

The Bill Blackwood Law Enforcement Management Institute of Texas

A Discussion of The Relationship Between Line Officers and Administration as it Relates to Conduct and Discipline

A Policy Research Project
Submitted in Partial Fulfillment
of the Requirements for the Professional Designation
Graduate, Leadership Command College

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March, 2000

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ABSTRACT

The purpose of this policy research project is to justify to the Council of the City of O'Donnell that the Police Department is in need of written directives and guidance regarding police employee conduct and discipline both on and off duty, and that no matter the size of an agency or a jurisdiction, all employees need clear and concise directives and procedures on what is expected of them. If employees have a good working knowledge of what is required of them, the employee will exhibit higher morale and higher productivity. This results in a more content employee that may continue employment with the city longer, thereby reducing down time taking applications, testing, conducting background checks, and other recruitment procedures. In contrast, employees that are unsure of the rules, regulations, or required conduct are more likely to generate citizen complaints that result in down time, internal investigations, and an overall decline in department morale. Poor morale exhibited in public will undermine the mission of the Police Department as well as erode public confidence and eventually trust. Officers with poor morale may also generate litigation that costs the City and ultimately, the citizens that the police have sworn to protect and serve.

It is recommended that the O'Donnell Police Department immediately formalize their policies with the formation of a clear and concise conduct and procedure manual.

Introduction

The O'Donnell Police Department, as with any law enforcement agency, requires specific department general orders to insure consistency, order, and discipline. Police administrators live in a time where officers move from one agency to another, and smaller agencies find it difficult to compete with larger agencies. However, every employee should expect to be held to a certain standard, in some cases higher than others. With that, the employee has the right to a clear and concise manual of what is expected of them, in terms of their behavior, and conduct, and the resulting discipline should written directives be violated.

The problem to be addressed is the lack of clear, written policies and procedures at the O'Donnell Police Department. Officers agree that policies and procedures are a necessary part of law enforcement and equally necessary to any successful organization. The vast majority of officer complaints revolve around the administration of discipline on a fair and impartial basis, as well as vague and outdated policies. All employees must be treated equally and fairly for good morale to develop and be maintained within any department.

The intended audience will be the City Council of the City of O'Donnell, Texas. The Chief of Police has inherent authority over O'Donnell Police Personnel, and is responsible for the development and implementation of special policies and orders for employees of the O'Donnell Police Department, to be approved by the City Council.

Primarily, the sources of information referenced in this paper emanate from several law enforcement agencies, periodicals, and case law. Those agencies include the El Paso County

Sheriffs Office, Midland Police Department, Odessa Police Department, Lubbock Police Department, Big Spring Police Department, Arlington Police Department and the Lamesa Police Department. Information that is appropriate to a growing police department in a small town will be particularly stressed.

The intended outcome of this project is to justify to the City Council of O'Donnell the need for a formal code of conduct, rules, regulations, and standardized operating procedures. This includes the development, implementation, and practice of disciplinary procedures regarding conduct that are fair and equitable to all parties involved, including the employee, the administration, and the public.

Legal Context

The Supreme Court has provided surprisingly little guidance on the reach of supervisory liability in Section 1983 cases concerning administrators and elected officials. In fact, the only Supreme Court decision directly focusing on this issue is a five-to-four opinion issued twenty years ago in *Rizzo v. Goode* (1976). In that case, the plaintiffs filed suit against the City of Philadelphia including the Mayor, the Managing Director, the Police Commissioner, and two other police department supervisors, alleging a widespread and accepted "pattern of illegal and unconstitutional mistreatment by police officers that was directed against minority citizens in particular, and against all Philadelphia residents in general" (*Rizzo v. Goode*, 1976 p. 03). Specifically, the plaintiffs charged the supervisory officials with "conduct ranging from express authorization or encouragement of this mistreatment to failure to act in a manner so as to assure

that it would not recur in the future." The lower courts found in favor of the plaintiffs and issued an injunction mandating that the parties develop a "comprehensive program for improving the handling of citizen complaints alleging police misconduct" (Kinports, 1997, p. 06). The Supreme Court clearly disapproved of the injunction issued by the lower courts, but the precise reason underlying its decision is somewhat murky. The majority opinion mentioned a number of factors, only one of which touched on the question of supervisory and administrative liability. In the portion of the opinion relevant to supervisory liability, the Court noted that "there was no affirmative link between the occurrence of the various incidents of police misconduct and the adoption of any plan or policy by [the supervisors]- express or otherwise - showing their authorization or approval of such misconduct" (Kinports, 1997, p. 06).

This case occurred over twenty years ago. Society now lives in an age of high mobility, technology, and video cameras. As usual, law enforcement is slow to learn from its mistakes, referring to Rodney King, and there is great anxiety that one day, sooner than expected, the lower federal courts or Supreme Court will hand down a devastating decision regarding police misconduct investigations. It behooves law enforcement agencies to stand up, take notice and as expeditiously as possible investigate and provide for retribution in all misconduct cases.

However, officer's rights must also be weighed heavily in those decisions and policies. In *City of Canton v. Harris*, the United States Supreme Court announced that a municipality could be held liable under Chapter 42, Section 1983 of the United States Code for the misconduct of an employee if deficiencies in a municipal training program were the moving force behind plaintiffs injury and the alleged municipal deficiencies were the result of a deliberate indifference to training police officers. In adopting the specific standard of deliberate

indifference, the Court explained that allowing a plaintiff to prove a lesser standard of fault would result in 'de facto respondent superior liability' and would cause federal courts to engage in an endless exercise of second-guessing municipal-employee training programs (Beh, 1998). The Court warned that the federal courts were 'ill suited to undertake' such a review and to do so would implicate serious questions of federalism"(*City of Canton v. Harris*, 1989 p. 07). In Justice O'Conner's concurring opinion in *City of Canton v. Harris*, she warned litigants that Section 1983 is not intended as a "'federal good government act' for municipalities"(City of *Canton v. Harris*, 1989 p. 07).

In a recent article at the Fordham University School of Law, concerning the ruling, Hazel Beh wrote: "Nevertheless, lower courts instantly expanded liability under Canton to include, not just the failure-to-train, but also the failure of other municipal programs which cause constitutional injury to citizens"(Beh, 1998, p. 02).

Review Of Literature Or Practice

As indicated at the outset, there are practices and policies of other police departments from which the O'Donnell Police Department can learn. Spokane, Washington Chief of Police Terrence J. Mangan once wrote:

Our values announce who we are and what we stand for. Organizational values need to be identified, articulated and related to the every day functions of our agencies. They are the underpinning of our ethical code. All of our rules, regulations, policies, and procedures must reflect these organizational values (Mangan, 1992, p 83).

Mangan (1992) believed that codified policy was one way to institute a uniform code of ethics.

The need for police professionalism is not isolated in one part of the country or another, nor does it depend on the size of the community served. Maria Baca, a reporter for the Minneapolis Star Tribune wrote an article in 1996 concerning newly proposed rules for Minnesota police officers. Baca wrote that a former Minneapolis police chief named Laux, moved to develop a model policy to address the shortcomings in the existing Code Of Conduct for the State of Minnesota (Baca, 1996). In 1994, the Minnesota code was updated and provided for a police oversight board to revoke licences of officers convicted of felonies, gross misdemeanors, and some misdemeanors. However, it was noted by Laux that some complaints against officers don't result in a conviction, but could still be defined as behavior unbecoming an officer (Baca, 1996). The Minnesota Legislature was about to create a set of standards when the oversight board was allowed to try. The result was the formation of a committee comprised of two lawyers with police backgrounds and representatives of police groups and public advocacy groups. Communication was emphasized as the key to a better understanding of both the law enforcement and public sides of the issues. The model policy was viewed both as an opportunity and a positive message to the community. In Baca's article, one member of the Minneapolis Urban League stated "I think its a very good start. That message needs to be pushed down from the top to the rank and file"(Baca, 1996, p 1 b).

It appears, however, there is no uniformity regarding the actual implementation of discipline and punishment among departments. Indications are that the current policies may not be lacking as much as equitable enforcement of discipline. Lt. Stan Parker of the Big Spring, Texas Police Department states that many policies are too flexible and that allows a double standard from officer to officer. "Equity regarding punishment is a major issue in our department and directly relates to

employee morale and other issues"(Parker, S., personal communication, 18 July 1999). Sgt. Alex Mietlinski of the El Paso Sheriffs Office states that policies regarding discipline in that agency are currently being updated, yet they have not been officially adopted. Mietlinski observes that the department should be operating under the old policies and procedures. Currently in the El Paso Sheriffs Office, there are supervisors that are enforcing and disciplining under new guidelines that have yet to be officially adopted, and others that are disciplining under the old policies (Mietlinski, 1999). "The line troops don't have any real grasp of what they should be doing because it's an unfair system"(Mietlinski, A., personal communication, 18 July 1999).

One solution, a civilian review board, has been suggested and even implemented in some cities in the U.S. However, it should be noted that "numerous studies support the conclusion that civilian review boards are less likely to sustain charges against a police officer than chiefs acting on the results of police internal affairs investigations and that, furthermore, civilian boards are more lenient in disciplinary recommendations when officers are found guilty" (Beh, 1998, p 10).

Types of police misconduct do not exist in a vacuum. If police accept one type of wrongdoing, this wrongdoing becomes a part of the police culture (Yale, 1997). Rob Yale reported in a Southern California Law Review that subsequent to an investigation of corruption in the New York City Police Department, an alarming connection between police brutality and police corruption was discovered (Yale, 1997). "The records of corruption-prone officers demonstrated that corruption and brutality often go hand in hand"(Yale, 1997, p 05). Yale asserted in his review that a corrupt police culture in itself could lead to more cases of civil disorder, officer assaults and other problems (Yale, 1997) Experts explain that brutality not only interferes with, but circumvents the strenuous efforts being made to improve community relations and overall police support (Yale, 1997).

It could be successfully argued that poor police/community relations have caused civil disorder, generated higher levels of crime and often more violent crime, and led to hostility by blacks against police and reactive hostility by police against blacks. Yale states that police corruption has: "led to a white backlash that perceives blacks as claiming racism in the face of facts that indicate favoritism for blacks"(Yale,1997, p 04).

Minnesota is just one area of the country struggling with this issue by creating a new "model policy" for law enforcement officers. Recently, Minnesota's Board Of Peace Officer's And Training Standards established and released a set of statewide ethical standards. Some police officials say the rules are demeaning and smack of micro-management. To minority activists, the rules send a positive message but do not replace the need for police officers to know their communities. The nine page "model policy" is a set of principles, rationales, and rules that each law enforcement agency in the state must adapt to its needs by July 1st, 1997. They define conduct unbecoming a peace officer and require officers to obey the law and apply it fairly to others (Baca, p.01 b).

There is no question that police misconduct exists in many departments, especially larger agencies, across the United States in one form or another. In a 1991 independent study, Darrell Wicker states his belief that this conduct is committed by a minute percentage of all police officers in this country. "The expectation for the future is that agencies will continue to expand and place responsibilities upon themselves to address internal disciplinary issues with consideration for the rights and privileges of the employee and the employer" (Wicker, 1991, p 21). One area of improvement in this area deals with initial hiring practices by a majority of departments including, testing, thorough background checks, mental evaluations, probationary periods, and consistently

administered employee evaluations.

A Discussion Of Relevant Issues

The O'Donnell Police Department currently has no codified rules, regulations or written procedures. For example, as per directives, law enforcement officers should be held to basic uniform criteria across the country. Police organizations, like all organizations, rely on distinctive structural forms and management processes to maintain accountability. However, police work is unlike any other occupation in the country. Command and control systems need to resolve internal tensions by instituting rules that prescribe the behavior of officers, create a pattern of command and supervision to enforce the rules, and establish a principle of unity of command to eliminate ambiguity in the chain of authority.

All police employee manuals should include a Code of Conduct. The Code of Conduct is designed to promote order, efficiency, discipline, and good public relations by setting forth written policies governing the conduct and behavior of every member of the department, both on and off duty. Many of the aspects associated with the Code Of Conduct continue to represent key issues as well as some constraints and opportunities. Well worth repeating, for example; acceptance of gifts, alcoholic beverages, reading of rights, search warrants, civil matters, code of ethics, conduct, courtesy, drugs, failure to take action, false information and gratuities are all primary issues of concern, as well as constraint and even opportunism. The Code of Conduct should be very specific in identifying .and spelling out proper behavior as it relates to virtually all of the aforementioned. As indicated previously, written directive systems, Code of Ethics, definitions, distribution, and

General Orders, which are intended to provide guidelines for the operation of a police department, also provide a litany of definitions which are to be found in the General Orders Manual and shall be defined and adhered to. Any breach of these could prove to be exceedingly costly and therefore swift, equitable, and decisive discipline should be administered.

Discipline should also be viewed in terms of positive control, or coaching, rather than only negative punishment. Conventional administrative mechanisms of control available to managers are education, training, rewards, peer influence, direction, supervision, recognition, career opportunities and negative discipline. The mechanisms of control should emphasize professional self-regulation rather than mere obligatory accommodations to the rules. Swanson states in his book Police Administration that: "Discipline should be viewed as training and preparation that develops self control and sound character"(Swanson, 1993, p 364). However, as with any profession, a certain percentage of employees will be violators. No matter how good the training or how good the management has been able to shape internal department culture, the circumstances of police work will continue to allow for corruption, malfeasance, and incompetence. Policing is not unique in this respect, but stakes are higher when lethal government power is involved.

There are reasons to believe that skillful administration will reduce such problems. If employee supervision and evaluations are well performed and documented, discipline can be exercised in ways that are both fair and perceived as fair by all concerned.

In addition, a strong hiring policy as well as a fair and equitable discipline policy should be adopted and adhered to. A hiring policy will encompass many areas including thorough background checks, education and personality which many departments mayor may not have any control over due to cost factors.

Required elements of a successful discipline policy are the complete codifying of related definitions, rules, regulations, procedures and discipline, and the distribution to each employee. Included in this policy must be the appeal procedure for employees, constant review and revision procedures that include employee and citizen input, ongoing training for employees, and a fair scale of discipline that is enforced equitably. Officers that do not know or understand the rules or conduct that is expected of them generate more rule violations and possibly citizen complaints. Complaints generate low morale among an entire department, and possibly conduct that invites litigation. Low morale brings down the productivity and public relations aspect of an entire department.

An officer that has a working knowledge of his /her regulations and procedures, is an officer that will generate fewer rule violations and higher productivity. Productive officers exhibit a higher morale than non-productive officers (Parker, 1999). Good morale among officers spreads just as poor morale does. A department with a high morale factor will lead to higher productivity. This will result in fewer citizen complaints and reviews that cost man hours and down time on internal investigations. The result will be fewer liability claims against the city. The community as a whole will also be more supportive of their police force.

The key elements for a successful police administration include proper hiring and appointment practices at the outset, codified rules and regulations issued to all employees which include an appeal process, administration customs and practices, as well as proper field training and continuing education. As with any department, a constant review and revision practice should be in place to amend outdated rules and to address new situations.

Conclusion/Recommendations

The research purpose of this paper is to justify written directives necessary to give employees clear and concise guidance on procedures, conduct, and discipline. To this end, there is much room for experimentation and caution since police departments function in a very complex society, and when the doors of change are opened too widely, an otherwise imperfect yet workable system may be seriously obstructed.

Twenty years ago, William Geller wrote on police leadership:

In my view, an adequate system for the review of police conduct will need to resolve four key dilemmas: the inability to articulate objective standards for police conduct, the inherent lack of credibility of internal review, the frequent inaccuracy of citizen perceptions regarding the fairness of the review process, and the apparent costs of external review for substantive fairness (Geller, 1980, p 02).

Times are changing, and in order to apply policy to the field officer, departments must be flexible and open to change, and even experimentation. Police departments are fundamentally the same as any other police agency in the United States, and most certainly need to provide direction and guidance to their employees through written directives and discipline policies. The O'Donnell Police Department is not prepared for many of the problems that other larger police organizations are facing, particularly in the larger cities. Due to the frequent changes in the law and the needs of the community, it is recommended that the O'Donnell Police Department codify conduct, procedures, and discipline in a manual that will require constant review and revision. Each employee is charged with the responsibility to present his ideas for revisions, additions, or deletions to the manual. At the same time, the community as a whole, i.e. City Council, should be a part of this process as all communities have different standards of conduct. However, there are basics of

human dignity and professionalism that apply to all American communities. As with any system of written directives, situations will undoubtedly arise which are not specifically addressed by directives within this manual. In those instances the employee should rely upon the principles outlined by the "Law Enforcement Code of Ethics."

Communities expect police departments to police themselves and correct inappropriate behavior. Police have authority and responsibility that the average citizen does not. Police professionals should be held to a higher standard both on and off duty because of the power given to them by the citizens. In 1995, Cerijo Martinez, in a policy research project on discipline, wrote: "In short, police agencies are forced into maintaining discipline within the organization. Almost every law enforcement agency throughout the country has in place an internal process to address misconduct. It is how this process is followed that has given rise to a new area of litigation now haunting police departments"(Martinez, 1995).

In conclusion, it is the responsibility of every Chief of Police to insure that subordinate employees follow rules and guidelines that are standard to police professionalism in every American police department. It is also the responsibility of the Chief to administer discipline should a subordinate violate rules or standards of conduct which have been established. It is also just as important to protect employee rights and to have the rules and standards codified so each employee will understand the behavior and conduct that is expected of them, and the ensuing discipline should a violation occur. A written, specific Code of Conduct and rules and regulations, along with a strong hiring policy, will insure that the O'Donnell Police Department will operate in an efficient, professional, respected, and high morale environment.

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