

**THE BILL BLACKWOOD
LAW ENFORCEMENT MANAGEMENT INSTITUTE OF TEXAS**

Internal Affairs Investigation

A Policy Research Project
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ABSTRACT

During the past decade, law enforcement in general has fallen from public favor and the public has the attitude that the police do not police themselves. Many examples exist, Rodney King, Randy Weaver, the Waco tragedy and so forth. These have added to the misconception that cops cover for cops. Comprehensive, consistent and timely Internal Affairs investigations into complaints may not change public opinion. But these investigations may identify an officer who is "At risk " to the public and allow the department to take the necessary corrective and/or disciplinary action. An investigation based on facts alone, will also protect the officer and department from unfounded or frivolous accusations.

This research was done primarily through review of existing policies from several agencies and laws such as *Garrity* and *Reverse Garrity*. These particular court decisions have been used as general guidelines to establish policy for internal affairs investigations. Law enforcement must keep it's own house clean and upon completion of this program, I will design an internal affairs policy suited for my department.

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Introduction

The purpose of this research project is to format an internal affairs policy protective to both the public and officer, that depends solely on the facts of the investigation. While it is not possible for one policy to be all things to all people, consistent and unbiased investigations will survive scrutiny and be, at least, acceptable to the public and department. Law enforcement, at all levels, has experienced a devastating period of time with regard to image. The officer who was once part of the community is now, in some areas, considered an outsider and not to be trusted. Some children are taught to fear the street cop and hold them in contempt. We, as peace officers, cannot change public opinion overnight. However, we can affect change by the continued use of a professional attitude and image that is conducive to re-establishing the “ Cop on the corner “ as a vital, productive and trusted part of the community. Community trust is only half the challenge. The remainder lies in establishing officer trust. Trust that the department will not side with the public or cave in to media pressure simply because they are the media. Trust that the department will do the right thing. A department’s credibility must be established from within before it can be recognized elsewhere. An effective internal affairs policy is a large part of that credibility. By review of the history of internal affairs and comparisons of policies used by other departments, I will put together a policy designed for my department and recommend implementation, to the Chief of Police.

Historical and Legal Context

“ Do the right thing,” is the first tenet and fundamental rule for internal affairs investigations. (Texas Department of Public Safety 1996). Since the concept of internal affairs units came into popular use in the 1950s, they have been held in varying degrees of fear, mistrust, scorn and contempt. Hitlers Gestapo was after all, an internal affairs’ unit. ****need cite here***

In the beginning implementation was haphazard and casual. For the most part, the units were used as Band-Aids to cover the growing number of complaints, primarily from minorities, of civil rights violations initiated by corrupt police officers. (Police Magazine May 1990 pp 11).

In New York City, a young police officer who was not working for internal affairs but refused to be party to the corruption in his borough, was shot in the face during a room entry. He had back up with him but they simple disappeared when he needed them. The officer survived and in 1970, testified before the Knappe Commission, who were at the time investigating corruption in the NYPD. A movie (Serpico), which has since become a classic with regard to police corruption and personal integrity, was made about that officer.

Margaret Linza wrote in the Temple Law Review (pp 89-125) that because of absent or unenthusiastic investigations into complaints of civil rights violations, the District Court of Philadelphia, in 1974, hit the Philadelphia Police Department with an injunction and further, fashioned specific relief to the complaint procedure.

The Supreme Court, reversed this decision and several other district courts in Rizzo v. Goode (1974) and denied injunctive relief under section 1983, against local police officials who failed to correct subordinate officers of civil rights violations. (***author 102-111).

In 1967, only 27 departments serving a population of 100,000 or more, had internal affairs units and civil suits against officers, departments and municipalities became the norm. In 1962, only one law suit was successful against a municipality. In 1982, 251 departments paid out one million dollars or more each, in punitive damages. By 1985, one million dollars as the average award. In 1996, 88,000 civil suits were filed. 50,000 were against law enforcement, who won 90% of the cases, but still lost 5000. At an average of one million dollars per award, administrators were forced to demand more stringent control of their officers. (Grant, 1996). Law enforcement continued to be mistrusted by a large section of society. Hiawatha Davis Jr., the chairman of the Denver Police Departments internal affairs section stated, “ My concern is that the fraternal commitment is so intense that police cannot clean their own house”. (Davis 8). Fortunately there were still those who realized that corrupt officers were exceptions and the vast majority of police officers were dedicated, honest, and hard working.

John Burpo, (1972) was among several researchers who noted a growing trend toward a “ Policemens Bill of Rights”, which listed specific procedures to be used in an internal affairs investigation. Several States adopted their own versions of this bill.

It took the Texas Legislators 22 years to pass a version of a Bill of Rights for Peace Officers.

This was done in 1994. (Need cite here *****)

During those years, law enforcement slowly came to the realization that these investigations were not going to go away and could in fact, be useful tools in establishing credibility within the community.

Modern administrators have been trying to change the attitude of their officers and have made some headway in the effort. Territo and Smith (1975) state that an internal affair’s unit is the

policeman's friend rather than foe and they need not fear an investigation if they have not erred. Law enforcement in general, tended to feel that they had *Miranda* rights against self incrimination. (Miranda V. Arizona 384 U.S. 436, 1966). These were established in *Garrity*, which allowed the officer right to counsel and to refuse to answer questions. (Garrity V. New Jersey 385 U.S. 493 1967). Cooler heads prevailed and *Reverse Garrity* (1968) brought law enforcement to a higher level of accountability. It said in part, that the officer has no right to counsel and may be compelled to answer questions if the purpose of the investigation is fact finding and the results will be used for departmental discipline only. No facts brought out during *Reverse Garrity* may be use for criminal prosecution. In fact, if at any point in the questioning the investigation shows' criminal wrongdoing, the officer is given *Miranda* warnings and *Reverse Garrity* no longer applies. The officer has the right of silence and counsel.

Review of Literature or Practice

Research literature on this issue is vast, opinions varied and emotions run from casual to intense. The theme consistent throughout this research is that the cops don't trust the public and vice versa. Pressure from the public has caused many departments to establish civilian review boards, much to the chagrin of the police. The late J. Edger Hoover said " They are sidewalk kangaroo courts," (*****author 13). Skepticism was rampant on both sides. The public was more likely to believe the police were covering up and would not investigate themselves. On the other hand, the police felt the public did not know what the job entailed and just wanted to fill their pockets at the expense of their agency.

The debate continues. Researchers for self regulation, such as Carl McGowen, believe that external (civilian) rule making has limitations and that self regulation is more promising. (684). Another researcher, Herman Goldstein, a justice professor at the University of Wisconsin, is especially critical of self regulation. He states “ Whenever it appears there is the slightest possibility that the agency or officer may be sued in connection with a complaint...interest in defending the case usually takes precedence over the agency’s wish to establish the facts and especially to assess the blame “(10).

Most departments have tried with some success to strike a medium for both sides of the issue. The Dallas Police Department internal affairs policy states in part, “ Employees will be held strictly accountable for properly exercising the authority they have been given to protect the rights, lives and property of all individuals,” and “ At the same time, Department members must be protected against false allegations of misconduct .” Also, “ Internal affairs are conducted in accordance with the fundamentals of fairness and all Department members are afforded their rights. (Dallas Police Department). This is consistent with the Bexar County Sheriff’s policy which states, in part, “ To insure the rights, safety and well being of the public,” and “ Insure the rights of Department employees are protected at all times from malicious, unfounded complaints made by the public (Bexar County Sheriff Department) . The Texas Department of Public Safety has a lengthy internal affairs policy which goes into great detail about public image, rights, professionalism and other concerns. It also specifically addresses *Reverse Garrity* and officer protection. It states in part, “ To insure protection for the officer from frivolous or malicious allegations. (Texas Department of Public Safety).

This theme is contrasted by other Departments such as the Missouri City, Texas Police

Department, which addresses public concern and image and leaves the officers interest in question. The policy states in part, “ The Department must completely and professionally investigate all allegations of misfeasance, malfeasance and nonfeasance by employees and complaints bearing on the Departments response to community needs.” (Missouri City Police Department). Careful review of the policy yielded no relief or guarantee to the officer except *Reverse Garrity* and *Miranda*. Constitutional rights are addressed if the investigation appears to be progressing into criminal conduct by the officer. An employee of the Department told me , “ The policy seems to be written as a design to further the, them against us, mentality “.

Of the four departments researched for this project, three of the internal affairs policies were written to address the concerns of public with regard to departmental integrity.

They also had specific officer protection as part of the policy. One addressed only the public and was worded in a manner which offered no specific relief to the officer against malicious or unfounded accusations.

The consensus among a number of police administrators is that was that over-zealous investigations caused, primarily by knee jerk reaction from the public and media, are a genuine detriment to law enforcement efficiency and moral. However, a thorough , unpressured investigation is a vital method of policing ourselves and regaining public support.

Discussion of Relevant Issues

While there are several important issues , three concerns were consistent.

First, as previously noted, is public concern that the police are a force unto themselves and will not admit to wrong doing. There is concern that the investigations will be structured to protect the officer from criminal charges and/or the agency from civil liability. This was partially true

during the early days of internal affairs investigations. Law enforcement is still under a shroud of distrust which was established, to a large degree correctly, during the decades of the 60's 70's and mid 80's. Second, is the modern police administrators desire to run a department which is forward looking and has integrity at all levels. Administrators are also concerned with reducing the possibility of litigation. Keeping a clean house, proper training, thorough selection process and the ever present specter of internal affairs are all vital tools for administrators, in this regard. Third, is the officers fears of ruined careers, civil litigation and criminal charges stemming from internal affairs investigations. The fear is not unfounded. During his career as Deputy Chief, in charge of the NYPD internal affairs division, John Guido thought honesty could be purchased through fear. In 1980 he said " There was corruption, there is corruption and there will continue to be corruption....Only simple fear will deter some people....[And] we do create fear."

Officers also feel, with some degree of accuracy, that the public cannot judge them because the public does not have the training necessary to view a situation from the eyes of a peace officer.

In a study conducted in 1979, by Eastwood Atwater, Beth Bernhart and Sue Thompson,

*** need where research was done, for what reason, and the credentials of the researchers***

three experimental groups of thirty-four people each were given the same use of force scenarios.

The groups consisted of police officers, students and civilians. Five of the police officers were judged to have either escalated the situation or used un-necessary force. Eleven of the students used unnecessary force and and nineteen of the civilians used unnecessary force.

While this study indicates that the untrained public does not understand the use of force continuum and nearly two thirds of them over-reacted, it also indicated that several of the officers need, better training, better supervision or a career change.

The constraints of internal affairs investigations are primarily improper training, distrust, and lack of committed implementation. A haphazard, incomplete, or biased investigation is as bad as no investigation at all. This type of investigation causes mistrust among officers and the public. It will not stand up to hard scrutiny because it has no integrity. Committed implementation requires an administrator who will establish balanced guidelines, provide proper training and view the results of an investigation with a cold eye. He must be able to deal with public pressure if the officer committed no wrong. He must also be prepared discipline an officer if policy was broken and to use the law against the officer if a crime was committed.

Opportunity, on the other hand is unlimited.

Community confidence, where waning or absent, may be re-established if the community genuinely believes the police are as concerned about enforcement of their own as they are with the general public.

Officers will be confident that they will not be put at risk if they have acted within the bounds of policy, good judgement and the law. They will also be less apt to turn away from the misdeeds of fellow officers.

Another benefit of internal affairs investigations is the opportunity for these investigations to identify shortcomings in training. If a problem is consistent over time, with different officers, it might be correctable through additional training. The investigations might suggest that a particular block of training be re-structured. Internal affairs investigations also directly affect policy changes.

The cost of an internal affairs unit is small when compared to the savings in civil litigation. For a small department, an individual officer or officers may be trained and designated as

internal affairs officer (s). This can be an additional responsibility and not a full time assignment. They would only be internal affairs officers during an investigation, and they would require a minimum of additional expense.

In a larger department, full time internal affairs officers are required and will be an expense in the budget. Cost versus benefit is difficult to measure since the savings in the cost of litigation is unpredictable.. However, comparing current litigation costs to those of recent years will provide a rough estimate of the programs effectiveness.

Conclusions/Recommendations

The purpose of this research is to present facts and show cause to write and implement an internal affairs policy for my department.

While this policy may not completely eliminate the possibility of litigation, it may drastically reduce the opportunity.

When an unbiased investigation is completed and is cemented in facts alone, it will stand scrutiny from the public, media, administrators and other officers. While it will not please all of the interested parties, they will be forced to concede the thoroughness of it and will be less inclined to pursue civil litigation.

The problem with internal affairs officers or units is mistrust by the public and officers. Research of the early history of these units revealed some cause for the public to believe cops were not going to investigate themselves with vigor. Currently these investigations are generally done with integrity but the officers, for the most part, feel they will be sacrificed for the sake of money.

In conclusion, every department has certain priorities and resources and it is possible to use these resources to design a policy specifically tailored for my department by using sections of policy from other departments. The needs and rights of the public must be addressed and protection for the officer from frivolous or vengeful complaints is vital.

Investigations must be done completely and without regard to the final outcome. Administrators must act on the results of the investigation and be firm in their conviction to “Do the right thing”.

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