the result of variables ranging from manageable stress factors to life threatening traumatic events. This paper will examine the Texas Department of Public Safety's (DPS) current procedures regarding discipline. Emphasis will be on the reasons behind the need for positive and/or punitive discipline accompanied by suggestions on ways to proactively identify and curtail those unethical activities requiring punitive discipline.

While ethical problems plague every profession, police agencies need be ever aware of and on guard against such behavior. Police officers are held to a higher standard of behavior because they are charged with policing themselves. "What may seem acceptable behavior in other professions is considered unethical for a police officer." (Brooks, 1998, 19)

When questioning the need for disciplinary procedures resulting from an officers unethical behavior, the International Association of Chiefs of Police (IACP) proclaim that, "Nothing is more devastating to individual departments and our entire profession than uncovered scandals or discovered acts of officer misconduct and unethical behavior" adding "a single incident of unethical behavior can take you from one of the most admired agencies to one of the least respected, literally overnight." (IACP Ethics Training Subcommittee, 1998, 14) This brings to mind vivid recollections of the horrendous effect events such as the Rodney King incident, Waco, and the highly publicized testimony of LAPD

Detective Mark Furhman had on law enforcement agencies and officers across the nation. Unethical behavior by a police officer almost always makes front page news and, while the accused officer may be thousands of miles away and work for an entirely separate agency, his/her actions can drastically affect every officer and agency in the law enforcement profession. Successful law enforcement agencies have strong management practices which are directed at dealing with officer misconduct post haste to assure the public of its commitment to the very purpose of its existence.

Historical and Legal Context

To support this commitment and practice by law enforcement agencies, the Supreme Court ruled in *Gilbert v Homar* that:

"...if a member of a police department commits an illegal act and is charged or arrested for a felony offense, it is permissible for the chief to impose an immediate suspension without pay, followed by a prompt post-suspension process that provides the officer with notice of the charges, an explanation of the evidence supporting the charges and an opportunity to be heard. This allows the chief to respond quickly to the demand for integrity within police departments and their officers and to demonstrate to the public a stern response to the criminal acts of an officer" (Higginbotham, 1997, 12)

thereby putting the stamp of approval on disciplinary actions by police agencies. Law Enforcement agencies across the country have suffered and continue to suffer the loss of the public trust and have had their credibility, effectiveness and integrity questioned due to the actions of misconduct by police officers. In order to assist law enforcement agencies to better police themselves, an organization was formed entitled The Commission on Accreditation for Law Enforcement Agencies. In their Standards Manual 26.1.3 a written directive establishes a disciplinary system to include:

- procedures and criteria for rewarding employees, including letters of commendation, compensation, awards for merit or valor;
- procedures and criteria for using training as a function of discipline;

- procedures and criteria for using counseling as a function of discipline; and
- procedures and criteria for punitive actions in the interest of discipline, including oral reprimands, written reprimands, loss of leave, suspension, demotion and dismissal.
(Commission on Accreditation for Law Enforcement Agencies, 1994, 26-1)

There is no doubt that disciplinary policies and procedures are warranted in the law enforcement profession. But, could there be a better way to curtail the misbehavior warranting that discipline? Is DPS doing all it can to be proactive to aberrant behavior instead of repeatedly reactive?

The DPS publishes its Code of Conduct, the IACP Code and Canons of Ethics, the Standards of Conduct of State Officers and Employees as found in Vernon Civil Statutes Article 6252-9b and Civic Responsibilities in a general manual which is made readily available to all DPS members. It is heavily dipped in policy and principle.

In addition to the published conduct requirements, DPS has what is called the Ten General Orders. These Orders are inclusive with those mentioned previously and strict adherence is mandated. General Orders number eight and number nine provide members the opportunity to voice their opinions and/or complaints or seek general relief for problems concerning themselves or their position. Those orders are:

- #8 To take up matters affecting me and my position with my immediate superior and through proper channels.
- #9 To submit through proper channels constructive suggestions for the betterment of the Department and its service.

First line supervisors of the DPS are charged with the informal discipline of their subordinates through verbal counseling, various forms of written counseling and re-training. Formal discipline most often follows a formal written allegation of misconduct received from various sources. Some complaints are relegated to administrative inquiries which are

generally less severe in nature. All DPS complaints and inquiries are properly investigated and include recommendations through the chain of command.

First line supervisory recommendations are crucial and of paramount importance in the disciplinary process. The first line supervisor is often the most knowledgeable of the accused and can determine what type discipline will achieve the desired results for the agency and the officer versus what will cause more problems or irreparable harm. A diligent effort is made to ensure a factual, detailed, thorough and unbiased investigation was conducted to support the resulting equitable, fair and impartial disciplinary action insuring its survival of any grievances by the affected employee and avoiding civil litigation. After a formal complaint investigation has been completed it is thoroughly reviewed and recommendations for the classification of allegations, and discipline, if warranted, is recommended by every link in the chain of command. The final classification of the allegations, disciplinary action decisions and the implementation of such are the responsibility of the Division Chief with the exception of discharges, which are forwarded to the Director for his review.

Punitive discipline is determined based on the nature and severity of a formal complaint and only recommended for those allegations which are classified as sustained. With the focus on formal complaints, DPS specifies a range of punishment including formal written reprimands, a probationary period, time off without pay, a service or location transfer, suspension or discharge. Other disciplinary action may be considered if conditions warrant. Once the final decision has been made reference the classification and assigned discipline, there are grievance procedures to protect the rights of the accused.

The following statistics from the DPS Internal Affairs Unit indicate that for a three year period, the number of complaints against DPS employees has remained relatively steady as shown in the following table:

Personnel Complaints and Administrative Inquiries (by Year)		
1997	1996	1995
452	415	445

Discharge of firearms cases not included.

Taking into consideration that during this three year time period there was an increase in the number of commissioned officers and other personnel at DPS, a conclusion can still be reached, however arguable, that these numbers are too high. Statistics are not available as to the actual number of complaints filed against commissioned personnel versus those filed against other members; however, the commander of the DPS Internal Affairs Unit states that the vast majority are filed on commissioned officers. Accepting that the very nature of police work places officers in a position to be the recipients of more complaints than any other profession should not deter the mission to decrease the number of valid complaints.

Review of Literature and Practice

As shown, the DPS most assuredly has established standards for ethical behavior and disciplinary procedures for those who behave unethically. However, the IACP advises that "the ultimate solution for officer misconduct is for ethics and integrity to become ingrained throughout every aspect of an organization, with constant reinforcement, whether through training or leading by example." and recommends that "integrity and ethics training occur during police recruit training and throughout an individual's police career." (IACP Ethics Training Subcommittee, 1998, 20,22) DPS officers receive extensive training and require certification in such areas as firearms, intoxilyzer and radar. We enhance their physical abilities and teach them to be tactically proficient, but do we prepare them mentally? Statistics

and surveys show that unethical behavior is on the rise and yet how much effort do we put into training officers in this area?

Lets examine the amount of emphasis the DPS places on ethics training. DPS began to address these issues, en mass, in 1989 when it entered into a contract with the Texas Commission on Human Rights and has since evolved to the following:

RECRUITS

*Ethics and Professionalism	8 Hours	*1995 to Present
*Multi-culturalism and Human Relations	12 Hours	*1995 to Present
*Use (and Abuse) of Force	13 Hours	*1995 to Present

ALL COMMISSIONED AND NON-COMMISSIONED PERSONNEL

Cultural Diversity	4 Hours	1989 & 1997
Understanding Diversity	4 Hours	1991
Ethics	3 Hours	1993

FIRST LINE SUPERVISORS

*Multi-culturalism	10-12 Hours	Upon Promotion
*Ethics	10-12 Hours	Upon Promotion
*Communication	10-12 Hours	Upon Promotion

*State Mandated
(Warren, 1998)

"Recruits: Officers new to the profession must discuss the rules and regulations of an agency, while coming to understand the power of the police culture. Recruits should be armed with decision-making tools so they are prepared to make intelligent / ethical choices." (IACP Ethics Training Subcommittee, 1998, 20) At least since 1977, DPS provided recruits with various levels of ethics training; however, in 1995 it became State mandated to provide ethics training to recruits that covers gratuities, conflict of interest, abuse of force, abuse of authority,

RESERVE

corruption, discretion and the public trust, cultural diversity, off duty ethics and personal values. DPS has complied, admirably.

Commissioned personnel or "Field training officers: FTO's are the most important link in developing a strong ethical foundation and culture within a police organization. FTO's must be schooled in the adult learning process so they are equipped to assist their trainees in learning to behave ethically." (IACP Ethics Training Subcommittee, 1998, 20) According to the statistical information, all commissioned officers have received some type of ethics training since 1977 at least once and most probably twice. The last time any commissioned officer received any ethics training, barring extenuating circumstances and promotions, was at least five years ago. I submit this is woefully inadequate. Continuous training is mandatory to accomplish a decrease in the number and severity of complaints of unethical behavior, secure the favorable reputation of the organization and help prepare officers to make the right choices when faced with those ethical challenges.

"Supervisory personnel: Supervisors and first-line managers within a police department must understand their role in the development and maintenance of a healthy ethical climate in an agency. This level of the organization, more than any other, must be constantly inundated with ethical situational training and scrutinized for indications of unethical behavior or dilemmas." (IACP Ethics Training Subcommittee, 1998, 20) With the exception of any ethical training received from attending specialized schools in management or further promotions, it is possible that a first line DPS supervisor may not have received any formalized training in ethics for many years. This cannot be acceptable, for one of the most important roles a first line supervisor plays is role model and mentor. Supervisors must not be allowed to fall through the cracks. For their own ethical survival as well as being able to recognize acts of unethical behavior on the part of their officers before such acts result in formal disciplinary actions or

termination, they must be well versed in ethical standards. Ethics training will enhance the ability to proactively recognize and derail potential problems.

Discussion of Relevant Issues

While training is not the sole answer to an agency's problems with unethical behavior by officers or even in decreasing the number of complaints requiring disciplinary action, it is most assuredly in the right direction. Most aptly put:

"In order to have a viable and effective integrity and ethics impact within a police organization, it is critical that an integrity and ethics emphasis be infused into an agency's policy and procedure, training, supervision and accountability systems. This integrity and ethics infusion should have generic and specific applications. It should be generic in that certain integrity and ethics principles are applicable to all personnel in every assignment and at every level within the agency. It should be specific in that there are unique integrity and ethics applications to each assignment and position in a police agency." (IACP Ethics Training Subcommittee, 1998, 24)

Another means of reducing the number of complaints against officers would be to develop an electronic tracking system for the continuous monitoring of officer behavior. This would allow for the early detection of potential problems. An analysis of behavioral trends could be most effective in deterring problem behavior before it becomes systemic.

While tracking officer behavior through complaints and investigations is beneficial, it is still reactive. "There is a relatively new concept, the 'Early Warning System', which is a non-disciplinary management system for identifying potential problem officers. The 'Early Warning System' is a computer database which tracks individual officers based on reportable elements of behavior." (Oliver, 1994, 182) If properly implemented, a tracking system, such as the "Early Warning System", could aid in decreasing the number of complaints, reduce stress, improve morale, identify training needs, reduce corruption and increase officer retention.

RESERVE

A tracking system would require developing a software application to fit DPS needs. A data base would be required to house the information and allow access to only authorized personnel.

The software application should include reportable 'elements' of officer behavior.

"Reportable elements include, but are not limited to the following:

- Discharge of a firearm, whether accidental or duty related;
- Excessive use of force;
- Any motor vehicle damage
- Any loss of equipment;
- "Injured on duty" reports;
- Sick leave in excess of 5 days, or a regular pattern of using one or two sick leave days over long periods;
- All complaints, including supervisory reprimands and other disciplinary actions."

"Other elements may include frequent "resisting arrest" reports, numerous transfers, marginal performance ratings, repeated financial difficulties and excessive pursuits. Reportable elements do not have to be departmental violations, but behavior that may indicate some type of problem" such as experiencing marital problems or a death in the family. (Oliver, 1994, 182)

Singular events, as described above in elements, may not indicate unethical or problematic behavior on the part of an officer. However, involvement in traumatic events or recurring events over a short period of time would indicate a behavioral problem and allow for early supervisory intervention. This early intervention could avert the officer from becoming a disciplinary problem which, if not detected, could ultimately result in his/her termination.

An analysis of the elements will determine if there is a problem or if it is simply based on the nature of the officer's specific assignment. Circumstances revealed from the analysis should sufficiently sift what is acceptable behavior from that which may indicate the existence of a problem. Once a problem has been identified, the supervisor should evaluate the problem and make decisions on resolution, which could include training, counseling, reassignment,

RESERVE

physical exams to include substance abuse or psychological testing. All intervention should be documented in the data base for future reference, taking great care to guard against violating a persons right to privacy by using the tracking system as a management tool only. After corrective measures have been taken, the supervisor should monitor the officer's activities closely for signs of improvement or deterioration and review his/her development periodically.

Since officer behavior, or misbehavior, is the source behind the need for discipline, and since the brain is the organ that controls our thought processes and formulates our motor impulses, therefore controlling our behavior, it would stand to reason that we pay particular attention to our officer's mental state. Though my reason for addressing officer behavior is narrowly directed at reducing complaints and the need for formal discipline, make no mistake that an officer's mental or psychological state should be recognized as being of the utmost importance for many more reasons than I will address here. Any way you look at it, psychological fitness is critical to effective police performance.

In 1996 the DPS began a Peer Support Group to intervene in critical or severely stressful situations. (Ford, 1998) The purpose of this group is to minimize the amount of stress and/or trauma and alleviate the immediate emotional and psychological reactions to traumatic events. They provide a service not only to commissioned officers but reach out to include their families and other victims when possible. Although the program is still in its infancy stage, it has responded to numerous calls and boasts of much success.

Earlier I discussed the need for supervisory intervention as a result of early warning signs. This intervention could be in the form of peer support. These early warning signs can signify that an officer is suffering mental or emotional stress which is revealed in his/her behavior. He/she may not even realize the connection or be aware of a change in their own behavior. Post Traumatic Stress Disorder is caused by traumatic events or stressful situations,

either singularly or continuously, which can, if left untreated, be the primary cause of inappropriate behavior resulting in the imposition of discipline.

In today's world, there are innumerable negative influences which affect our behavior. Intervention from a professional psychologist or intervention from a peer support group could effectively counteract unethical behavior, bringing the officer back into focus, successfully modify his behavior, eliminate complaints and minimize the need for punitive discipline. I strongly suggest the DPS consider expanding the responsibility of our peer support group to include proactive intervention when behavioral trends indicate an officer is experiencing problems.

Conclusions and Recommendations

Upon review of the management control audit performed on the DPS by the Office of the State Auditor and after interviewing several persons involved in that audit, I want to comment on the idea of establishing a fixed discipline schedule. (Outon , Karakashian, 1998) "Some agencies have a set 'bail schedule' listing specific disciplinary actions for particular violations" (Arnold, 1998, 11) DPS does not utilize such a schedule. Some have the opinion that disciplinary decisions could be made less arbitrarily by the creation of a published discipline or 'bail' schedule. This schedule would establish a set punitive measure for specific infractions, leaving no doubt in the actor's mind as to what the punishment would be for the violation. While this may appear a prime solution for fair discipline, there are some shortfalls. Similar conduct should receive similar sanctions; however, circumstances such as aggravating and mitigating forces and the history of the officer's performance or behavior will ultimately affect the final disciplinary decision. In order to insure that all extenuating circumstances in each case does not fall through the cracks, the schedule would need to be exhaustingly extensive. Also, it would require an exceptions statement such as; 'variances may be

RESERVE

necessary and mandated at the discretion of the chief'. Such a statement would therefore invalidate the entire schedule.

All employees of the DPS take their investigative and classification responsibilities extremely serious and do an excellent job of being equitable, fair and impartial. There are very few complaints in this area and I make no recommendation for improvement.

Unethical behavior by police officers is most definitely destructive. Responding to that behavior is unpleasant, but extremely necessary. When we, as an agency, respond reactively, we have ultimately let our people down. Our most precious and valuable resources are those officers who place their lives in jeopardy to protect and defend all of us. Shouldn't management do all that is possible to recognize their silent sufferings and proactively respond? Punitive discipline is without a doubt warranted in many cases; however,

"Effective discipline is a positive process when its perceived purpose is to train or develop by instruction. Among the programs having an impact on discipline in a Law Enforcement Agency are selection, training, direction, supervision and accountability. These elements are interdependent and a weakness in any one is damaging to effective discipline." (Commission on Accreditation for Law Enforcement Agencies, 1994, 26-1)

Becoming proactive in terms of supportive discipline should be our goal before final judgment is required. I recommend the DPS take a more proactive approach by developing a tracking system to recognize the 'early warning signs', become immediately responsive to those signs and support a more active role by the DPS Peer Support Unit.

RESERVE

BIBLIOGRAPHY

Arnold, Jon. "Internal Affairs Investigations: The Supervisor's Role." Law Enforcement Bulletin. 67(1): 11-16. 1998 January.

Brooks, Michael E. "Police Ethics: Crisis in Law Enforcement." Law Enforcement Bulletin. 67(5): 19. 1998 May.

Ford, Wade, Lieutenant. Personal interview. 10 August 1998.

Higginbotham, Jeffrey, "Due-Process Requirements in Suspensions Without Pay." Police Chief. 64(11):12. 1997 November.

International Association of Chiefs of Police Ethics Training Subcommittee. "Ethics Training in Law Enforcement." Police Chief. 65(1): 14-24. 1998 January.

Karakashian, Chuck. Personal interview. 10 August 1998.

Oliver, Will. (Glenville State College) "The Early Warning System." Law and Order. v42. no9. p182 1994 September.

Outon, David, Captain. Personal interview. 11 August 1998.

Texas Department of Public Safety General Manual. Texas, USA, 07.52.01, p14, 1996 July.

The Commission on Accreditation for Law Enforcement Agencies, Inc. Standards for Law Enforcement Agencies, Fairfax, Virginia, 26-1&2, 1994 April.

Warren, Mark, Captain. Personal interview. 10 August 1998.

RESERVE