

The BJA Executive Session on

Police Leadership

2019

The BJA Executive Session on Police Leadership is a multi-year endeavor started in 2010 with the goal of developing innovative thinking that would help create police leaders uniquely qualified to meet the challenges of a changing public safety landscape.

In support of an integrated approach to creating safe and viable communities across America, the project directors recruited 20+ principals from a range of disciplines. The principals, in turn, led national field teams of practitioners focused on the work of policing and the organization of the future.

To gain new insights on leadership, the *BJA Executive Session on Police Leadership* engaged police chiefs in documenting their own paths and invited leaders to participate in various audio and video forums to tell their stories and discuss the future of policing and police leadership.

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The principals are supported in their work by a team that includes project co-directors Darrel W. Stephens and Nancy McKeon.

Some Thoughts on Improving Police Discipline¹

by
Darrel W. Stephens

In a perfect world, employees fully understand the organization's expectations, report to work on time and always do the right thing. In such a world, employees manage their own behavior with little need for elaborate disciplinary processes. Although that perfect world does not exist in policing today, a large majority of employees have no experience with the formal disciplinary processes because they do understand the expectations, treat people respectfully, and regularly do their jobs in an acceptable manner. In exchange, these employees expect to be treated in a fair and consistent manner should they run afoul of some policy, rule, regulation or are the subject of a citizen complaint. Given all of the issues and concerns with disciplinary processes, how do police executives create systems that address mistakes and misconduct fairly while meeting the expectations of the community and employees? What would that process look like? Is it a matrix that specifies sanctions, or an education-focused approach, or the

¹ This is updated material from: Stephens, D. (2011) Police Discipline: A Case for Change. Harvard Executive Session on Policing. National Institute of Justice, Washington, DC.

creation of a philosophy that guides how sanctions are determined? A combination of these approaches, or something that has yet to be invented?

There are no definitive answers to these questions. As one works toward answering them, the complexity of the administration of discipline in a police organization becomes more clear. A police chief does not have complete control of all the factors that influence disciplinary outcomes, but they all must be considered. Court decisions, state law, local ordinances, union contracts, civilian oversight, civil service boards, arbitrators, politics, complaint processes, investigative practices and organizational culture are all in play when disciplinary actions are taken. With all of this complexity, police executives might understandably shy away from a complete overhaul of their disciplinary process and focus on those parts over which they have some control or influence and which they believe might, with a little persuasion, be acceptable to stakeholders.

Disciplinary Process Characteristics

Police agencies with all the right policies, training and effective supervision still need a disciplinary process that addresses mistakes and misconduct in the most appropriate manner. Given the differences in police agencies, state laws, union contracts, forms of government and communities, it is unlikely that one model would meet the requirements of all agencies. Rather than try to focus on one or two approaches, it seems more helpful to identify characteristics that contribute to an effective disciplinary process:

Early intervention at the lowest level possible. Recognizing mistakes and misconduct as soon as they occur and taking appropriate corrective action is fundamental to effective discipline. Police officers frequently say, on learning an officer has been severely disciplined or terminated, that it was about time the department addressed the behavior. Officers may be aware of misconduct but often fail to accept the responsibility for intervention or to bring it to the attention of a supervisor. The best intervention, and likely the most effective, comes from peers and first line supervisors. Peers can and do influence behavior in both positive and negative ways. An environment that encourages employees and supervisors to take corrective action on minor mistakes helps create a culture where everyone takes responsibility for their own behavior and for the behavior of others who may need guidance from time to time. It should also be clear, at the same time, that serious misconduct will be handled and properly documented through the formal investigative and disciplinary processes.

Ethical Policing is Courageous (EPIC)

EPIC is a training program developed by the New Orleans Police Department that encourages officers to engage in peer intervention. It creates the expectation that officers will intervene when another officer is engaged in misconduct.

(Jackman 2019)

Fair and consistent application of discipline. One of the most difficult challenges for discipline in a police organization is ensuring both the perception and reality of fairness and consistency. In large police agencies the majority of officers do not believe discipline is fair. In a 2013 survey of two large agencies in Maryland only 20% agreed the discipline process in their agency was fair, although 46% felt their personal discipline was fair (Cordner 2013). Employees that experience the discipline pro-

cess must understand the reasons for the actions taken by the department and how they can avoid similar problems in the future. They also must have the sense that everyone in the organization is held accountable for their behavior, and if the sanctions are different for similar behavior that they are appropriate for the circumstances.

Developing a sense of fairness and consistency among employees is difficult to achieve. It requires department and (ideally) union leadership to spend time in recruiting and in-service training explaining the complaint, investigation and disciplinary processes. Chief executives must invest time in these forums and others explaining their approach to discipline and their expectations of employees. They must also be ready to explain their decisions to employees and the community within the framework allowed by state and local law.

Behavioral focus. The primary focus of discipline should be on changing unacceptable behavior. If the behavior can be changed by a supervisor cautioning the employee or showing the proper way to handle a situation that should be all that is required. If the disciplinary decision includes sanctions, the employee is entitled to an explanation of the reasons for the sanctions and their connection to the behavior problem. Training should be an option for addressing honest mistakes. It is one thing for officers to make judgmental errors because of not knowing the correct procedure or having the right knowledge. It is quite another for them to know what to do but intentionally fail to follow policy and procedures. The latter may require more severe sanctions to reinforce departmental guidelines. The Education Based Discipline approach created by the Los Angeles Sheriff's Department is an example of an emphasis on behavioral change rather than punishment.

Timely. One of the most frequent complaints about internal investigations and the disciplinary process is the time it takes to bring these to a conclusion. A substantial part of officer concerns with the fairness of discipline has to do with how long it takes to learn the outcome. It is not unusual for cases to take a year or more before discipline has been imposed. The Cincinnati Fraternal Order of Police leader recently called on the city manager to conduct a review of the disciplinary process citing several examples of cases taking well over a year to resolve (Baker 2018). Both internal investigations protocol and the disciplinary process must have completion deadlines established. Most agencies set goals of 30 to 60 days to complete the investigation, but some are as long as 180 days. To ensure these deadlines are met, a monitoring component that tracks progress on the case from the initial complaint to its resolution is an important piece of the process.

Transparent. Transparency in internal affairs investigations and discipline is a challenge for most police agencies because of state laws governing personnel records and in some cases union contracts. An independent panel review of the New York City Police disciplinary process found it lacked consistency and suffered from "a fundamental and pervasive lack of transparency" (Watkins and Winston 2019). The NYPD Police Commissioner was quick to agree and indicated he would support legislation to make more disciplinary files open to the public (Watkins and Winston 2019). The California legislature passed a statute that went into effect on January 1, 2019 requir-

ing the disclosure of records of shootings by officers, severe uses of force and confirmed cases of sexual assault and lying by officers (Lau 2019). Although many in policing resist transparency in internal affairs and discipline records, Florida law has required these records be open after the investigation is completed since the late 1970s.

While respecting individual privacy rights and staying within the framework of the law, police agencies must be as open as they can possibly be to their employees and the community they serve. Transparency increases the community's confidence that mistakes and misconduct are treated seriously. Transparency helps employees see the department leadership supports employees but is also willing to publicly acknowledge mistakes. Openness helps contribute to an environment where accountability is an important individual and organizational value.

This means that police agencies must, at a minimum, share statistical data with the community on police misconduct, sustained complaints and disciplinary action. Many police departments do this by publishing an annual report that is made available to the news media and public. It also means that complainants receive timely and substantive feedback on the outcome of their complaint.

Transparency on disciplinary review boards could be improved by including an officer's peer, so a street officer's perspective is a part of the deliberation. Some agencies have citizens sit in on the discipline hearings either as observers or as a voting member of the board to enhance transparency.

Disciplinary processes that contain these characteristics are likely to have greater legitimacy in the eyes of the employees and the community. Both are wary of a process that they do not understand, is not transparent and takes an inordinate amount of time to complete.

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