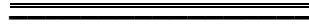


**The Bill Blackwood
Law Enforcement Management Institute of Texas**



Equity in Discipline Throughout Law Enforcement



**A Leadership White Paper
Submitted in Partial Fulfillment
Required for Graduation from the
Leadership Command College**



**By
Kelly Wright**

**Stafford Police Department
Stafford, Texas
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ABSTRACT

This paper discusses the importance of fair and consistent discipline and spells out the reasons as to why it is a must throughout law enforcement. However, this needs to be established through evidence based discussion that takes into account both the pros and cons of a structured discipline matrix. This paper analyzes a few such matrices from reputable publications by taking both the view points in the form of position, counter position, and builds a case by providing rebuttals and drawing recommendations for the need to have fair and consistent discipline as a cardinal principle in police administration. The inevitable conclusion is the need for police administrators to adopt a conceptual framework on the lines of a disciplinary matrix, which is found to be an emerging and workable concept.

TABLE OF CONTENTS

	Page
Abstract	
Introduction	1
Position	3
Counter Arguments	6
Recommendation	10
References	13

INTRODUCTION

In law enforcement, as well as in the corporate world, policy violations and misconduct, whether intentional or accidental, are common occurrences; this calls for fair and consistent discipline administered throughout the profession. Police officers are public figures and are often held to higher standards than the average civilian. Officers are not to violate state or federal laws, nor can they flout any of the policies or general orders the department has put in place. Due to police officers having the highest visibility among the public, they have been held more accountable when compared with any other public servants (Trojanowicz & Bucqueroux, 1998). As a result, police officers are in the spotlight. If an officer has violated a general order/policy, the officer should have faith and believe they will receive fair and consistent discipline regardless of personal and professional relationships that they may have with supervisors. If that is not in place, as pointed out by Goldstein (1967), the officers are likely to only conform to the perceived expectations of their superiors, even if their superior's views are not in line with the organization.

There are several reasons why fair and consistent discipline needs to be adopted. As previously stated, the public is watching and wants to see a transparent investigation to take place. The outcome should show fair and consistent discipline is administered. If the public can see that disciplinary action was taken when a policy violation is committed, the public will have some comfort in knowing that discipline has been administered. An article entitled "Disclose Police Discipline..." (2015) discusses a complaint that was filed against an officer. The person who filed the complaint was advised that it was investigated, and the officer was punished but was told nothing

beyond that. The complainant wanted to know the exact nature of the punishment, but the department refused to disclose this information. This resulted in the case being taken to the Maryland Court of Appeals, whose ruling sided with the police. It is possible for more litigation to come from this, but what was missing here is a transparent investigation and the knowledge that fair and consistent discipline was administered.

Law enforcement agencies want their officers to be highly productive and have high morale throughout the department. To achieve these, law enforcement agencies should adopt a standard of discipline that is enforced equally and fairly throughout the department. Thus, as stated by Stinchcombe (1980), there prevails a deep rooted view that the police officers are paid to comply with the orders of the superiors without having any regard to whether they are right or wrong. Gazell (1976) believes that despite innumerable efforts that were taken by some dynamic police chiefs to make the police administration responsive, this has not borne fruit; modern policing still is ridden with the same problems of previous years. In order to bring about changes that would take the police force from impersonal human beings to rational thinking beings, fair and consistent discipline would have to be implemented both in letter and spirit.

Nonetheless, while what has been discussed may be relevant from a common knowledge point of view, one needs to critically analyze the concept of consistent discipline and fairness because police perform two types of functions, namely, (i) taking actions that are consistent with the law, and (ii) while doing so, they have to keep in mind that such actions are legitimate and their conduct is appropriate and does not violate policies while exercising their authority. The problem is they do not go hand and

hand, and the evidence suggests being lawful does not gel with popular legitimacy (Skogan & Frydl, 2004).

POSITION

Unfair and inconsistent discipline in law enforcement has led to low morale and liability issues for administrators and departments. Amaranto, Steinberg, Castellano, and Mitchell (2003) established that low morale can result when police officers perceive favoritism in the decisions of their superiors. When equity and consistency are combined in the administration of discipline, officers are more confident and trusting in the disciplinary system. On the contrary, according to Adams (1965), if the conformance to rules and goals is not proportional to the rewards in terms of accuracy and fairness, it would lower the performance.

Another article states that “if employees believe that they are being dealt with fairly, they are more likely to be accepting of corrective actions and less likely to be alienated” (“Employee disciplinary...,” 2006, para. 4). Employees want and need fair and consistent discipline. This gives officers confidence and a more positive outlook of the department. On the other hand, when officers think they are not being treated fairly, they lose trust in the disciplinary system and the supervisors who are administering the discipline.

When fair and consistent discipline is being utilized, officers are more trusting in the system, which makes them to become more productive officers. The officers come to work without thinking whether they would get into trouble at work and what would happen next. Officers do not report to work with the intent of violating policy, but

sometimes they do so in the heat of the moment, and that is when a policy could be violated.

An example is of an officer A, who is considered to be one of the most productive officers on the shift. Officer A is patrolling and hears a call to go out over the radio of another officer, officer B requests assistance. When the officer A hears the call to go out, officer A advises dispatch that the officer A is en-route on a priority. While proceeding to officer B's location, officer A fails to come to a complete stop at a stop sign control at an intersection. Failing to come to stop at a stop sign violates one of the department's general orders. If officer A receives anything other than fair and consistent discipline, officer A will never trust the system, supervisors, or department, and this will cause officer A's level of productivity to go down. Officer A will be exhibiting signs of low morale, complaining about the department, may resort to excessive use of sick leave, and exhibit low work productivity, which all can lead to possible recurring policy violations. Officer A will not be the only officer who will be affected by this unfair and inconsistent discipline. Other officers will also be affected as well by what is known as 'locker room talk'. Locker room talk is just chatter between officers, and during this chatter, when officer A starts talking negatively about the inconsistent and unfair discipline he received, the department and supervisors would also tend to become negative. The other officers will feed off of this negativity, and their work productivity and morale will most likely decrease as well.

Curry (2004) observed that discipline is a great concern and is an often discussed topic between officers. Most police officers avoid being involved in an internal investigation and do not receive harsh disciplinary action during their law

enforcement careers. Because of the constant interaction of the law enforcement officers with the citizens, there is always a higher risk for complaints being filed against them. Even for honest mistakes occurring, there is always a chance of an internal affairs investigation being launched against the officer. Curry (2004) stated, "Officers are influenced by the locker room talk about 'Internal Affairs' investigations and general perceptions of not being treated fairly in the processes" (p. 5).

Johnson (1998) noted, "By utilizing progressive discipline, an employer may be able to successfully correct a problem and enjoy many years of productivity from that employee" (p. 7). In today's society, reformed personnel are not considered dispensable. Additionally, Johnson (1998) revealed that, "overall workplace morale and productivity will undoubtedly suffer if the employees perceive that an employer unfairly terminated employees without offering them an opportunity to correct the problem" (p. 1).

Another reason that law enforcement agencies should adopt a fair and equal standard of discipline is to reduce liability. The liability placed on an employer for inconsistent and unfair discipline is very real. A supervisor administering inconsistent discipline can be viewed as discriminating. Dolan (2014) advises about supervisors being inconsistent in disciplining officers for violation of the policies, which can result in discrimination lawsuits. Organizational leaders should ask themselves if the proposed punitive action has ever been issued for this type of behavior and whether it has been successful in the past, in reference to comparable incidents (Dolan, 2015). Another thing that leaders must consider is whether or not this conduct is fundamentally unlike of other actions encountered before or now. If the response is "no" to these questions,

then perhaps there is a discrepancy in the punishment. According to Dolan (2015), inconsistency can undermine the disciplinary system. The case Dolan (2015) is referring to is Tom Brady and the National Football League. Tom Brady was accused of having been involved in the under inflation of footballs in the American Football Conference Championship game held on January 18, 2015. The National Football League launched an investigation and ultimately proposed disciplinary action on Tom Brady. The case was taken to the United States District Court for the Southern District of New York, thus leading to vexatious litigation.

COUNTER ARGUMENTS

Some departments and administrators do not want to use a system, like a matrix system, which specifies the discipline to be administered. These departments and administrators want to use a system that gives them the leeway to use discretion in making all disciplinary decisions. These administrators want complete control over every aspect of the disciplinary system. These same administrators contend that a 'matrix system' is too rigid and does not allow for supervisors to use common sense when making punishment decisions. For example, one officer is a really hard worker and has a high level of self-initiated activities and this has resulted in some high profile criminal cases being made against offenders. This officer is also well liked and respected throughout the department, but when such an officer violates a general order, in a rigid matrix system, it would state a particular punishment for the said violation. If the same officer violates the same general order under a discretionary disciplinary system, the supervisor can administer whatever level of discipline they believe is proper. The supervisor may decide to administer a verbal reprimand and under the rigid

matrix system, the penalty for the violation could be a suspension for one day without pay and cannot be changed.

Some administrators believe that it is good practice to keep hard working and well-liked employees happy. This practice is commonly referred to as the 'good ole boy' system. In the good ole boy system, the supervisors have a lot of flexibility when administering discipline. This type of discipline can be used when a really good employee makes a mistake or violates a minor general order. The supervisor can use their discretion when administering discipline and can make the punishment any level they think is appropriate. This same supervisor can have a troubled employee make the same mistake or violate the same general order and use his discretion in administering however harsh discipline he sees fit with this troubled employee. This supervisor's discretionary discipline can also come into play when two employees from two different divisions of the same department violate the same general order under exactly the same circumstance. After the investigation is complete, and it is time for their supervisors to administer discipline, one supervisor may give his employee one level of discipline, possibly a written reprimand, because this violation of this general order is his 'pet peeve'. The other employee's supervisor could administer a totally different level of discipline, possibly a verbal counselling, dependent on his beliefs and feeling towards the violation.

Another reason to eschew the 'good ole boy system', or any type of discipline that is administered differently among a supervisor's favorite employee and other coworkers, is because of the effect it has of hurting everyone (Fosdick, 1920). An example of this is where one officer, who is liked by all throughout the division, violates

a policy and receives a minimal punishment. Yet another officer, not so well liked in the division, violates the same policy and receives a harsher punishment. The punishment could be because the well-liked officer has friends in supervisory positions. Another reason could be that the punishment was administered by a different supervisor who has different views on this certain policy violation. The reason is irrelevant; the problem is not just the officer alone who was meted out with the harsher punishment, but it can apply to all of the officers in the department. Officers will lose the trust and confidence in the supervisors and the department. Once this occurs, morale will drop and officers' productivity will likely follow. This type of behavior can lead to officers being concerned about coming to work and being treated unfairly. This can create an atmosphere in which officers are worried about receiving an unfair punishment just because they are not in the good graces of their superiors. It is common knowledge among law enforcement officers that if they do not get out and do a lot of self-initiated work, and proactive policing, there will be little or no complaints, which, in turn, means not much chance of having to worry about discipline. There is also liability issues involved when one officer receives harsher punishment for the same violation of a general order than another.

Some administrators may believe that in the name of discipline, extreme measures are perpetuated on the officers which strip them of their independence. In effect, they are molded into a uniform personality, which is controlled and manipulated as if one has to operate within guidelines of a discipline matrix (Goldstein, 1967). Thus, in the name of discipline, they sacrifice their independent thoughts and opinions, which prevents them from participating in a meaningful way in the affairs of the department.

However, Mollen (1994) reported that some of the faulty structure of the organization and police themselves; for instance, inconsistent performance ratings and discipline may accentuate the bitterness of the police force. In the absence of fair and consistent discipline polices, either the affected police officers may keep silent, or worse, retaliate against their organization. To avoid such unpleasant circumstances, it is necessary to put in place a written piece that will save not only the police officers but their organizations as well.

Cultivating all discipline has nothing to do with stereotyping of personalities, and on the other hand, discipline brings in a degree of uniformity to the officers. Discipline is also a characteristic that is amenable to the voluntary compliance of the rules and regulations of the police organization. The officers may feel let down if they feel that the administration has not exercised fairness in disciplinary processes, which may result in a decline of their support to the agency. When fair and consistent discipline procedures are articulated and displayed, it prevents vagueness and ambiguity (Carter, 1994). The clear cut advantages discussed here will endow on the morale, performance, and reputation of the police agency who is operating under this premise (Iannone, Iannone, & Bernstein, 2013).

There are two things about fairness that should have the same prominence ("Employee disciplinary...", 2006). One is equality, which, in reference to the application of discipline, is constancy, and two is that law enforcement officers would have to have trust in the system and be reassured that other officers who perpetrated the same transgressions received similar and consistent punishment. The article stated, "To be consistent, punishment for one person's act of misconduct must be the same or closely

similar to the punishment given to other persons who have committed the same or similar act” (“Employee disciplinary...”, 2006, para. 5), that is to say similar penalties for the same offense, in like situations.

Sereditch (2011) talks about disciplining employees and how it can lead to a lawsuit. The author cautions that the consequences of meting out special treatment for very important people may come down hard on some people but not on others. Sereditch (2011) stated, “You know treating people the same, regardless of age, race, gender and the like, is essential; otherwise, you could end up explaining your progressive discipline before the EEOC” (p. 1).

RECOMMENDATION

It is imperative that law enforcement agencies should adopt a standard of discipline that is enforced equally and fairly throughout the department. The implementation of unfair and inconsistent discipline is harmful in creating a productive work environment. All officers want and need consistency in discipline. Having fair and consistent discipline allows officers to concentrate on their jobs. This will create a safe and productive work environment for the majority of officers. Johnson (1998) found, “Employees who may be rehabilitated cannot be considered expendable or even easily replaceable. Second, overall workplace morale, and productivity will undoubtedly suffer if employees perceive that an employer unfairly terminated employees without offering an opportunity to correct the problem” (p. 1).

When fair and consistent discipline is administered throughout the department, there are fewer chances for lawsuits against supervisors and departments. The implementation of a discipline matrix will greatly assist the administration in fair and

consistent discipline practices. A matrix does not leave any room for discretion. The matrix gives a set of specific guidelines for administering discipline.

Although some agency administrators prefer discretionary discipline in order to have more control over the administration of departmental discipline, it has been shown that if discipline is not administered fairly and consistently, officers will be less productive. The officers will talk negatively about the discipline they received from the supervisors and the department. This locker room talk will promote poor morale, lower work productivity, and a possible increase in the violation of general orders. When officers think they are being treated unfairly and no longer can trust the department and the supervisors, the officer turnover rate will increase.

A system being utilized by some departments to administer fair and consistent discipline is known as a 'matrix system'. According to the article "Employee Disciplinary..." (2006), "a disciplinary matrix provides the decision maker with a guideline for the disciplinary decision" (Disciplinary Matrix section, para. 4). For example, an employee accused of a policy infraction would know the level of discipline they would be eligible to receive. Just as the employee would understand the level of punishments, the supervisor would be provided levels of discipline he could recommend. This would apply department wide and not person to person and thus, this would take the subjectivity of discipline out of the matrix system and ensure fair and consistent discipline. Larger agencies with as many as 6,000 plus officers (ex: Houston Police Department) as well as smaller agencies with as few as 100 or less officers (ex: Round Rock Police Department) would be able to administer fair and consistent discipline with the use of a discipline matrix.

The reasons can be many but a common thread one finds in the literature is that policing in the United States is facing very serious challenges, and there are greater demands by the community (Schulhofer, Tyler, & Hug, 2011). This paper has identified fair and consistent discipline as one of the key factors and has gone on to build a case that a lack of it can cause further deterioration to the performance of the police by bringing in a distorted work culture. To arrive at a balanced conclusion and stress the central purpose of the paper, which is the need for putting in place a proper system of fair and consistent discipline, the paper takes into account both pros and cons and arrives at the inescapable conclusion for the need of fair and consistent discipline to be implemented. By doing so, it is clear that morale and work productivity will increase and the risk of liability pertaining to discipline is greatly reduced.

REFERENCES

- Adams, J. S. (1965). Inequality in social exchange. *Advances in Experimental Social Psychology*, 2, 267-299. doi: 10.1016/S0064-2601(08)60108-2
- Amaranto, E., Steinberg, J., Castellano, C., & Mitchell, R. (2003). Police stress interventions. *Brief Treatment and Crisis Intervention*, 3(1), 47-54. Retrieved from <https://pdfs.semanticscholar.org/6277/8be28588d718ae150850cb68846a26444177.pdf>
- Carter, D. L. (1994). Police disciplinary procedures: A review of selected departments. In T. Barker & D. L. Carter (Eds.), *Police Deviance* (3rd ed.), pp. 355-376. Cincinnati, OH: Anderson.
- Curry, T. H. (2004). *An analysis of the discipline process and outcomes, with recommendations for the Lansing police department*. Retrieved from <https://lansingmi.gov/DocumentCenter/View/1023>
- Disclose police discipline: How can the public trust police when incidents of misconduct are kept secret? (2015). *Baltimore Sun*. Retrieved from <http://www.baltimoresun.com/news/opinion/editorial/bs-ed-public-info-20150706-story.html>
- Dolan, M. (2015). Tom Brady and the NF: Personnel law lessons for public safety leaders. *Legal & Liability Risk Management Institute*. Retrieved from http://www.llrmi.com/articles/legal_update/2015_dolan_tombrady.shtml
- Dolan, M. (2014). Discriminatory discipline in public safety agencies. *Legal & Liability Risk Management Institute*. Retrieved from

http://www.llrmi.com/articles/legal_update/2014_dolan_discriminatory_discipline.shtml

Employee disciplinary matrix: A search for fairness in the disciplinary process. (2006).

Police Chief, 73(10). Retrieved from

<http://www.policechiefmagazine.org/employee-disciplinary-matrix-a-search-for-fairness-in-the-disciplinary-process/>

Fosdick, R. B. (1920). *American police systems*. New York, NY: Century Company.

Gazell, J. A. (1976). William H. Parker, police professionalism and the public: An assessment. *Journal of Police Science and Administration*, 4(1),28-37. Retrieved from <https://catalog.hathitrust.org/Record/003564194>

Goldstein, H. (1967). Administrative problems in controlling the exercise of police authority. *The Journal of Criminal Law, Criminology, and Police Science*, 58(2), 160-172. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2536602

Iannone, N. F., Iannone, M. D., & Bernstein, J. (2013). *Supervision of police personnel*. Upper Saddle River, N.J.: Prentice Hall.

Johnson, B. T. (1998). Implementing progressive discipline policies to minimize liability and improve employee performance. *Fairfield and Woods Law*. Retrieved from <http://www.fwlaw.com/news/146-implementing-progressive-discipline-policies-minimize-liability-improve-employee>.

Mollen, M. (1994). The city of New York commission to investigate allegations of police corruption and the anti-corruption systems of the police department. Retrieved

from <https://cases.justia.com/federal/district-courts/new-york/nysdce/1:2010cv06005/366535/400/1.pdf>

- Schulhofer, S. J., Tyler, T. R., & Huq, A. Z. (2011). American policing at a crossroads: Unsustainable policies and the procedural justice alternative. *Journal of Criminal Law and Criminology*, 101(2), 335-374. Retrieved from <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7392&context=jclc>
- Sereditch, L. (2011). Discipline: 5 ways you can get into legal trouble. Workplace Safety Network. Retrieved from <https://web.archive.org/web/20150327041103/http://rapidlearninginstitute.com/discipline-legal-trouble/>
- Skogan, W. G., & Frydl, K. (2004). *Fairness and effectiveness in policing: The evidence*. Washington, DC: National Academies Press.
- Stinchcombe, J. B. (1980). Beyond bureaucracy: A reconsideration of the 'professional' police. *Police Studies*, 3(1), 49-61.
- Trojanowicz, R. C., & Bucqueroux, B. (1998). *Community policing: How to get started*. Cincinnati, OH: Anderson Pub. Co