

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.

Disciplinary Decisions

by
Darrel W. Stephens

Police executives are responsible for the administration of discipline in their agencies. It is one of their most important and challenging responsibilities. Disciplinary decisions are closely watched by officers and, for high profile cases, by the community as well. Officers are very concerned about the fairness and consistency of these decisions. The community is concerned about officer's being held accountable for misconduct. Chiefs want to ensure officers are held accountable for their behavior and also want discipline to be applied in a fair and consistent manner.

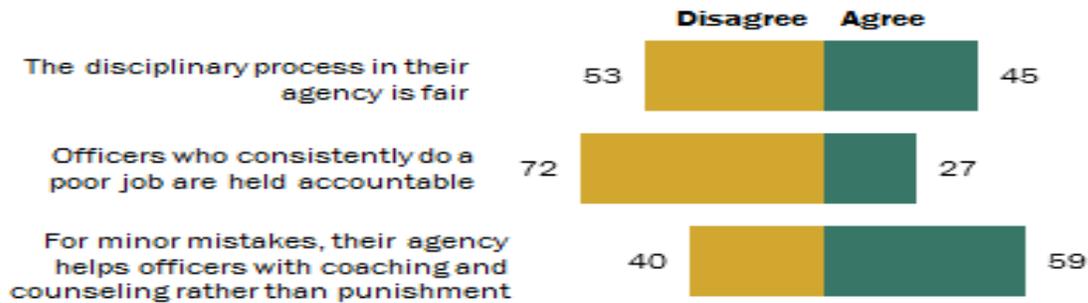
Perception Gap

The data suggest however that many officers do not believe their Chiefs are achieving those objectives. The graphic (on the following page) from the Pew Research Center indicates over half of the officers do not believe discipline is fair in their agency, 72% believe officers that consistently do a poor job are not held accountable and 40% think their agency focuses on punishment for minor mistakes rather than coaching and counseling. For agencies with more than 1000 officers 67% say discipline is not fair compared to 40% in agencies with less than

1000 officers (PEW Research Center).

Officers' assessments of key aspects of the disciplinary process are mixed

% of officers saying they ____ with each of the following statements



Note: "Agree" comprises those who say they agree or strongly agree with the statement. "Disagree" comprises those who say they disagree or strongly disagree with the statement. No answer category not shown.

Source: Survey of law enforcement officers conducted May 19-Aug. 14, 2016. "Behind the Badge"

PEW RESEARCH CENTER

In today's environment, few things can undermine a leader's credibility as much as proclaiming publicly to run an agency with transparency and accountability but then failing to do so in the eyes of their employees. Why do so many officers believe discipline is not fair? What accounts for the significant difference in agencies with more than 1000 officers? The literature does not provide clear answers to these questions, but I have thought about and made discipline decisions for many years as a police executive and city administrator.¹ My experience suggests that three factors largely influence officers' perceptions about discipline. First, their knowledge about the decision is limited in most agencies because the process is confidential. Second, what they hear comes through informal communications that often lack a full understanding of the circumstances of the misconduct and factors considered in the disciplinary thinking. And third, in large agencies officers are even more removed from the process and only hear about the high-profile cases or those involving officers they know and work with.

Disciplinary Matrices

Police agencies have tried to address these issues by being more open and transparent within the framework allowed by state law or local policy. Many have adopted a disciplinary matrix to guide these decisions. A disciplinary matrix spells out the range of potential sanctions that may be imposed for various types of infractions. Police use of disciplinary matrices is very common – Madison, Vancouver, Los Angeles, Tucson are among

¹ For a detailed discussion of police discipline see Stephens, D. (2011) Police Discipline: A Case for Change. Harvard Executive Session on Policing. National Institute of Justice, Washington, DC.

those that have adopted the use of a matrix. It is believed they serve several useful purposes. First, they provide an officer with an idea of what the sanctions can be for specific types of misconduct. Second, a matrix helps the public understand how officers are held accountable for various types of misconduct. Third, they are meant to directly address the issues of consistency and fairness. By specifying the range of sanctions for a specific category of misconduct the discipline will be the same or similar for comparable violations.

Although a step in the right direction disciplinary matrices fall short of addressing the problems in a couple of ways. Because most of them provide discretion in the sanction within a range of possibilities (and they should) the process is still open to criticism on consistency. Officers are still left in the dark on what was considered in the sanction decision.

Discipline Philosophy

In order to provide greater insight into the factors considered in making those decisions I wrote a disciplinary philosophy in 1993 while chief in St. Petersburg. The department had several chiefs within a short period of time and there was widespread concern over the consistency in disciplinary decisions. The philosophy identified the factors that would be considered in making those decisions. The same philosophy was adopted in Charlotte in 2001 while I served as chief. It is still in place in Charlotte and has been adopted in other agencies.

The philosophy defined fairness and consistency and identified five factors that are considered in the discipline decision.

...consistency is defined as holding everyone equally accountable for unacceptable behavior and fairness is understanding the circumstances that contributed to the behavior while applying the consequences in a way that reflects this understanding. (CMPD, 2001)

This definition introduces the idea that “fairness” includes an understanding of the circumstances in which the misconduct took place. A violation of a rule or policy can take place because the officer made an honest mistake in judgment. They also occur when the officer is fully aware of the rule but goes forward with the conduct anyway. Both should be held accountable for the violation, but the two cases beg for different treatment.

The **Five Decision Factors** the CMPD considers in making disciplinary decisions are:

1. **Employee Motivation.** The police department exists to serve the public. One factor in examining an employee's conduct will be whether or not the employee was operating in the public interest. An employee who violates a policy in an effort to accomplish a legitimate police purpose that demonstrates an understanding of the broader public interest inherent in the situation will be given more positive consideration in the determination of consequences than one who was motivated by

personal interest. Obviously, there will be difficulty from time to time in determining what is in the public interest. For example, would it be acceptable for an employee to knowingly violate an individual's First Amendment right to the freedom of speech to rid the public of what some might call a nuisance? Or is it acceptable as being in the public interest to knowingly violate a Fourth Amendment right against an unlawful search to arrest a dangerous criminal? Although it would clearly not be acceptable in either case for an employee to knowingly violate a Constitutional right, these are very complex issues that officers are asked to address. The police have a sworn duty to uphold the Constitution. It is in the greater public interest to protect those Constitutional guarantees in carrying out that responsibility even though it might be argued the public interest was being better served in the individual case. But if an employee attempts to devise an innovative, nontraditional solution for a persistent crime or service problem and unintentionally runs afoul of minor procedures; the desire to encourage creativity in our efforts at producing public safety will carry significant weight in dealing with any discipline that might result.

2. **The Degree of Harm.** The degree of harm an error causes is also an important aspect in deciding the consequences of an employee's behavior. Harm can be measured in a variety of ways. It can be measured in terms of the monetary cost to the department and community. An error that causes significant damage to a vehicle for example could be examined in light of the repair costs. Harm can also be measured in terms of the personal injury the error causes such as the consequences of an unnecessary use of force. Another way in which harm can be measured is the impact of the error on public confidence. An employee who engages in criminal behavior -- selling drugs for example -- could affect the public confidence in the police if the consequences do not send a clear, unmistakable message that this behavior will not be tolerated.
3. **Employee Experience.** The experience of the employee will be taken into consideration as well. A relatively new employee (or a more experienced employee in an unfamiliar assignment) will be given greater consideration when judgmental errors are made. In the same vein, employees who make judgmental errors that would not be expected of one who has a significant amount of experience may expect to receive more serious sanctions.
4. **Intentional/Unintentional Errors.** Employees will make errors that could be classified as intentional and unintentional. An unintentional error is an action or decision that turns out to be wrong, but at the time it was taken, seemed to be in compliance with policy and the most appropriate course based on the information available. A supervisor for example, might give permission for a vehicle pursuit to continue on the basis the vehicle and occupants met the general description of one involved in an armed robbery. The pursuit ends in a serious accident and it is learned the driver was fleeing because his driver's license was expired. Under these circumstances, the supervisor's decision would be supported because it was within the policy at the time it was made. Unintentional errors also include those

momentary lapses of judgment or acts of carelessness that result in minimal harm (backing a police cruiser into a pole for example, failing to turn in a report, etc). Employees will be held accountable for these errors, but the consequences will be more corrective than punitive unless the same errors persist.

An intentional error is an action or a decision that an employee makes that is known to be in conflict with law, policy, procedures or rules (or should have known) at the time it is taken. Generally, intentional errors will be treated more seriously and carry greater consequences. Within the framework of intentional errors there are certain behaviors that are entirely inconsistent with the responsibilities of police employees. These include lying, theft, or physical abuse of citizens and other equally serious breaches of the trust placed in members of the policing profession. The nature of the police responsibility requires that police officers be truthful. It is recognized however, that it is sometimes difficult to determine if one is being untruthful. **The department will terminate an employee's employment when it is clear the employee is intentionally engaging in an effort to be untruthful.** Every effort will also be made to separate individuals from the department found to have engaged in theft or serious physical abuse of citizens.

5. **Employee's Past Record.** To the extent allowed by law and policy an employee's past record will be taken into consideration in determining the consequences of a failure to meet the department's expectations. An employee that continually makes errors can expect the consequences of this behavior to become progressively more punitive. An employee that has a record of few or no errors can expect less stringent consequences. Also, an employee whose past reflects hard work and dedication to the community and department will be given every consideration in the determination of any disciplinary action (CMPD, 2001).

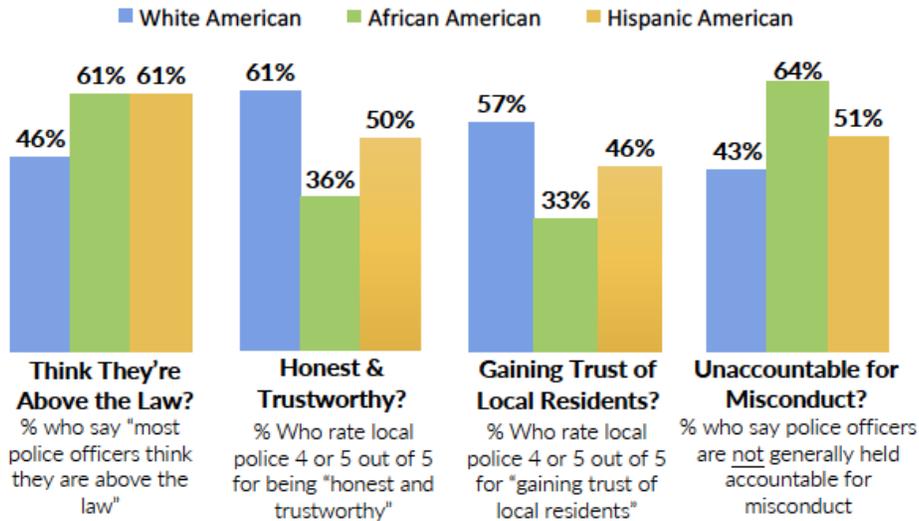
Identifying and codifying these factors helps police commanders think through the circumstances involved in the misconduct. The approach explicitly points out those unintentional mistakes are to be treated differently from intentional misconduct and that officers who run afoul of policy while genuinely trying to serve the public good should be given consideration in determining sanctions. Putting these factors in writing and sharing them with the department and community helps take some of the mystery out of the discipline decision making process and highlights the complexity of the job police officers are asked to do.

Using these five factors in making disciplinary decisions requires some thought be given to implementation. Supervisors and command level personnel must be provided training in how to apply the factors. All employees need to understand what they are and how they are applied. In Charlotte I personally provided training to the command staff and reviewed the disciplinary philosophy with every recruit class. I also provided briefings to the Citizen Review Board and the Civil Service Board. The experience in using these factors in both Charlotte and St. Petersburg was generally positive.

Conclusion

Police discipline is a difficult and challenging responsibility for police executives. It has become a complex, overly legal process that is largely out of the view of the public and officers not directly involved. It is a critically important aspect of maintaining the trust and confidence of the public. A recent Cato Institute survey indicates how important it is from the public's perspective (see graph below (Ekins 2017)). A substantial portion of the public believes that police think they are above the law and they are not accountable for misconduct. Those survey results should be sufficient motivation for police executives and officers to work toward creating a process that is fair but more open to the public.

Police Integrity and Accountability



CATO INSTITUTE/YOUGOV 2016 CRIMINAL JUSTICE SURVEY

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