Managing for Effective Police Discipline

A MANUAL OF RULES, PROCEDURES, SUPPORTIVE LAW AND EFFECTIVE MANAGEMENT

International Association of
Chiefs of Police

Second Edition (Revised) 1977

This document was produced in part under contract to the Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policy of the U.S. Department of Justice.

Library of Congress Catalog Card Number 76-42120

Printed in the United States of America
Second Edition (Revised) 1977

Contents

Preface

In recent years, the International Association of Chiefs of Police has become aware of increasing demands for help in understanding police discipline.[1] Discipline is an important concern to both citizens and law enforcement professionals. Police administrators have faced challenges by the community and in court, as well as morale problems in their own departments. However, there has been little effective study of this subject, and adequate guidance has not been available to those who are daily involved in discipline.

Citizens have pressed for justification and reform of the entire system. Police officers have raised objections to rules, procedures and dispositions which they deem unfair and improper. Too often, antiquated disciplinary procedures have been maintained without review. Rank-and-file officers have felt frustrated with the differing interpretations of the rationale and effect of controversial rules. Because court decisions surrounding some disciplinary issues have not been widely studied, many departments enforce rules and procedures which are illegal.

This need at a practical level was the motivation for the extensive study begun early in 1974 by the IACP and reported herein. Many aspects of discipline were examined in seventeen selected police departments. The purpose of the project was to give insights into the determinants of effective discipline management and to provide practitioners with useful recommendations for understanding and improving their disciplinary practices. The study was funded by the Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice.

The initial project task was to review all available literature, make a survey of common rules and procedures used by representative agencies, and visit nearby departments to determine the dimensions and character of common disciplinary practices. An advisory board contributed direction throughout the project. This preliminary phase was undertaken to formulate the precise areas and variables to be addressed, and to develop the research design.

As is often true in projects of this type, several obstacles were encountered in the early period of problem definition. There was little evidence in everyday

[1] The term police discipline, as used throughout this text, refers to discipline in all types of law enforcement organizations.

practice that discipline was employed to enhance overall performance of departments. No commonly accepted objectives of discipline were available as reference points for the study. A number of conceptual schemes were developed and evaluated by the project staff as possible frameworks for field work. Research methodology consultants, chosen by IACP and NILECJ, aided in selecting and defining a final research design.

Many design decisions were necessary in limiting the study to an effective scope. One decision was to limit research to issues affecting sworn officers, and to exclude from study the special situation of civilian police department employees. This limitation was felt to be desirable due to fundamental differences between civilian and sworn personnel with regard to imposed standards of conduct, training, job performance requirements, internal administrative procedures, and expectations of the community.

After all instruments were pre-tested and field work was initiated, the research design was tailored to accommodate departmental differences. Deficiencies in departmental records on disciplinary matters were common. In many instances, personnel records were not maintained in a manner to facilitate sampling. At times, IACP staff found it difficult to ensure an appropriate degree of anonymity for the individuals tested and interviewed. These constraints, however, appear to be of no greater consequence than is to be expected in survey research. Participating agencies were very cooperative in adapting to project requirements.

The seventeen police departments involved in the main study phase were chosen to present a wide range of operating conditions. Each participating department made available all materials relating to disciplinary standards and procedures, and provided access to many individual administrators and field officers for interviews. The data-gathering and analysis by IACP staff were conducted from the following four perspectives: administrative, government official and community interest group, officer attitude, and legal. This approach allowed independent views of each of a number of issues, giving a more sound basis for interpreting the overall data. All four types of data were gathered at the site of each of the seventeen agencies with one exception. Employee questionnaires were not completed at the request of one agency which was involved in labor negotiations at the time of the IACP visit.

The results of the project are: (a) an individual report of findings to each participating department; (b) this document, which conveys the general practical implications of the combined findings, including detailed quantitative results of the research at the project sites; and (c) a summary report highlighting major project findings and recommendations.

The purpose of this document is to share with the reader an interpretation by the project staff of the information gathered in this research. The information has diverse sources, yet common themes and relationships have clearly emerged. The intention, from the beginning of the project, has been to develop guidance useful to the widest possible audience. Accordingly, no one explicit "model" for optimum discipline is applicable to all agencies. Any model must be modified for local variations, such as laws, size of agency, type of agency, and status of labor relations. An analysis of the issues relating to discipline has been given, followed by a synthesis of those findings to demonstrate how important factors might be identified in different local situations.

Chapter One explores the sources of the traditional view of discipline as a management technique to control employee behavior. It discusses the negative character of discipline and the view that discipline is a single isolated management function. It also contrasts the military model of management and discipline with a more adaptive organizational approach. A self-appraisal by police managers, with these models in mind, will identify starting points for constructing a new disciplinary system.

Chapters Two, Three, and Four treat important areas of departmental operation, including the tools of discipline, the processes used, and the people involved. Separate analysis of these subjects will help the reader to diagnose specific agency problems.

Chapter Two discusses the usefulness of tools for effective discipline. These tools are the structural resources of management. These resources are basic building blocks which, when integrated with processes and people, make an effective system possible. The structural resources available to a department are many and varied. A few examples are written directives delineating management expectations, assignments of authority and accountability, units for inspection and control, and goals and objectives for internal discipline.

Chapter Three develops the idea that in the handling of disciplinary cases, the process is similar for all major cases. Often as many as ten elements are included, such as conduct of investigations, imposition of sanctions, and appeals. For minor infractions, the process may be simplified. The purpose, application and results of each element are discussed.

Chapter Four deals with the effects of the personalities, skills, motives and roles of people involved in the management of discipline. People are a significant resource which management must use wisely. Selecting individuals and assigning them to formal organizational positions is a fundamental task of leadership. Participating, monitoring, recognizing expectations, and coping with conflicts among values and roles, are some of the topics covered in this chapter.

Chapter Five compiles key ideas from the three previous chapters, with page references. Statements selected and grouped in Chapter Five present a compact, practical outline for persons who are considering organizational changes.

Chapter Six is a prototype document containing rules of conduct and disciplinary procedures for police organizations. These rules and procedures are designed to promote effective management control of officer behavior, and to provide officers with a degree of personal freedom appropriate to contemporary conditions. The rules and procedures are based on recent court decisions as well as the discipline experience of many departments. The prototype should serve as a foundation for departments to develop variations in accordance with their local needs.

The concepts and evidence discussed here must be compared with individual agency characteristics. Methodical self-diagnosis and corresponding follow-up action by police management teams are necessary. It is hoped that this report will serve to stimulate and guide in that effort.

The first edition of this book was published in 1976. Since then, many new cases on police discipline have been decided. These decisions are reported in Appendix B. Except for the addition of these new cases, the text remains basically the same as in the first edition.

As was stated previously, the prototype rules and procedures presented here are intended only as a guide to assist others in developing a sound disciplinary system. No one should assume that the rules and procedures can be implemented without careful review and alteration to meet local conditions.

Likewise, the cases presented in the Annotated Bibliography (Appendix B) are intended as a reference only. The complete text of any case referred to should be carefully reviewed and analyzed before making a decision as to its meaning and relevance to a particular issue at hand.

Acknowledgements

Two key resources made this project possible: funding by the National Institute of Law Enforcement and Criminal Justice (NILECJ), and the cooperation of many police departments across the United States.

Staff members at NILECJ (the research component of the Law Enforcement Assistance Administration) made valuable critiques of the early concept papers prepared by the Legal Research Section of the IACP, and approved funding of the project in April 1974. Seventeen police agencies representative of a large segment of the police community in this country were selected to participate. These agencies committed substantial staff resources and were most cooperative in meeting research needs. We are grateful to the over 2,000 police officers who responded to the IACP questionnaire. We also thank those additional departments which furnished materials relating to their disciplinary practices.

The project staff was fortunate to have the assistance of a dedicated advisory board. This group could be counted on to give not only its talents and energy, but a sustained and sincere interest which was an additional source of motivation much appreciated by the research team. Members of the Advisory Board were:

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We are indebted for the technical expertise and practical advice provided by our consultants:

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We are grateful to our NILECJ project monitor, William E. Saulsbury, for his guidance at many decision points during the project. We also appreciate the assistance of David J. Farmer, Director of the Police Division of the NILECJ. As project evaluator, Victor Rosenblum provided us with useful insights.

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1

Discipline as Part of the Management System

INTRODUCTION

The subject of police discipline is an excellent example of the maxim that "the definition of the problem is half the solution." Discipline is not well understood. Critical analyses of disciplinary practices are rare in most police organizations. Normally, criticism originates with an individual who has a narrow interest and demands a solution to an immediate problem; i.e., a citizen wants to know why a particular complaint was not recorded, a police officer wants to know the reason for being singled out for reprimand, a police administrator wants to know why simple regulations cannot be enforced without throwing the entire department into turmoil.

This attitude is similar to the behavior of an irate customer who has lost a ccin in a cigarette machine. By kicking the machine, the customer hopes either to get the coin back or to get the cigarettes. This individual is not overly concerned with the reason for the coin sticking nor the inner workings of the machine.

Perspectives usually held by people toward police discipline, while somewhat varied, do tend to share the idea that discipline (or creating a desired quality of discipline) is one of several distinct functions of police management which is to be carried out through the simple exercise of authority—in short, a matter of "kicking the machine."

Frequently discipline is given a negative connotation—referring to either a technique to prevent negative behavior on the job, or a punishment when such negative behavior occurs. While the word "discipline" was originally defined as

instruction, teaching or training, its meaning has shifted toward a concept of control. As stated by A. C. Germann, "[N]egative discipline is the threat or imposition of punishment upon the person who failed to conform, or in a sense, did not learn."[1] The distinction between teaching and control is important in its implications for any organization's management, and specifically police management. Too many police organizations stress control, while placing minor emphasis on instruction. In response to the statement, "[T]he term 'discipline' can best be defined as . . . ," only 20 percent of police officers sampled in the current study chose the completing phrase, ". . . training or counseling to improve police officer performance."[2] The first-line supervisor, in particular, is prone to use punitive methods to control behavior. Egon Bittner has described the police supervisor as ". . . someone who can only do a great deal *to* his subordinates and very little *for* them."[3]

A POSITIVE VIEW OF DISCIPLINE

The dominance of negative aspects of discipline has disturbed many police observers who feel that a positive emphasis will improve the morale and productivity of police officers. A first step in approaching discipline differently is to reconsider basic premises. For example, it is easy to think of disciplinary problems in terms of the individual who will not conform; but the focus may belong instead on organizational practices in establishing and making known suitable rules and procedures, or in processing disciplinary cases. Several military research studies suggest that the conforming behavior of individual members depends more on perceptions of these practices than on soldiers' personal characteristics.[4]

Similarly, it is too common for rules of conduct and disciplinary procedures to be used as an end in themselves—their purpose as an aid to reaching departmental goals is forgotten. It is necessary to question the origin of present rules of conduct and disciplinary procedures in order to pinpoint the intended

[1] A. C. Germann, *Police Personnel Management* (Springfield, Illinois: Charles C. Thomas, 1958), p. 169.

[2] Other major responses were: "punishment for officer misconduct," 24 percent; "behavior according to police standards of conduct," 25 percent; "an attitude which causes officers to obey police standards," 30 percent.

[3] E. Bittner, *The Functions of Police in Modern Society* (Chevy Chase, Md.: National Clearinghouse for Mental Health, 1970), p. 59.

[4] See, for example, G. A. Clum and J. L. Mahan, Jr., "Attitudes Predictive of Marine Combat Effectiveness," *Journal of Social Psychology*, 83 (1971), pp. 55-62.

goals. There are different solutions to these problems because the problems themselves are different. Without question, both social and organizational environments are changing dramatically. Citizen perspectives of the police service, as well as officers' views of their departments have changed. Many citizen groups demand a high level of integrity from their police agency, and expect responsiveness to complaints and rapid resolution to all incidents of misconduct. At the same time, officers have adopted new standards of conduct consistent with new societal values. The role of discipline during this period of change cannot escape revision. Now is an appropriate time to treat discipline as a managerial resource in need of development. If the disciplinary aspects of managing police officers can be given positive emphasis, a much needed management tool will be created to replace a system which too often acts to reduce morale and motivation, and which strains police-citizen relationships.

INFLUENCING OFFICER BEHAVIOR: THE MILITARY LEGACY

Management's goals in any organization are not necessarily the inherent goals of employees. A basic tactic of sophisticated management is to bring these goals into harmony. A common approach to management which attempts to converge these goals can be called the "military model." This approach has been the dominant influence in the development of today's police organizations. The term "military model" is used here to describe a management style, rather than to denote militaristic quality in the execution of law enforcement *per se*. This model comprises the total body of management philosophy and techniques used to achieve compliance to direct orders. This style reached the peak of its expression in most of the world's armed forces of the first half of this century. Several management principles, such as unity of command, clearly delineated authority, formal communications through channels, and standardization of roles, were applied to achieve control in these organizations.

This style of management was also adopted at an early date by private and public sector management to achieve control of employee conduct. While private industry has discarded many of the more visible and control-oriented features of the military model, the public sector in general and police organizations in particular have not.

In the military context itself, several techniques are used in an attempt to cause an integration of the goals of management with those of the soldier. For example, considerable attention is given to training soldiers to internalize the goals of protecting their territory from incursions of other armies and of preserv-

ing the liberties of their fellow citizens. However, the military model makes use of a more focused technique for controlling and directing soldier behavior toward desired "common" goals. To buttress this effort, the concept of military discipline has been developed. Discipline in this form has a clear identity and is elaborated in well-defined codes and procedures. In this context, discipline has been defined as ". . . a function of command that must be exercised in order to develop a force amenable to direction and control."[5] The implicit aim of this approach is to achieve more certainty of control over behavior. Also implied is the idea that there is "one best way" for individuals to behave in pursuit of organizational goals, and that deviance from that way should be detected and corrected.

Advocates of the military model hold that in addition to behavioral control induced by simple threat or fear of sanctions, soldier self-discipline is also gained. At one level, those who comply would feel rewarded for their compliance simply by seeing punishment suffered only by those who deviate. If supervisors can maintain this consistency, each officer may voluntarily follow management directives. Furthermore, those who comply may be rewarded by peer approval.

Thus, the military model is aimed at two outcomes. The first is self-discipline, believed to be developed through activities such as stress training and continuous, explicit applications of rewards and punishments tied to a wide range of behavior. The second is group discipline, or *esprit de corps*, depending on a self-reinforcing relationship among peers and between the peer group and its leadership. Both of these outcomes are also often associated with the challenge of high standards (e.g., in the form of competition) and pride in accomplishment. In the military, intermediate goals with which soldiers can readily identify, such as winning at team sports, are sometimes introduced for the purpose of building *esprit*. The intention is that positive results will generalize to any situation in which the primary goals of management are pursued.

TESTING THE MODEL AGAINST CHANGING NEEDS

The military model of management and the sub-model of military discipline were developed and found in their purest form in a time and context markedly different from the world of police management in the 1970s. Even within the military, discipline has changed over the years, particularly since

[5]W. B. Melnicoe and J. Mennig, *Elements of Police Supervision* (Beverly Hills: Glencoe, 1969), p. 77.

World War II. Arguably, greater change has been realized in the armed forces than in many police departments. Generally, the total application of the military model may have a negative impact on police management effectiveness today, due to a basic lack of congruence between the premises underlying the model and conditions in contemporary law enforcement. This contrast is highlighted when related to the following objectives which have been proposed by Leavitt, Dill and Eyring as important in reducing internal conflict in organizations:[6]

1. A high degree of socialization of members,
2. Well-structured tasks, and
3. A stable environment.

In reference to the first objective, the military has much more influence in fostering socialization among its members than do police organizations. The police officer attitude survey conducted during this project indicates a variety of opinions among officers with factions evidenced in differing age groups, educational levels, and other personal and social characteristics. While socialization can be strong within police cliques and subgroups, homogeneity across entire police organizations is not a reality.

Under the second objective, military tasks are well structured in the sense that a planned team approach is adopted for operations, even when the exact nature of the mission is not known until it develops. Team operations in policing have been the exception. The majority of routine work, such as patrol, involves one or two officers in a sequence of unstructured assignments. Each daily tour of duty is unique in its pattern of events.

The third objective stresses the importance of a stable environment, and while the larger environment of the military is stable only to the extent of common world circumstances, many measures are taken to modify the immediate environment of the individual soldier. Standardization of equipment, living quarters, daily work assignments and a far-reaching array of personnel practices all contribute to a contrived stability of environment, relatively independent of outside events. Police officers, however, increasingly treat their work as an occupation separate from their private lives. Even though the police organization maintains some military-like measures to promote stability, the impact on officers is probably small compared to influences in their "civilian" lives. Also,

[6]H. J. Leavitt, W. R. Dill and H. B. Eyring, *The Organizational World* (New York: Harcourt, Brace, and Jovanovich, 1973), p. 16.

the role of the police department in its environment does not enable the department to insulate itself as successfully as the military. The result is that the police officer is not heavily conditioned to perceive a stable environment merely as a result of the manipulations of police management.

In summary, the sources of motivation and control of military personnel, their patterns of work, and their working environment as traditionally conceived, can differ substantially from those of police officers. Accordingly, military models of management and discipline may not be the optimum choice for police management.

TREATING DISCIPLINARY ISSUES AS INTEGRAL WITH OTHER MANAGEMENT RESPONSIBILITIES

Logically, an alternative to a military management perspective might be that of business, industry and public service organizations. Although most management principles of the western world had their origin and early development in a military context, they have seen important modifications in the private sector. These modifications have served to answer the survival needs of business as it copes with its environment. Police organizations operate in that same "civilian" environment. Drawing from the same labor pool, competing in terms of working conditions and employee expectations, both police and business exist to deliver a service or product to the same market—the public.

How do the military and business approaches to management differ? Citing superficial examples may not show a clear difference, because of wide variations in practice. It is possible to find business firms with codes of conduct and scales of punishment more explicit and detailed than those which exist in the military. It is also possible to find military units where disciplinary measures are left largely to peer influences. Generally, however, an important distinction of the private-sector is its flexible, experimental approach to organizational problems, which de-emphasizes rigid, preconceived solutions based only on managers' deliberations. This approach is careful and responsible, but its hallmark is an openness to scrutiny and change. It is a management initiative to achieve control, but it may accommodate participation by the rank-and-file. It aims at considering and balancing many aspects of the department's problems and possibilities at once. It is a continuous process involving many members and levels of the organization, not an autocratic approach by management to a permanent method for running the department; it is organic, not mechanistic.[7] This openness to input extends beyond the organization.

A police department exists to serve its community by pursuing a long list of goals reflecting community interests. These interests are forcefully spelled out by groups as diverse as trade unions, ethnic action committees, courts, arbitrators, civil service systems, private citizens, and political office holders. Often a mismatch develops between the expectations of the community and the police department. Community goals may become seriously incompatible with the goals of the department and of individual officers. Management policies and actions, including those labeled "disciplinary," may be based on values which are not supported by some elements of the community. Management may have created a focus on internal objectives, such as overuse of the chain of command, or "spit and polish," instead of external and service goals. In these cases, the agency has failed to sense environmental needs and to adapt its operation to them. The potential for these mismatches is always present. A routine watchfulness by management and the capacity to make responsive changes is necessary. This "adaptive coping cycle" can be developed within the normal resources of most organizations where management is willing to involve both members of the organization and the external environment.[8]

Contrasted with this alternative viewpoint on management, some traditional ideas about discipline appear to be misconceptions. Discipline does not, in the new context, appear as a system or subsystem of management to be manipulated independently, but as a basic dimension of organizational life. Those who claim that people can be "pushed" into desired behavior, and "pulled" away from undesirable behavior by a good disciplinary system, may be claiming too much. Realistically, the entire management effort, informed by a constant feedback from the "managed" and those served by the department, is the determinant of desired performance by officers. It is also beneficial to perceive all managerial efforts on a continuum from proactive to reactive and to consider disciplinary events as reactive management actions. The implication is that the occurrence of reactive events can be reduced by relevant proactive efforts.

Those who maintain a reactive posture tend to "manage by activities" dealing with disciplinary problems as they occur. Often, the result of action management is the inaccurate charging of the accused officer, lack of under-

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[7]The terms "organic" and "mechanistic" are used to indicate types of organizations which differ in the way they cope with changing conditions. See T. Burns and G. M. Stalker, *The Management of Innovation*, 2nd ed. (London: Tavistock Publications, 1966).

[8]E. H. Schein, *Organizational Psychology*, (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1965), pp. 98-103.

standing by agency employees as to the nature and scope of the disciplinary process, and dissatisfaction within the rank-and-file regarding disciplinary procedures. These undesirable conditions stem from the agency's failure to establish a plan for dealing with disciplinary issues.

On the other end of the continuum are those agencies which have devoted extensive resources and energies to design and plan for dealing with discipline. These agencies manage by objectives. They have internalized discipline as part of the administrative process and consider disciplinary management no less important than planning for manpower allocation and distribution, reviewing budgets, purchasing needed equipment, and other administering management functions. Their posture on management is proactive in that actions to meet anticipated and unanticipated occurrences are predetermined by a plan. In agencies utilizing management by objectives and results, there is a concentrated effort to define the results to be achieved from the disciplinary process and steps necessary to achieve pre-determined results.

Police departments which manage disciplinary occurrences by objectives and results generally have a well-defined set of written directives which do not conflict with legal standards or prior labor agreements. The reason for such lack of conflict is that adequate research, both administrative and legal, is performed before a directive becomes final. Additionally, there is a high degree of acceptance of directives by the rank-and-file because the officers have received adequate training and, therefore, understand (and have internalized) management expectations. Thus, disciplinary procedures are well-established, understandable, and accepted because the procedures have been rigorously planned prior to implementation.

In the following chapters, the entire phenomenon of discipline as seen in police organizations is analyzed in the proactive frame of reference. It will be assumed that discipline is a dimension of management, not a technique or a system. However, the very act of analysis requires the use of labels and categories. For ease of communication, it is necessary to refer to a disciplinary "system" and to discuss its parts. Additionally, some of the conclusions are in the form of rules and procedures. The analysis seems to produce the same kind of results as the "mechanical" approach to discipline; however, it should not be assumed that the latter is comparable or inevitable. On the contrary, there are important differences, which will become evident in the discussion. They lie both in the management processes by which these end products are reached in each organization, and in the ways these visible parts of the discipline "iceberg" are used.

2

Structural Considerations in the Management of Discipline

INTRODUCTION

Chapter One emphasized that all segments of the disciplinary process should be considered as integral parts of the management system. Discipline should not be viewed as a distinct aspect of management, but rather as a part of the administrative process which maximizes the realization of performance norms and minimizes the likelihood of undesirable behavior. Further, discipline must be conceptualized primarily as a positive tool for modifying undesirable or potentially undesirable behavior, rather than solely as a punitive mechanism for controlling behavior.

All disciplinary events should be analyzed from this broad perspective. The importance of this conceptualization cannot be overemphasized. The manager who views discipline from a narrow perspective is destined to commit some very expensive errors. This is not to say that control and punishment are not important means which can be used to secure effective discipline. Before such action is taken, however, it may be more reasonable to employ nonpunitive, behavioral modification techniques to correct improper behavior. Such decisions should be based on the severity of the offense and results of previous nonpunitive measures. In many cases, the use of positive techniques will result in savings in human and monetary resources.

This chapter discusses methods the police manager can use to move the organization toward effective and efficient discipline. The chapter is primarily intended to guide the manager in deciding how discipline can be integrated into the total organizational structure. Furthermore, it identifies and discusses neces-

sary conditions for effectively determining if employees are complying with management expectations—a necessary outcome for the realization of service delivery goals.[1] The major management focus should be on creating an environment and system for the achievement of departmental expectations (performance norms) and decreasing the probability of unacceptable behavior. The manager can accomplish this by using available resources (money, material and manpower). A key to achievement, however, is careful planning. Included in this chapter are the following major topics:

1. *Identification and Discussion of Organizational Considerations*—This section highlights several organizational concepts deemed essential for a workable administrative process. The foundation for effective management practices, both in the public and private sector, is based on the successful application of these principles to accomplish desired goals. This section attempts to apply these concepts to the disciplinary realm, and in doing so establishes a basis for understanding the disciplinary factors to be covered throughout the manual. The issues of direction and control are presented under organizational considerations, as well as the subjects of organizational goals and objectives, the problems of determining such goals and objectives, and means of diminishing these difficulties.
2. *Written Directives*—A review of written directives is presented to point out the importance of establishing a system of rules and general orders to move the organization toward a common goal.
3. *Establishing Responsibility for Discipline within the Organizational Structure*—A discussion of responsibility within organizational units is included. This section stresses the importance of identifying these entities, delegating authority, and ensuring control over operations.

ORGANIZATIONAL CONSIDERATIONS

Any treatment of management tools for an organization must first begin with a concept of the organization. It is essential to establish a basic understanding of the need and purpose of these tools.

[1] Police agencies establish delivery patterns to meet the needs of the community. To serve effectively, each agency must establish goals and objectives for effective use of resources. If employees do not conform to management intentions, these goals and objectives will not be realized.

"Organizations are social units (or human groupings) deliberately constructed and reconstructed to seek specific goals."[2] Organizations are characterized by:

1. Division of labor, power and communication responsibilities, divisions which are not random or traditionally patterned, but deliberately planned to enhance the realization of specific goals;
2. The presence of one or more power centers which control the concerted efforts of the organization and direct them toward its goals; these power centers must also continuously review the organization's performance and re-pattern its structure, where necessary, to increase its efficiency;
3. Substitution of personnel; i.e., unsatisfactory persons can be removed and others assigned their tasks.[3]

Organizations are a complex mixture of many components or subsystems. The overall police organization may be viewed as a structural device composed of several interrelated entities. This view in itself, however, does not provide a complete understanding of the police service delivery system. A structure by itself does not function until other critical ingredients are added.

By the same token, a police service delivery system is not simply a group of people randomly performing law enforcement activities without direction. The organization designed to deliver police service is similar to other public and private institutions consisting of a group of persons in a structure which changes (or is reconstructed) as needed to seek specific goals.[4] Four basic components are included in these organizations:

1. *Tasks*—determining what needs to be done;
2. *Structure*—a broad and basically permanent framework of resources and people in some sequence of hierarchy;
3. *Technology and Process*—utilization of modern technological advances and management designs to give direction to tasks; and

[2] Talcott Parsons, *Structure and Process in Modern Societies* (Glencoe, Illinois: Free Press, 1960), p. 17.

[3] Amitai Etzioni, *Modern Organizations* (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1964), p. 3.

[4] Parsons, p. 17.

4. *People*—individuals who populate the organizational structure, who are directed by the management process, using the technology to perform tasks in order to achieve organizational goals.

These elements are necessary in private industry to produce and market products at a profit, and in the police agency to meet and service the needs of the community. The general task of management is to move these basic components of the organization toward a desired goal. The varied and multi-dimensional relationships between the components and subcomponents are, therefore, directed and controlled by the administrative process.[5] While carrying out this process, management must take steps to ensure that performance norms are realized and the probability of undesirable behavior is minimized.

To manage effectively and efficiently, there must be a logical approach to the management task. In discussing discipline, such an approach may be realized by defining goals and objectives of affected units, promulgating management expectations to guide these units toward the realization of particular goals, and establishing a means to monitor performance to correct improper actions. Management can, by implementing such a plan, deal with discipline proactively and reduce internal and external dissatisfaction with the management task.

The differences in management by activity (reactive management) and management by objectives and results (proactive management) are obvious. The latter is a more effective method of managing police disciplinary problems and other complex organizational problems. George L. Morrisey states that "[M]anagement by objectives and results is a professional approach to management that determines:

1. What must be done (after careful analysis of why it must be done), including establishment of priorities;
2. How it must be done (the program steps or plan of action required to accomplish it);
3. When it must be done;
4. How much it will cost;
5. What constitutes satisfactory performance;

[5] Dwight Waldo, *The Study of Public Administration* (New York: Random House, Inc., 1955), p. 11.

6. How much progress is being achieved; and
7. When and how to take corrective action.[6]

This step-by-step plan is appropriate for all management tasks. Each of these questions must be answered if rational decisions are to be made concerning use of manpower and resources. In the context of discipline, this plan could be expanded as follows:

1. What must be done to establish a clear, understandable, and acceptable method of transmitting management expectations, and to establish a fair and reasonable disciplinary process which assures that internal and external complaints will be investigated and resolved?
2. What program or action plan will accomplish those ends identified above?
3. When should the agency begin these programs or action plans (when should they be planned and implemented)? How long should the activity continue before evaluating results?
4. How much will it cost to implement and maintain the activity (staff, material, money)?
5. What constitutes satisfactory performance by program staff, and what criteria for measurement should be used to demonstrate program effectiveness?
6. How much progress is being achieved toward attaining desired ends?
7. When and how should action be taken to correct undesirable and unanticipated consequences of the implemented program, and maximize positive, unanticipated consequences of the implemented program?

While this plan deals mainly with the planning portion of management, i.e., establishing methods of handling disciplinary issues (steps 1 through 4), the importance of evaluating results and modifying existing disciplinary practices (if necessary) should not be minimized (steps 5 through 7). Often, failure by management to evaluate their program limits the realization of their goals.

[6] George L. Morrisey, *Management by Objectives and Results* (Reading, Massachusetts: Addison-Wesley Publishing Co., 1970), p. 3.

ESTABLISHING GOALS AND OBJECTIVES

One of the most important facets of police management, which is often overlooked, is the establishment of organizational goals. Frequently, goals are not easily identifiable because they are not stated succinctly. Additionally, "goals" and "objectives" are frequently used interchangeably due to confusion over their meaning. However, there is a difference in definition.

The ends toward which organizations or individuals strive may be referred to as targets, purposes, objectives, goals or missions. In the context of police organizations, goals are those measurable end results toward which the total agency strives; objectives are those intermediate organizational achievements, usually accomplished by individual units, which when realized will cause the organization to reach its goals. Where objectives represent *an end*, goals are best described as *the end* toward which the organization strives.

The determination of goals for the total organization and objectives for each organizational entity is important to any discussion of disciplinary systems. Since goals direct the organizational effort, failure to achieve them generally means that the procedures established to reach the goals are not being followed or are being intentionally violated. In these instances, disciplinary processes become operational. Positive measures may be taken in the form of retraining and counseling to correct inappropriate behavior; negative actions in the form of punishments may be used to induce compliance.

There is, however, an often ignored or overlooked reason why these goals are not achieved. It is quite possible that at times goals may be either incorrectly stated or unattainable. Further, even if goals are realistically stated, the strategy to achieve them may be unworkable. In such cases, the disciplinary process should not be used, because the fault lies with the strategy—not the individuals. The organizational mechanism to identify faulty strategies and to make suggestions for appropriate modification is termed inspections and control (to be discussed later in this chapter).

One function of goals and objectives, when transformed into work plans or strategies, is to provide stability and direction to the organization. Stated by Leavitt, Dill and Eyring, there is a relationship between organizational stability, goals, objectives, and the task to be performed in order to reach these goals:

> One thing, however, seems clear: to the extent that an organization's tasks are operationally specific, regular and predictable, the organization is likely to generate a *structure* that is specific, regular and predictable. If an organization knows not only what it is trying to do, but how and when it must be done, then we should expect its structure to evolve directly from that task, with authority and responsibility carefully allocated, and with pieces of the task carefully cut up and assigned.[7]

Once such tasks are assigned, direction and control are simplified because members can be held accountable for task completion, and irregularities in performance are easily identifiable.

The establishment of goals and objectives also provides management with a yardstick to measure performance of the entire organization and particular units. Such measures may indicate that the police agency is not reaching desired goals. As applied to discipline, goals and objectives may direct the organization toward the resolution of citizen allegations of misconduct, the reduction in officer violation of rules, and the maintenance of directives which are current with the law and sound employment practices. Feedback or measurements of such activities may indicate the need to alter goals or review the actions of organizational entities responsible for carrying out certain tasks. These entities may not be able to meet objectives for a variety of reasons. Management must ascertain these reasons and take appropriate action. Establishing any administrative process or committing any agency resources without a stated goal can be wasteful and ineffective.

Example

A primary goal of law enforcement agencies should be the encouragement and proper handling of complaints about the service delivery system. Or, stated more precisely, the goal is to create an environment which is conducive to efficient reception, investigation, and resolution of all complaints against procedures and/or personnel, from both internal and external sources.

Various organizational units must select and define objectives which guide the overall organization toward the realization of this goal. A fundamental principle in managing by objectives and results is that the tasks performed by organizational units are directed toward the overall goals of the total organization. If this principle is followed, there exists a common direction of action and

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[7]Harold J. Leavitt, W. R. Dill and H. B. Eyring, *The Organizational World* (Harcourt, Brace, Jovanovich, Inc., 1973), p. 16.

continuity of purpose. Since objectives form a basis for determining what activities are to be performed, the objectives might be stated as follows:

1. To provide (x) hours of training to all members of the agency by (date) on the need for a mechanism which adequately provides for the reception, investigation and resolution of complaints against police personnel and procedures. Such training shall not exceed (y) dollars.
2. To provide (x) hours of training to supervisory and command personnel by (date) on methods of investigating complaints against police personnel and/or procedures at a cost not to exceed (y) dollars.
3. To decrease the tension and apprehensions associated with making a complaint against police personnel and/or procedures.[8]

Difficulties in Determining Goals and Objectives

The determination of goals and objectives is a difficult undertaking for several reasons. First, it requires the manager to plan for the future. Most police executives are striving just to keep pace with present problems. However, planning and goal setting are essential if the organization is to respond to the changing dynamics of society. Thus, the administrator must be cognizant of evolving conditions and accelerated rates of change. Management should provide the techniques to gather and analyze information which may affect the department. This proactive planning will profoundly influence the organization's ability to deliver service.

A second difficulty, closely associated with the first, arises when modifying established goals to keep pace with changes in the environment. Managers may see the task of constantly revising goals as futile because of the ever changing nature of the law and community needs.

A police agency exists in a political and social environment. As with any organization, it must adapt to the milieu. The actions of individuals and groups, both within and outside the agency, may alter the relationship of the organization with its environment. Special interest groups demanding a better system of

[8]Note that objective three is stated in a different format than one and two. There are some objectives which are subjective in nature. Subjective ends are still critical, and should not be overlooked. To do so would defeat the purpose of management by objectives. See reference 5, pages 47-48, for a complete discussion.

investigating citizen complaints seldom hesitate to pressure management for rapid change. Politicians responding to constituents often make stringent demands on the police executive. To illustrate, many police agencies investigate complaints brought to the department's attention by a politician more promptly and thoroughly than complaints made by a citizen. This situation is understandable, but it clearly demonstrates the indisputable fact that complaints filed by someone with influence usually will be handled as priority items. Pressures exerted by the mayor, city manager, alderman, councilman or county commissioner will cause the agency to react more vigorously than if the average citizen registered the complaint. In at least five of the agencies analyzed during this project, interviews confirm that complaints received through the governor's office, the mayor's office, or other political entity were handled directly by the internal affairs unit, while other complaints were initially investigated at a lower level. There is reason to believe that similar practices are followed in the other agencies visited.

Other pressures result from new or revised legislation, collective bargaining agreements, employee organization demands, and claims of citizen interest groups. Therefore, goals and objectives must be reviewed periodically and updated when necessary. While this task is not easily accomplished, it is an essential function in the administrative process. Such a task may be achieved by modifying present strategies or creating adaptive administrative systems to solve specific problems.[9]

Further, it is often difficult to implement strategies for achieving goals. Methods designed to achieve goals often are unrealistic or not feasible. The goal may be clearly stated, responsive to citizen interests, and consistent with all criteria of a well-stated goal, but procedures for achieving the desired ends simply do not work.

Finally, employees who must carry out the process to achieve goals and objectives may disagree with them. In many instances, goals are developed by a manager or a staff person without consulting line employees. Whenever goals and procedures are imposed without input from those who must implement the workplan, there is a risk of opposition or protest.

Diminishing the Difficulties. Problems in setting goals and objectives can never be eliminated, but they can be diminished. One way to reduce problems is to create a unit within the agency which senses both internal and external changes in the environment. These units, which are often referred to as organiza-

[9]P. M. Whisenand and R. F. Ferguson, *The Managing of Police Organizations* (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1973), p. 11.

tional sensors, inspect existing operations and maintain quality control, thus determining if management standards, as reflected in policy and procedures, are being carried out as intended. Organizational sensors are used to "keep on top of things"—a task designed to discover anticipated changes and determine how they will affect existing goals and objectives.

Ideally, every officer is responsible for identifying changes. However, the following units have specific responsibilities as organizational sensors:

1. *Legal Unit*—monitors laws which affect the service delivery system and discipline, and makes recommendations as to the system's ability to function within legal guidelines.
2. *Inspection and Control*—identifies undesirable conditions which can be altered by new procedures or plans.
3. *Internal Affairs*—identifies and investigates misbehavior uncovered from external sources (citizen complaints), or internal sources. Also examines conditions which are deemed to be undesirable.
4. *Planning and Research*—analyzes conditions pointed out by other organizational sensors and recommends procedures for improvement.
5. *Training Unit*—indoctrinates officers to management expectations, both at the recruit level and for veterans requiring in-service training.

Specific involvement of these units will be discussed in later sections of this chapter.

DIRECTION AND CONTROL

An essential task in the administrative process is the direction and control of activities and behavior of people performing work. Direction involves the creation and implementation of certain management techniques which establish the level of acceptable behavior and activity (performance norms). Once such expectations have been established and measurement is made possible (performance evaluation), it becomes essential that controls be established to correct action or behavior which is deemed contrary to the established work expectations (disciplinary system). As stated by Koontz and O'Donnell:

> The managerial function of controlling is the measurement and correction of the performance of activities of subordinates in order to make sure that enterprise objectives and the plans devised to obtain them are being accomplished. It is thus the function whereby every manager, . . . makes sure that what is done is what is intended. Some managers, particularly at lower levels, forget the principal of control responsibility that *the primary responsibility for the exercise of control rests in the manager charged with the execution of plans.*[10]

The establishment of work expectations implies the development of organizational plans and goals. They are generally written directives issued by management to inform subordinates of the organization's policies, procedures and rules for attaining goals and objectives. Again quoting from Koontz and O'Donnell:

> Since control implies the existence of goals and plans, no manager can control without them. He cannot measure whether his subordinates are operating in the desired way unless he has a plan, however vague or for however brief a period. Naturally, the more clear, complete, and coordinated plans are and the longer the period they cover, the more complete controlling can be.[11]

The day-to-day operations of a police agency are so complex that a systematic procedure for issuing written directives must exist. Although this is true of all police organizations, it becomes especially true as the size of the agency increases and tasks become more complex. Since police operations are carried out over different periods of time and often are separated by geography, the agency cannot operate efficiently with outdated rules or oral transmittals which do not delineate management expectations. A police agency, without a proper system for disseminating policies, procedures and rules, will not reach its maximum efficiency. Even a department with a high potential for leadership will suffer without a system of written directives to insure adequate direction and control. Lacking such a system, officers must rely on their own discretion in carrying out organizational goals.

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[10] Harold Koontz and Cyril O'Donnell, *Essentials of Management* (McGraw Hill Series in Management), p. 359.

[11] Koontz and O'Donnell. P. 359.

THE WRITTEN DIRECTIVE SYSTEM

In order to attain goals and objectives, management must establish workable procedures for documenting all expectations and advising individuals of their duties and responsibilities. The recommended format is a well-defined written directive system designed to move organizational components toward common goals and set the standard for acceptable behavior.

Written Directives as a Management Guide

Any analysis of disciplinary procedures must start with an intensive concentration on written directives. Directives are the organizational tools which establish the level of expected behavior. The disciplinary process, both punitive and nonpunitive, is used when performance norms, as set by directives, are not realized and undesirable behavior is noted.

The disciplinary process takes place generally when the procedures, rules and policies of management are not carried out, are misinterpreted, or are intentionally violated. To ensure understanding in complex police organizations, management must endeavor to have all policies clearly stated and understood. The potential for misinterpretation of administrative thinking grows as directions flow from level to level. Police executives should ensure that directives are interpreted and carried out as intended. To achieve such control, each organizational level of command must execute its duties accurately: the administrator's job is to determine goals and adopt policy; the commander's duty is to interpret these goals and establish objectives for goal achievement; the supervisor's task is to see that the work gets done; and operational personnel are responsible, in most cases, for carrying out tasks.

Numerous administrative techniques are used in police agencies to achieve the desired level of understanding. The most common approach is to publicize expectations in some form of written directive, educate employees through recruit and in-service training, and seek some form of feedback on the practical application of policies and procedures. Through field research, it was determined that the quality of such management techniques varies substantially in different agencies. It was also found that these differences contribute to variations in officer perceptions of management's ability to make known expectations. Overall, those agencies which more clearly define orders and policies, more actively seek employee input in the administrative process, and more clearly explain expectations in training programs realize more positive employee perceptions of management techniques to make known expectations.[12] Ostensibly, officers in these agencies will more clearly understand all management expectations.[13]

The lack of a standardized format for written directives creates confusion over expectations. In many agencies studied in this project, there is an absence of an agency-wide, easily identifiable, written directive system establishing management policies, procedures and rules. Some of these departments, for example, utilize civil service rules and regulations as organizational codes of conduct. Other agencies use department memoranda as a format for general orders, special orders, information transmittals, special announcements, etc. Officers in these agencies frequently have difficulty determining which directives are most authoritative.

Further, in some agencies, the authority to issue a written directive is not controlled. It is important that unit commanders be authorized to issue written orders. However, directives from unit commanders should not be similar in appearance to those issued by the chief executive. Also, unit commanders should not be permitted to issue written directives on subjects solely within the purview of the chief of police.

It was found that several agencies encounter problems by issuing general orders in broad, lengthy documents, often outdated, which give the appearance of training orders. The problems caused by conglomeration of written directives are many. Officers are not only confused by inherently broad written directive systems, but in many instances view written directives as abstract and nonauthoritative documents.

In some departments researched, management's inability to issue clear, acceptable, and up-to-date directives has resulted in the union contract becoming the most authoritative document on employee conduct. In this instance, management authority is clearly undermined. As stated by several officers in these agencies, the union has simply promulgated guidelines where management failed to do so.

In assessing the effectiveness of any organization's disciplinary system, it

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[12] A statistical difference was found (significant at the .001 level) between those four agencies receiving highest scores (top 25 percent) and those four agencies receiving lowest scores (lowest 25 percent). For further information, see Appendix A, pp. 247-248.

[13] While this question was not researched directly in this project, interviews with employees provide indications that more clear understanding was evident. Additionally, it was found that better understanding of disciplinary procedures is evident in those agencies which more clearly defined these procedures (see p. 53).

becomes necessary to establish the initial conditions or basis for taking disciplinary action. If such action is to be taken, the employee must have violated one of the expected conditions of employment. These conditions should be articulated in a written directive system.

Written directives serve as the foundation for effective discipline. By defining parameters of acceptable behavior, these documents provide official notice of management's position on enforcing the law. Also, management policies, when transformed into written procedures, furnish a standard of conduct for those who perform daily police operations. The foundation provided by directives helps limit the potential for abuses of police discretion. As recommended by the National Advisory Commission on Criminal Justice Standards and Goals:

> Every police agency should acknowledge the existence of [this] broad range of administrative and operational discretion that is exercised by all police agencies and individual officers. That acknowledgement should take the form of comprehensive policy statements that publicly establish the limits of discretion, that provide guidelines for its exercise within those limits and that eliminate discriminatory enforcement of the law. Policies should be developed to guide or govern the way policemen exercise this discretion on the street.[14]

Designing an Effective Directive System

The following factors should be considered among basic requirements for an effective written directive system:

1. Only the chief should have the authority and responsibility to promulgate directives which delineate departmental goals. The directives generated by the chief generally have agency-wide implication and should be issued using a readily identifiable, distinctive format. The chief may also issue directives intended specifically for one organizational unit or a specific group of individuals, but must issue such directives in a format other than that intended for agency-wide distribution (memorandum or inter-office letter would be appropriate).
2. Mid-management and organizational entity commanders have the responsibility and authority to promulgate written directives which explain methods of reaching the applicable unit objective (thus, directing the unit toward attainment of departmental goals).
3. Management expectations must be clearly delineated if employees are to be held accountable for carrying out assigned tasks.
4. All employees, regardless of assignment, have the right to know exactly what is expected of them.

[14] National Advisory Commission on Criminal Justice Standards and Goals, *Report on Police* (Washington, D.C.: GPO), p. 21.

To avoid a conglomeration of written directives, management must categorize directives by particular purposes. While some directives are authoritative in that they define "do's and don'ts," others are informational. Directives are divided into five types in this review: rules and regulations, policies, procedures (including general orders and special operating orders), instructional material, and memorandums.

Rules and Regulations. These directives are designed to cover situations in which no deviations or exceptions are permitted. The essence of a rule is its inflexibility. A rule, properly enforced, applies equally to all persons.

Policies. These directives are general statements which guide the organization and its employees in the direction of organizational goals. Policies may be viewed as those directives which represent an overall plan for the organization. As stated by Koontz and O'Donnell:

> Policies delimit an area within which a decision is to be made and assure that the decision will be consistent with and contributive to objectives. Policies tend to predecide issues, avoid repeated analysis, and give a unified structure to other types of plans, thus permitting managers to delegate authority while maintaining control.[15]

Policies permit some discretion, but are generally supplemented by procedures which make the policies operational.

Procedures. While policies are general guides, procedures are specific guides. Procedures are written directives which describe expected methods of operation. Procedures generally permit some flexibility within certain constraints. Since they have organization-wide application, they cut across organiza-

[15] Koontz and O'Donnell, p. 56.

tional entity lines and must, therefore, be promulgated under the authority of the chief executive. There are two forms of procedures:

1. *General Orders/Standard Operation Procedures*--These are permanent procedural directives which can be modified only by the authority of the chief executive and are in effect until so altered or superseded by another order.
2. *Special Operating Orders*--These are intended to define specific policy and direct procedures for special situations or events. These orders cover temporary situations and are self-cancelling once the situation ceases to exist.

Instructional Material. These directives are intended to expand on the purpose and reason for rules or procedures. Training bulletins, for example, are often an extension of standard operating procedures and rules. Ordinarily, disciplinary action would not result from the violation of a training bulletin or other instructional material. If a particular bulletin is found to describe proper methods of behavior, it should be re-issued as a rule or procedure.

Memoranda. These directives are designed to either inform or inquire, or to direct. Memoranda are personal in nature and usually addressed to one person or a restricted number of persons. Memoranda are utilized to disseminate information or instructions which do not warrant a formal order. They are also used to explain or emphasize previously issued orders.

Several other considerations must be addressed when preparing written directives. Planning and coordination are essential to meeting each of these tests. Policies, procedures and other written directives should not be derived hastily. All possible negative ramifications of issuing directives should be identified before dissemination. Several key considerations are presented in the following, with recommendations offered for ensuring thoroughness in the management of the written directive system.

Directives Must Be Legal. Currently, many rules or procedures are partially or totally contrary to law or to the prevailing trends of the courts. This is particularly true of those directives which are not periodically revised in accordance with court decisions. When there are clear indications from court decisions that a particular directive may be overruled, if challenged, it would be foolish to invite such contest. During field work, it was discovered that most legal advisors (or city, county, or state attorneys) review written directives only when asked to

do so, or when an existing directive is challenged through legal action. To be effective, legal advice should be sought prior to implementing the directive.

To avoid conflict between the proposed directive and the law, thorough research should be undertaken to determine legal views on the particular subject. Departmental legal units should research statutes and cases which may cause conflict. All directives should be reviewed periodically by the legal unit, or the city, county or state attorney. The cost of doing business without legal input can be high.

Directives Should Be Acceptable to Those Affected. It is often difficult to obtain acceptance to directives. At times, unpopular directives must be instituted to achieve organizational goals or objectives. Employee perceptions of these directives vary according to several factors, including amount of conflict between the employee organization and management.

Some agencies with a high degree of socialization of employees enjoy a basic commitment to the agency and its goals, and a willingness to accept the authority of management decisions. In other agencies, conflict reigns between employees and police management, as well as between groups of employees. Successful methods have been applied in several organizations to reduce this conflict. One of the most appropriate techniques is to increase subordinate input in the management system and in decision-making. Use of this technique can enhance employee acceptance of written directives and instill more confidence in the administrative system for obtaining feedback from lower level personnel.

One of the organizations studied was especially solicitous of officers' opinions. The department's chief executive periodically visited officers in their homes to discuss department policies and procedures, as well as controversial issues. In this department, 87 percent of the officers surveyed stated that rules were fair as written (compared with an average of 67 percent for sixteen departments surveyed). Nearly 70 percent of the officers surveyed in this department indicated that they felt free to suggest new or revised written directives (compared with a sixteen-department average of 49 percent).

Officer perceptions of agency standards of conduct were also researched during this project to determine the degree of acceptance of traditional standards. Specifically, the intention was to measure officer perceptions of differences in codes of conduct for officers and civilian employees, and for officers and the public at large. Overall, it was found that officers readily accepted these differences. It was also determined that higher scores were obtained in those agencies in which management had given a full-scale commitment to publicizing

the explaining standards.[16] This finding gives credence to assumptions underlying an additional technique for obtaining acceptance, management should strive to apprise both employees and citizens of acceptable standards.

Officer perceptions of rules and regulations were also analyzed.[17] Officers in each agency were asked to give impressions of fairness of each rule as written and as enforced. While higher agreement was noted for written rules than rules as enforced, some problems are evident. Officers are most critical of rules which restrict their behavior while off duty, specifically rules on hairstyles, off-duty employment, residency, and personal debts. Additionally, officers indicated that many of the rules were too broad or vague to be properly enforced. Rules to which greatest disagreement of this type was apparent are those involving criticism and insubordination. The important finding in this analysis is that police agencies must modify existing rules, in many cases, to realize full commitment by employees to agency norms.

Directives Must Be Understandable. Another difficulty in preparing directives of all forms is to make them understandable. A good directive must clearly and explicitly state management intentions to avoid misunderstanding. The directive must avoid vague language which can result in several interpretations. The consequences of vague directives can be seen in many court decisions in criminal cases, and in police employee challenges to management decisions.

Two levels of understanding must be considered when preparing written directives. The first is that of transmitting to the reader the concept of the directive. The reader must understand what management wishes to accomplish by the directive. The second requires the order to be sufficiently explicit to tell the reader the expected behavior.

During the IACP field work for this project, questionnaire analyses showed that officers did not feel that all directives offer this second level of understanding. The following two questions were asked: (1) "Written directives in this department generally are stated so that I can understand them." In 16 departments, 83 percent of respondents agree with the statement, 7 percent were

[16] A statistical difference (significant at the .001 level) was realized between the four agencies in which highest scores were obtained and the four organizations receiving lowest scores. It is difficult, however, to identify reasons for this difference. At best, this finding must be defined as inconclusive. For further information, see Appendix A, pp. 234-238.

[17] Fourteen rules were analyzed including those prescribing agency policies on off-duty employment; operation of police vehicle; hairstyles; mustaches and beards; courtesy to public; physical force; use of firearms; late for duty; moral conduct; insubordination; personal debts; criticism of department; use of alcohol off duty; gratuities; and residency. For further information, see Appendix A, pp. 199-212 for percentages of responses, and pp. 252-259 for analyses of results by agencies.

uncertain, and 10 percent disagreed. (2) "Written directives are stated so that I have a good understanding of what is expected of me." Officers responded in the following manner: 70 percent agreed, 13 percent were uncertain, and 16 percent disagreed.

The responses from 2,058 police officers indicated that with few exceptions, directives were understandable as written. However, officers tended to feel less sure about directives setting forth prescribed conduct. The 16 percent negative response to the second question above, coupled with 13 percent who were uncertain, indicated an undesirable condition. Thus, while 83 percent agreement to the first question indicated basic understanding of the directive as written, the decrease in the number agreeing in the next question indicated less confidence regarding expected behavior in work situations.

A related finding is that many officers did not understand disciplinary procedures, including the role of the internal affairs unit, the internal review process, the method of receiving and investigating complaints, and the procedure for outside appeals. It was found that greater understanding was evident in those agencies which more clearly delineated such policies and thoroughly covered them in training programs.[18]

The failure of officers to understand these expectations was quite apparent in three departments visited by the IACP. In one organization which was operating under 12-year-old rules and regulations, 56 percent of the respondents stated that directives did not clearly delineate expected behavior. The administration in this organization had told officers continually for four years that a new manual was to be issued. Increased confusion among line officers resulted from this failure to promulgate the manual. In other departments where understanding of expectations was low (45 percent and 30 percent either disagreeing or expressing uncertainty to this question), employee manuals were outdated and practically useless in the management system.

In other organizations visited, officers were quite satisfied with the directive system. In two organizations exhibiting adequate directive systems, for example, understanding was quite high. One agency in particular, which uses a well-defined directive system, realized very favorable responses as to officer comprehension of directives.

The message for administrators from this analysis is clear—many rules and directives are not understood by employees. This inadequacy poses a dilemma

[18] A statistical difference (significant at the .001 level) was found between the top four departments on this measure, and the lowest four agencies. Further information on this finding may be obtained from Appendix A, pp. 229-234.

with ramifications for the entire disciplinary dimension—how can employees be disciplined if they are not adequately informed of expected behavior?

Directives Must Be Current. If directives are to be a useful tool for moving the organization toward goal attainment, they must be kept current. Unless directives which control the operations of the agency are up-to-date, there will be a strong possibility that some existing operations will be outdated and perhaps illegal. Police administrators must adapt organizations to meet changes in society and in the law.

There are several methods which can be employed to assure that directives are kept current. First, it is important that the agency formalize and establish a policy and procedure for purging, updating and revising directives.

Generally, there should be a total review of all directives on a semi-annual basis. This procedure should ensure that outdated and conflicting directives are purged or altered. All directives must be examined for conflicting statements that result in an uncoordinated and incompatible system.

The majority of the seventeen agencies studied had no regular procedure for reviewing, updating and purging of the written directive system. Directives were examined on an "as needed" basis, and generally only when conflicts occurred. The difficulty with this reactive approach is that outdated directives often go unnoticed until violated. Obviously, this could cause considerable embarrassment to the agency.

Standards and Controls on the Directive System. To be useful, a written directive system must be controlled. The directives must be prepared and issued in a rational manner and must be recognized by employees as authoritative instruments.

In some agencies studied, officers complained that they could not keep up with the many directives issued; they did not know which ones were the most important. They also complained about the constant changes and revision in directives and generally felt bogged down by the "papermill." Obviously, employee confusion and complaints in these agencies could be minimized by an improvement in the quality of the written directive system.

To further illustrate the need for a controlled written system, in three departments where officer opinions regarding the fairness of written directives were the lowest, two salient characteristics were noted: the department's manual was outdated (in one case, it had not been revised since it was issued fourteen years previously), and/or department members did not recognize it as authoritative in matters of conduct and discipline.

Authority to issue directives must be controlled. Not everyone in the organization can be authorized to issue all forms of directives. Although this

may appear to be an obvious statement, many agencies fail to control the issuance of directives, often resulting in a conglomeration of documents. The authority of the documents will be questioned and often directives will contain conflicting orders and instructions.

Those in supervisory positions must have a uniform means of transmitting directives to individuals in their command. Not all of these directives have equal weight, and must be issued in a manner so that the impact is known. Authority in an organization is an important tool for moving toward goal attainment; directives must reflect that authority. Police agencies should devise a system for issuing directives by the various levels of authority. This system should be documented to avoid confusion. Directives which affect the total department must be distinctive from all others and must be issued only by the chief executive. No unit commander should be permitted to sign a directive or use a format which has not been approved by the head administrator or as stated earlier, which appears to be similar to the type of directive issued by the chief executive. Directives pertaining to individual organizational entities should be issued by the commander of the unit, provided there is no conflict with agency-wide rules or procedures.

Five different forms of directives were previously identified in this chapter. It is recommended that only the chief executive of the agency have the authority to issue policies, rules, general orders, and instructional material. These directives have agency-wide applications and, therefore, must only be issued by one person.

A classification and numbering system. Many police agencies issue directives without regard to a system of classification and numbering. As a result, directives are not ied and maintained in chronological fashion. Thus, when reference to a par.. ilar directive is desired, it becomes necessary to search the entire volume of directives to locate the one sought. This inconvenience discourages employees from using the directive system fully and supports the often-heard complaint that directives are confusing.

The most common error of this type noted by the IACP occurs with general orders. Such directives carry the same force and authority as agency rules and regulations, but are issued more frequently and should be revised more often. Because general orders are extremely important and issued with such frequency, it is important that a system for easy classification, retention, and accessibility be established.

One method of classification, which was encountered in field research, is to group the orders into separate categories and assign a consecutive master number to each category. One agency used this system and divided general

orders into the following seven categories: Administration, 1.0; Communications, 2.0; Investigations, 3.0; Legal, 4.0; Miscellaneous, 5.0; Patrol, 6.0; and Traffic, 7.0.

This department categorized general orders by frequency of usage and the organizational entity most directly affected. For example, the general order which explains and delineates the agency's written directive system comes under Administration (1.0) because it relates to administrative matters. Other general orders found in the administrative category include practices and procedures relating to transfers and promotions, overtime, disciplinary procedures, etc. Likewise, orders dealing with departmental correspondence, radio procedures, telephone usage, and other communications would be found under master number two (2.0), Communications.

The agency consecutively numbers each general order; the general order number is preceded by the master number. Thus, the first general order in the administrative category is 1.1, and subsequent general orders are identified as 1.2, 1.3, 1.4, etc. Two indexing methods are needed for the above described procedure. First, there should be a sequential index to identify directives.

The format of the index would be as follows:

No.	*Date*	*File Code*	*Subject*
1.1	3/14/73	Adm	Departmental Written Directive System
1.2	9/18/70	Adm	Budget Procedures
1.3	2/12/74	Adm	Promotion and Transfer Procedures
1.4	5/13/75	Adm	Disciplinary Procedures
1.5	5/12/74	Adm	Grievance Procedures
2.1	4/20/74	Comm	Departmental Communication
2.2	5/15/75	Comm	Radio Procedures
2.3	5/ 2/70	Comm	Telephone Procedures

In this index, when revisions are necessary, general orders are superseded. The updated orders are assigned the original index number with the new date indicating its revision. Therefore, dates are not necessarily consecutive in this index.

A second type of indexing is an alphabetical listing of general orders. This system enables the employee to identify the location of the order by its common title and then determine the order number. Thus, if officers need to refer to the order on disciplinary procedures, they would find the title order in the index and turn to order number 1.4. Several departments visited by the IACP made use of such a system.

Distribution of directives. Occasionally, officers contend that they have not received copies of directives. The claim might be legitimate because the officer was not present during distribution due to illness, vacation, or other reasons. To hold an employee responsible for the contents of an order when such order was never received is unfair. Also, if the agency takes disciplinary action for noncompliance, the officer may successfully challenge the charges on this ground.

A distribution scheme must be developed to assure that everyone affected by an order receives a copy. One method of achieving this is to hold supervisors responsible for distribution of all directives to all subordinates. In such an approach, the supervisor is given sufficient copies of the order with a control list containing the names of all subordinates. When the order is distributed, each subordinate is required to sign the control form next to his or her name indicating receipt. If a subordinate is not present during distribution of the order, his or her absence will be readily apparent. Distribution is not complete until each subordinate receives and signs for the directive.

An alternative system which places primary responsibility on the individual officer is used in one agency visited. Officers receive copies of new written directives in their mailboxes and every six months receive a memorandum listing all written directives promulgated during the preceding six-month period. The officer is responsible for obtaining all missing directives, copies of which are available at the personnel office. Each officer must then initial a receipt for all issued directives.

Once the directive is distributed, its contents should be explained to the officers clarifying any ambiguities and possible misinterpretations. Most police departments explain orders at lineup or roll call so as to indoctrinate everyone at the same time. This system, based on IACP field work, does not achieve full understanding of directives. Usually, time at roll call is too limited to explain practical applications of rules. Furthermore, first-line supervisors often are not well versed in instruction methods. Many supervisors convey the impression that they are only completing a tedious and unimportant task. As a result, officers may feel that such directives are not important.[19]

Programs can be implemented which enhance employee understanding. In one agency visited, officers were assembled one-half hour early to explain new rules and general orders and to give practical examples. At the conclusion of this half hour, officers were quizzed about their knowledge of all new or revised

[19] A further discussion of supervisory techniques in explaining directives will be presented in Chapter Four.

policies. This system, of course, may require that overtime pay be allocated for participating officers. However, these funds would be well spent on such a program to ensure officer understanding of written directives.

Training on Written Directives. All officers should be thoroughly indoctrinated in directives which establish agency expectations. This training should start in recruit school and be continued through periodic in-service training sessions.[20] The typical police agency spends a great deal of time in recruit school discussing matters such as laws of arrest, firearms proficiency, and other operational concerns relevant to the actual performance of tasks. These programs, however, are usually deficient in their explanations of rules of conduct and in discussions of disciplinary procedures. This condition arises partly from time constraints, but even more directly from insufficient emphasis being placed on such matters. Of the seventeen agencies studied, only a few devoted more than cursory coverage to these subjects. In several departments, they were covered in as little as four hours.

This situation is unacceptable in contemporary law enforcement. New officers may be apt to interpret certain rules as they see fit, particularly if they are not instructed in all details of specific policies. With the increase in court challenges of department standards of conduct, police organizations must exercise caution in making certain that officers are instructed on proper conduct.

Lack of instruction is a concern to police officers, as confirmed through questionnaire analysis. When responding to the statement, "My recruit training gave me a working knowledge of written directives," 37 percent of the total sample disagreed (either disagree or strongly disagree), 11 percent were uncertain and 50 percent agreed (either agree or strongly agree). The 37 percent negative score together with the 11 percent uncertainty presents an undesirable condition in that 48 percent of all respondents were not confident that expectations were made known through training programs.

In several of the organizations studied, over 50 percent of the officers responded negatively to the above statement. In those agencies in which extreme negative responses were indicated (over 60 percent), recruit programs contained only four hours of instruction in rules and procedures.

By contrast, in one agency where 45 hours are devoted to instruction on rules and procedures, only 14 percent of the respondents indicated disagreement with the above statement while 11 percent were uncertain and 74 percent agreed. The significant relationship between number of hours devoted to training

[20] In-service training sessions as discussed in this section refer to formalized programs and not to roll call instruction.

on rules and procedures and the degree to which such training provides a working knowledge of directives should be considered in curriculum planning.

In several departments studied, officers received extensive training through state-level law enforcement training programs, but little training in their individual departments. In all of these departments, responses to the question on recruit training were more negative than the sixteen-department average. Obviously, individual departments should supplement such state-wide programs with instruction sessions that explain the department's rules of conduct, procedures, and penalties.

If it is accepted that training and instruction on departmental expectations are necessary to develop in new officers a cognizance of their role, then it follows that such instructions must in fact reflect the actual and current thinking of the agency administration. If the teachings in the police academy are not current and reflective of the chief's policy, the instruction given will be improper. Therefore, unless there is constant revision in the lesson plan which treats administrative policy, procedures and rules, the instruction offered is misleading.

To avoid transferring such incorrect information to officers, the following approach should be taken:

1. Departmental expectations (rules, procedures and policies) must be written and continually revised and updated to reflect changing conditions and needs.
2. Instructional lesson plans should be developed and be based on the written directives promulgated by the agency administrators.
3. The lesson plan should be submitted to the chief executive of the agency for approval. Such approval signifies acceptance of the training format and instructional content.

ESTABLISHING RESPONSIBILITY WITHIN THE ORGANIZATIONAL STRUCTURE

To carry out disciplinary tasks successfully, responsibility must be delegated to individual units within the agency. The disciplinary dimension is multifaceted; the organizational structure should consist of several separate entities responsible for performing diverse functions. This is not to say that each function will be carried out by a large specialized unit. In some cases, primarily in

smaller agencies, one individual may have responsibility for completing such tasks. However, the concepts governing operation of these units are similar in all police organizations, for even in small departments there is a need to maintain certain skills beyond those necessary to perform operational tasks.

This section is devoted to a discussion of four principal organizational units or groups of individuals given responsibility for undertaking disciplinary functions: the immediate supervisor, the internal affairs entity, the inspections unit, and the training unit.[21] Each of these plays a vital role in the management of discipline. The key to successful operation of each is that tasks be clearly defined so that individuals responsible for certain functions, as well as the organization as a whole are aware of what the tasks are and how they should be carried out. It is imperative that definitions be specific enough so that the total meaning and requirements of the tasks are understood.

Immediate Supervisor[22]

Every supervisor has a responsibility for knowing and practicing the procedures established by the organization to deal with employee behavior which is contrary to expectations. Most police organizations have established some procedures to deal with violations of directives. If the supervisor fails to follow these procedures, he or she is not conforming to expected behavior patterns and should be subjected to some type of corrective action.

One of the most important functions of the administrative system is that of direction. Direction is defined here as a process of guiding or regulating the total resources of the organizational entity through motivation, leadership and communication, and is an implicit task of supervision. Such direction is effected through formal written directives, verbal directives, and interpersonal relationships between supervisors and subordinates. Leadership is an important element of direction. Leadership involves instilling within all members of the agency the will and enthusiasm to act individually and collectively toward the attainment of the agency's goals.

[21] Whereas this chapter is primarily concerned with defining responsibility for each of these units or individuals, later chapters will discuss in greater depth practical problems encountered by each entity in processing disciplinary cases.

[22] This discussion of immediate supervisor's responsibility applies to all levels of supervision within the agency. A more detailed analysis of each level's responsibility together with common problems typical to many police organizations will be presented in Chapter Four.

It is important to recognize, however, that leadership can occur only when each member of the agency who is in a position of authority understands the responsibilities and knows the limits of authority to complete assigned tasks. Although the levels of authority vary within the hierarchy of the organization, the failure to carry out responsibilities at any level will render the organization ineffective. The previous quote from Koontz and O'Donnell is worth reiteration:

> Some managers, particularly at lower levels, forget the principle of control responsibility that the primary responsibility for the exercise of control rests in the manager charged with the execution of plans.[23]

The necessity for the organization to adequately delineate agency expectations through written directives has been previously emphasized. Additionally, it is important to stress that supervisory personnel must provide the impetus for directing manpower and other agency resources toward attainment of those expectations. To provide such direction, supervisory personnel must be granted proper authority to carry out such responsibilities, and by the same token must be held accountable for the completion of such tasks. To be functional, supervisory activities must be:

1. Legally authorized
2. Departmentally authorized by written directives
3. Understood by everyone in the agency.

The task of clearly delineating responsibility and authority is the first step to effective supervision. Also important is the agency's responsibility to provide adequate training to new supervisors and periodic in-service training to experienced supervisory personnel. A new supervisor cannot be expected to read, digest and successfully practice the concepts and responsibilities associated with the new role without proper training. An older, more experienced supervisor (or command officer) cannot (and in some instances will not) keep abreast of changes affecting supervisory functions in the management system without in-service training.

Experience has shown that inadequate amounts of supervisory authority, as well as insufficient training in administrative skills and responsibilities creates

[23] Koontz and O'Donnell, p. 359.

problems of role confusion affecting disciplinary situations. This is true particularly with first-line supervisors. Increased training for supervisors is one answer to this inadequacy. In one department studied, supervisors received regular in-service training in supervisory skills. Questionnaire responses show that officers' evaluations of the performance of supervisors in this department were consistently more positive than the average in sixteen departments surveyed.

Although the sergeants' rank represents the first step into the managerial system, these administrators are often not considered and used by mid- or upper-management (lieutenant and above) as part of the management team. Likewise, operational level personnel (patrolman rank) may often fail to view sergeants as managers, but simply as supervisors. Thus, decisions made by first-line supervisors are often subject to criticism by employees above and below the sergeants' level of authority. This problem is compounded if the first-line supervisor's role, responsibilities, and commensurate authority are not clearly delineated. In such instances, disciplinary action taken by the first-line supervisor is a discretionary decision which often results in inconsistent disciplinary practices. If, for example, one sergeant is lackadaisical in enforcing a particular regulation while another enforces it rigorously, employees may view discipline as being arbitrary and inconsistent. Such a condition often produces morale problems and impedes achievement of organizational objectives.

Another problem arising from inadequate supervisory instruction is inconsistent recommendations for punishment, or a complete lack of action. If such problems are identified, it is imperative that causes be discovered and remedial action be taken.

Internal Affairs Unit

Many police organizations, especially larger agencies, have found it advisable to create specialized entities within the organizational structure to deal with defects in the service delivery system. Deficiencies of many types, including citizen complaints against employees or against procedures, are often handled and resolved by these units.

The first type of specialized unit is that of internal affairs. Internal affairs has as its major function the receiving and processing of complaints made against employees or procedures. It also maintains staff control over such complaints. This is a necessary task in police organizations, since actual operations may fall short of ambitious efforts to realize intended goals. The most sensitive function of internal affairs is the investigation and reporting on complaints of alleged misconduct or violation of policies, procedures, and rules by police personnel.

The existence of an internal affairs unit to deal with false or inappropriate behavior on the part of police personnel in the service delivery system should be well documented for the benefit of citizens and staff operating within the system. The effectiveness of the police organization is based largely on its integrity and reputation—both must be beyond reproach. A police agency cannot afford public doubt regarding its forthrightness and trustworthiness. Likewise, police employees must recognize that the behavior and method by which they deliver police service is continually scrutinized by members of the public; and when their behavior falls short of the public's and the department's expectations, they will be subject to investigation and subsequent disciplinary proceedings. For this reason, it is imperative that all police agencies establish a stable, uniform and totally unimpeachable system for investigating complaints against the agency or any of its employees.

In previous sections, the need for the administration to promulgate rules, regulations and procedures delineating agency expectations has been established. If it is brought to light that these expectations are violated or that existing procedures are contrary to changing service delivery needs, the agency must determine the extent to which existing practices are undesirable and alter its present operation. In this regard, the internal investigation system of the agency is designed not only to deal with employee misconduct, but also to deal with complaints against the outdated and sometime ineffective system and process being utilized by the police agency.

As stated in the National Advisory Commission on Criminal Justice Standards and Goals:

> Complaints from the public provide the police chief executive with invaluable feedback. These complaints, whether factual or not, increase his awareness of actual or potential problems and assist him in his use of problem-solving techniques as well as providing him with another basis for evaluating the performance of his agency.[24]

In essence, progressive police executives should welcome complaints from the public to determine where the existing system falls short of its intended goals. Likewise, and equally important, a chief executive should welcome complaints about officer behavior (and misconduct) so that subsequent discipline, both punitive and nonpunitive, can be initiated. No doubt such a policy will result in frivolous and often false accusations. The frivolity and inaccuracy of

[24] National Advisory Commission on Criminal Justice Standards and Goals, p. 471.

the complaint, however, should be determined early in the investigatory process, and should not be used as a justification for discontinuing or hampering the complaint reception process.

A strong and responsive internal investigation entity is an indispensable part of the police administrative process. Its clear existence in the organizational structure gives notice to both the public and the employee that the police agency is willing to "police its police." Additionally, a clear and comprehensive written directive delineating the process and procedures for dealing with both external and internal complaints eliminates the possibility that allegations made against the police service delivery system might not be investigated. Moreover, it decreases the possibility that individual officers may use their own discretion in disposing of this vital citizen feedback. Again, quoting from the National Advisory Commission on Justice Standards and Goals:

> It is clearly in the interest of police chief executives to initiate effective change in their administration of internal discipline. Otherwise, public or police employee groups, or court decisions in civil litigation, may force executives to follow a course other than the one they would have chosen, and thus diminish their control over the agency.[25]

The investigation of alleged employee misconduct must be based on sound investigative principles and formal, written and understandable policies, procedures and rules. To be effective, the internal investigation unit and disciplinary system must be based on legal authority. This legal authority should be specified in the written procedure delineating the system.

> The disciplinary system should be based on sound management principles, current administrative law, and—to a certain extent—societal attitudes. . . . Police agencies must maintain a disciplinary system compatible with administrative law. The legal unit of the local jurisdiction, the police agency legal advisor, or management publications should provide the police chief executive with current information which he can use to administer internal discipline.[26]

Since legal authority, societal attitudes, and management principles are

[25] National Advisory Commission on Criminal Justice Standards and Goals, p. 470. See also *Rizzo v. Goode*, 423 U.S. 362, 96 S. Ct. 598 (1976).

[26] National Advisory Commission on Criminal Justice Standards and Goals, p. 470.

dynamic, ever changing states of affairs, the need to revise the promulgated investigatory and disciplinary system of an agency is obvious. If court decisions, new legislation, improved management techniques or the demands of society make existing procedures outmoded, the procedures must be altered. It is, therefore, imperative that the police executive develop an awareness of changes which may alter the existing disciplinary and internal investigation system. When such changes are made, they should be reflected in the written directive system which outlines the disciplinary procedures and internal investigation process for the department. In essence, not only is the initial establishment of the internal disciplinary and investigatory system formalized, but subsequent changes also become a part of the administrative process. Unless accomplished, this critical and sensitive function will be viewed with distrust by both officers and civilians.

The disciplinary system functions only when departmental requirements and expectations are not adequately met or if rules, regulations, procedures, and established policies are intentionally violated.

Although the police service delivery system can never function perfectly, the extent to which it meets its objective of serving with the least complaints from the citizenry is a criterion for measuring effectiveness. If, however, the mechanism for receiving complaints is cumbersome or nonexistent, the improper actions of officers cannot be measured. Moreover, unless improper operations are acted upon, the faulty system will only perpetuate itself.

Measures which indicate problems in the service delivery system (or improper officer behavior) are derived from the following two sources: citizen report of dissatisfaction, and supervisory action for violation of rules and regulations.

If the agency sincerely wishes to know about every complaint regardless of its severity, complaints must be documented. Therefore, there must be a formalized method of receiving complaints and adequate measures of assuring that such complaints are received. The maintenance of complaint files and statistical compilation relating to complaints should be the responsibility of the internal affairs unit. This information should then be fed to management, specifying the type of misconduct occurring most frequently and possible reasons for this misconduct.[27]

[27] In some agencies, the responsibility for maintaining such records rests with the inspections unit. This chapter recommends that the internal affairs and inspections units establish working channels of communication so as to best identify organizational problems to management. The physical location of the complaint file in this analysis (whether it be with the internal affairs or inspections unit) is of secondary importance to the establishment of workable relationships between these units.

The basic purpose of internal investigations is to establish the truth or falsity of complaints against police officers and other members of the police agency. It is also the responsibility of this unit to see that each complaint is documented and that established procedures are followed, regardless of the degree of seriousness of the alleged infraction. Unless this function is specifically authorized by management and made an integral part of the administrative process, there will be no assurance that all complaints are recorded and investigated.

The function and responsibility for internal investigations must be codified in written procedures. Unless this responsibility is understood by each employee, the police delivery system is jeopardized and the integrity of the agency is subject to question by outside groups. Currently, the responsibility of this unit is not well understood in many agencies, and there is a great deal of discontent and suspicion over the role of the internal affairs unit.

The fact that the internal affairs entity assumes primary responsibility for receiving, documenting and investigating allegations of misconduct does not mean that this task is not shared by other organizational units and individual officers. The sensitive task of self-inspection and investigation is an organization-wide responsibility, with staff control for such functions delegated to the internal affairs unit. Since this responsibility applies to all officers, it is necessary that the police agency issue a policy statement explaining the reasons for this posture. The following policy statement is provided as an example:

> A proper relationship between the police and the public they serve, fostered by confidence and trust, is essential to effective law enforcement. Police officers must be free to exercise their best judgment and to initiate action in a reasonable, lawful and impartial manner without fear of reprisal. Concomitantly, they must meticulously observe the rights of all people.
>
> The appreciation of this philosophy imposes upon the Department the responsibility of providing a system of complaint and disciplinary procedures which will not only subject the officer to corrective action when he conducts himself improperly, but will protect him from unwarranted criticism when he discharges his duties properly.
>
> It is imperative, therefore, that adequate provision be made for the prompt receipt, investigation and disposition of complaints regarding the conduct of members and employees of the Department. To this end, the Police Department welcomes from the people of the community constructive criticism of the Department and valid complaints against its members or procedures.
>
> This order sets forth the purpose, organization and function of the Internal Affairs Section, prescribes duties of personnel in processing complaints and explains the disposition of sustained co.nplaints.[28]

Inspections Unit

The basic need of any manager is knowledge that the plans of the organization are implemented and carried out as intended. It is necessary for all administrators to know if behavior is, in fact, consistent with written directives. Such stated rules and policies are plans which articulate the overall goals and objectives of the agency. These directives are powerful instruments for action. However, individual or unit behavior not in conformance with such directives has the effect of inhibiting achievement of all expectations. The manager must have some method of detecting this undesirable behavior. The task of detecting such defects should be delegated to the inspections entity. There are several tasks which may be carried out by the inspections unit:

1. Determining if all procedures are being followed;
2. Discovering if existing methods are accomplishing the agency goals, and if not, why;
3. Determining if a procedure needs to be altered in order to better meet agency goals.

The crux of the inspections function is to see that employees and material are performing adequately to meet stated goals and objectives. In essence, the primary responsibility of the inspections unit is the timely review of procedures, materials, and personnel.

The creation of an organizational entity specifically responsible for the inspections function depends on several factors, including such things as the size of the agency, the complexity of the task to be accomplished, and the degree to which employees in the police agency are motivated toward abiding by established organizational procedures. In small agencies, it is generally safe to hold unit commanders solely responsible for the inspection of personnel procedures and material under the commander's control. Their failure to correct inade-

[28] This statement provides an example of one department's policy for handling citizens' complaints.

quacies would be readily apparent. In these departments, the chief of police generally performs the overall inspection function. In large agencies, however, the inadequacies and improper inspection of personnel, material, and procedures can often go unnoticed for extended periods of time, resulting in serious consequences.

The need for a well-staffed and effective inspections unit was often ignored in departments studied. Many agencies had no inspections unit at all, while others had units which were understaffed or improperly utilized. One department so ineffectively utilized its inspections unit that it assigned its senior commanders to the unit as a means of "putting them out to pasture." Another agency had an inspections unit listed on its table of organization, but the unit was assigned no personnel.

When an inspectional services entity is created to perform this function, it should report directly to the chief of police. The sensitivity of the inspections function necessitates a direct line of communication between that unit and the chief. The inspectional services entity should be commanded by an individual of unquestionable integrity and of sufficient rank to achieve inspectional objectives.

In some instances, it may be practical to include under the direction of one commander the internal affairs function and the inspections function, because both perform similar tasks. This, however, is a decision best made by the agency. If the two functions, internal affairs and inspections, are not grouped under one commander, there must be a willingness on the part of both commanders to coordinate their activities closely since both work on matters of mutual interest.

The inspections unit should perform the following major duties:

1. Procedure evaluation
2. Material resources evaluation
3. Evaluation of responses to calls for services and the reporting system
4. Determine by actual on-site inspection whether the policies of the management are being complied with by personnel at the operating level.

The purpose of procedure evaluation is to insure that the work of the organization is conducted within the established policy framework. This necessarily presupposes that written policies and procedures truly reflect the viewpoint of the administration. A thorough inspection of each organizational entity is necessary. To this end, procedure evaluation should be accomplished on a

scheduled basis so that inspections are planned and timely, and insure that no unit is neglected.

Inspection unit personnel should critically compare performance against established procedures to insure that the procedures are being followed. This is accomplished through the review of administrative reports, case reports and other information, and through oral questioning. Discrepancies should be reported through the chain of command to the chief and back to the commander of the unit where the discrepancy was noted.

Procedural evaluations are also of great importance in revealing training needs; thus, the inspections unit should direct appropriate communications through the chief to the training entity.

Material resources evaluation deals with the inspection of material and equipment used by the agency including motor vehicles, communications equipment, office supplies, and machinery, as well as the buildings themselves. Inspection of material resources has a twofold purpose:

1. To insure that the items are being properly used and maintained in good condition
2. To forecast a need for additional supplies or replacement of supplies.

Training Unit

As stated elsewhere in this manual, training is an important aspect of indoctrinating officers on management expectations as reflected in the various written directives. This training should take place not only in recruit school but also during in-service training programs designed to reinforce desirable behavior patterns and call attention to noticeable actions which are deemed to be undesirable. Of all officers surveyed, 48 percent were either uncertain or simply did not feel that recruit training provided a working knowledge of written directives. Recruit training must be restructured to eliminate such negative responses. Favorable responses increased where considerable time in recruit school was devoted to a discussion of rules, procedures and policies.

While a negative perception of the value of recruit training is one indicator of the need to revise existing training practices, many other measures also exist. For example, officers' acts which are committed because the officer either misunderstood procedures or was never made aware of the correct action are indications of training needs. The source of such information should be the internal affairs unit. This unit not only has the responsibility for maintaining staff

control over internal investigations, but should also analyze information to determine training needs. Most agencies, as indicated in field interviews, do not use internal affairs for this purpose. With a proper record system, internal affairs will be able to identify undesirable behavior trends and identify those individuals in need of counseling and retraining.

Though additional training or retraining may at first appear expensive, it represents a much lower expenditure than punitive discipline, providing, of course, the officer is receptive and can benefit from retraining. An officer whose undesirable actions go unchecked may eventually cost the agency several times the amount invested in retraining. Lawsuits, terminations coupled with the need to hire and train a replacement, poor departmental image, low morale, and injury or death to a citizen or an officer can be far more expensive and damaging to the agency.

3

Discipline Procedures and Processes

INTRODUCTION

Previous chapters have discussed the function of discipline as it relates to achievement of management objectives. Also discussed were management tools for creating a discipline system. This chapter focuses on the component parts of the discipline system, with special emphasis on the *procedures* and *processes* involved in taking disciplinary action.

The discussion will deal with the elements of the discipline process in rough sequential order; that is, in the order in which the various steps will take place during the course of a typical disciplinary action. While the process may be simplified or streamlined for minor infractions, each of the elements discussed should be included in any major case. The elements to be discussed are the following: (1) establishment of standards and rules of conduct, (2) establishment of mechanisms for detecting violations, (3) intake of misconduct complaints, (4) assignment of responsibility for handling complaints, (5) temporary and emergency suspensions, (6) investigation, (7) charging, (8) resolution, (9) imposing sanctions, and (10) appeals.

Discovery of internal police records has become a subject of great concern to police administrators. Therefore, at the end of the chapter, this matter will be explored in some depth. Discovery of personnel and internal affairs records in criminal prosecutions and in civil litigation are treated separately because the development of case law in these areas has proceeded under different theories.

THE DISCIPLINE PROCESS

Defining Proper Behavior

Any discussion of police discipline is premised on definitions of what is and is not acceptable behavior by police officers. Before a police department can discipline an officer for misconduct, it must have clearly defined, preferably in writing, what constitutes misconduct. There is a legal maxim which holds that there is no crime unless it has been created by law ("nullum crimen sine lege"). The same holds true for administrative disciplinary action. An officer may not be disciplined for action which the officer has not been informed is prohibited, nor for omitting an action which has not been required.

The problem, in its current context, is best illustrated by the practice (found in many police departments) of including many unspecified offenses under the charge of "conduct unbecoming an officer" or "conduct tending to bring the department into disrepute." Several recent judicial decisions have shown that such broad language is too vague to sustain a disciplinary action against an officer for any conduct not specifically defined as "conduct unbecoming." *Bence v. Breier*, 501 F.2d 1185 (7th Cir. 1974), *cert. denied* 419 U.S. 1121 (1975). Other courts have ruled that "conduct unbecoming" is an appropriate charge when because of common knowledge or department practice, the officer knew or should have known that the conduct was proscribed. *Perea v. Fales*, 114 Cal. Rptr. 808 (Ct. App. 1974).

These all inclusive rules are a source of great concern to many police officers. Of all officers surveyed by the IACP, 70 percent agreed with the necessity for the conduct unbecoming rule and believed that it should be included in written directives.[1] Interview results also demonstrated that officers are aware of the need for such an inclusive rule.

A department is not prohibited from evaluating an officer on general performance characteristics and recording the evaluation in a personnel file. The data in such files need not relate to violations of specific rules but may be a general assessment of performance. However, if there is to be a penalty imposed for a specific act, the act must be defined as prohibited conduct.

A major consideration in establishing rules of conduct is that they be designed for a particular purpose. To include a rule simply because it relates to

[1]Officers were asked to respond to the statement "the rule on conduct unbecoming should be included in written directives." Responses were as follows: strongly agree (22 percent), agree (48 percent), uncertain (12 percent), disagree (10 percent), and strongly disagree (8 percent).

conduct traditionally prohibited by the agency, or law enforcement generally, is not a rational decision. There must be a logical explanation for a given rule if it is to be acceptable and enforceable.

Moreover, the fact that by law the department may include a rule prohibiting certain types of activities does not necessarily mean that the agency should have such a rule. The more rational reason for prohibiting certain types of activity would be that the rule is necessary for achievement of organizational goals. Conversely, if the absence of a rule does not hamper the achievement of organizational goals, there should be no reason for including the rule.

To illustrate, the rule on secondary employment is a traditional prohibition in many police agencies. Economic conditions, however, often make it difficult for a family to maintain a desired standard of living without a second source of income. A more realistic method of dealing with secondary employment of police officers is not to prohibit it, but rather to permit such employment subject to conditions. These conditions should then reflect the concerns of the agency, e.g., conflict of interest, number of hours, type of employment, use of department equipment or uniform. This same approach could be followed to resolve personnel problems concerning several other rules. As indicated in this research, many officers feel that traditional prohibitions on conduct are infringements on their personal rights, e.g., debts, hairstyles, moral conduct.[2] Police agencies should consider whether these rules are essential to the accomplishment of organizational goals and objectives.

Detecting Misconduct

A system of rules and regulations specifying proper behavior will not assure in itself effective discipline. Unless there is some method of detecting violations of the rules, and bringing misconduct to the attention of the proper authorities, the written rules will have little meaning. While most police agencies cannot afford to devote substantial resources to "policing" themselves, certain measures seem to be effective and efficient, and are therefore highly recommended.

The primary responsibility for enforcing departmental policies rests with first-line supervisors. As has been discussed earlier, sergeants and lieutenants are in closest contact with the rank and file and have immediate supervisory authority over them. These supervisors must clearly understand their responsi-

[2]Further information on officer perceptions of rules of conduct is included in Appendix A, pp. 199-212 and pp. 252-259.

bility for enforcing adherence to departmental policies and for taking action in the face of violations.

Another important tool for detecting violations is the citizen complaint process. Many departmental policies govern officer interactions with citizens. Supervisors may not always be present to monitor such events. In these cases, feedback concerning the propriety of officer actions will be obtained only from citizens who believe they have been treated improperly. While an officer's written reports may give some indication of failure to follow proper procedures, not all misconduct can be detected through this process. The department must maintain and rely upon an effective citizen complaint procedure to actively seek feedback regarding officer compliance. This procedure should be designed to "protect the integrity of the force, to protect the public interest, and to protect the accused employee from unjust accusation."[3] In this sense, the complaint system should serve two ends:

> A properly administered complaint review system serves both the special professional interests of the police and the general interests of the community. As a disciplinary device, it can promote and maintain desired standards of conduct among police officers by punishing—and thereby deterring—aberrant behavior. Just as important, it can provide satisfaction to those civilians who are adversely affected by police misconduct.[4]

Other mechanisms for detecting violations of departmental procedures are the inspections unit and the internal affairs unit. While the inspections unit is primarily concerned with detecting procedural deficiencies within the department, it is also effective in discovering system malfunctions due to individual error or inefficiency. The internal affairs unit is primarily responsible for conducting investigations of misconduct allegations. As such, it does not necessarily "discover" the misconduct, but does confirm the existence and details of misconduct, and thus serves as a key element in detecting violations of departmental rules.

The citizen complaint systems of seventeen agencies were assessed through IACP field research by interviewing members of the media and representatives of community groups such as the American Civil Liberties Union, Blacks,

[3]N. F. Iannone, *Supervision of Police Personnel* (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1975), p. 296.

[4]Harold Beral and Marcus Sisk, "The Administration of Complaints by Civilians Against the Police," *Harvard Law Review*, 77, No. 3, January 1964, p. 500.

Chicanos, Indians, religious organizations, ex-convicts, and other local interest organizations.[5]

A common theme throughout these interviews was distrust of internal investigations, generally founded upon the citizens' lack of information about the process. Many community representatives stated that police agencies should not investigate complaints against their own personnel. The rationale was that investigations would be biased. The terms whitewash and cover-up were used to describe community sentiment toward departmental investigation practices. These groups stated that alternative bodies, such as the district attorney's office, other law enforcement agencies, and private investigators should be responsible for investigating complaints.

The fact that citizens' groups did not communicate with the police on an ongoing basis, and generally were not aware of investigative practices, generated this criticism. In one jurisdiction, the district attorney actually was responsible for investigating serious allegations. Community representatives were unaware of this practice.

Many citizens denounced the secretiveness of the process of internal investigations. They stated that members of their respective groups who had complained of police misconduct usually were not even contacted by the department during investigations, and that generally they were not informed of the status of the investigations, of any hearings, or of the resolution of the case. Those interviewed expressed skepticism as to whether the agency actually conducted investigations.

In comparing actual practice to these perceptions, it was determined that in several jurisdictions citizens were not regularly informed of case results. In those instances where complainants were notified, the agencies did not use a standard format for this purpose, and in many cases, used only verbal means for apprising citizens of results.

In one agency in particular, community representatives said that complainants were intimidated by officers, and that the accused officer was often assigned to take a statement from the complainant. Other community representatives reported incidents involving citizens who were harassed by receiving numerous traffic citations following the lodging of complaints.

Media personnel, as well as others, protested the lack of information on internal investigations. Many citizens felt that their right to know the facts was jeopardized by the complaint system. One individual compared the publication

[5]These perspectives were analyzed through the field instrument "Legal Analysis, Part II." This instrument is included in Appendix C.

of names of arrestees with the failure to publish names of accused officers, as an illustration of unfairness.

Representatives of several ethnic groups stated that their members were unfamiliar with the criminal justice system, including the handling of complaints, and that no effort was made by departments to acquaint minority persons with the process. They expressed surprise that agencies were concerned with officer misconduct.

Citizen concern over police misconduct is not new. In fact, it has been a subject of debate between public officials, citizens' groups, and police administrators for many years. The tendency for police officers to band together when confronting adversity is a critical factor in this dilemma. Because of the defensive solidarity which police agencies often assume, the police may fail to distinguish individual wrongdoing from a broader sense of criticism of police misconduct. Such reactions are understandable since all officers have experienced public criticism of the police function–criticism which may be unwarranted due to other shortcomings in the law and governmental practice.[6]

This code of internal secrecy should be recognized as an inherent phenomenon in police departments. Police administrators must endeavor to acquire public support, however, and take positive steps to cope with the realities of officer reactions. The recommendations offered throughout this manual concerning reception of complaints, notifications of citizens, and positive inducements for realizing self-discipline should increase public confidence. Many agencies, including some visited by the IACP in this project, have adopted such procedures to limit the adverse effects of internal secrecy and elicit greater citizen confidence.

Additionally, public support may be acquired by informing lower income and minority groups about the complaint procedure and other developments.[7] These citizens, who may be more apt to have confrontations with officers and less inclined to understand police work, could perhaps be educated through a community relations program or when visiting police headquarters.

[6]Herman Goldstein, "Administrative Problems in Controlling the Exercise of Police Authority," *The Journal of Criminal Law, Criminology and Police Science*, 58, No. 2, June 1967, p. 165.

[7]A specific problem, noted in many agencies, is simple lack of communication between the department and the community. In one agency visited, officers were being trained by a psychologist in cultural differences to develop greater sensitivity to minorities. Through one interview, it was determined that a vocal black action group was particularly concerned about the need for such training and thought it essential that the department take such action. The interviewee was not aware, unfortunately, of the agency's program to induce greater understanding.

Receiving Misconduct Complaints

Complaints or allegations of police officer misconduct may originate from inside or outside the agency. They may be brought by citizens who believe they have witnessed or suffered from officer misconduct or may be brought by fellow officers or supervisors. Complaints of officer misconduct must be afforded the same degree of serious consideration as reports of criminal offenses. It is necessary that there be an established formal procedure for handling such complaints. Most departments have a system by which a supervisor may report misconduct by his subordinates. However, in some departments, the system for receiving complaints from citizens is inadequate.[8]

Lack of an efficient procedure for intake of citizen complaints detracts from the credibility of the department's commitment to thorough investigation and correction of misconduct. On the other hand, the existence of a formal complaint procedure provides a much needed "safety valve" against the explosive effects of a law suit alleging widespread toleration of misconduct. Also, a complaint procedure gives the department added feedback as to what kind of job its officers are doing.

The procedures themselves must be designed so that they are not so complex or burdensome that they discourage the filing of complaints. For example, a requirement that a citizen must appear in person at police headquarters (which in a large city or state agency may be miles away) in order to file a complaint is unreasonable. A telephone call or a trip to the local precinct should suffice to initiate the complaint. If it is necessary to speak to the complainant in person, an officer should go to the complainant's home or office. The following specific factors should be considered in developing an efficient complaint intake procedure.

Simplicity. As mentioned above, overly burdensome procedures are to be avoided. Some departments intentionally make things complicated, believing that "minor" complaints will thereby be deterred or discouraged. While there certainly is a need to screen out frivolous complaints early in the system, this should be accomplished at an initial investigatory stage rather than by discouraging complaints. The requirement of a sworn or notorized statement to initiate a complaint is another example of an unreasonable deterrent, as is the requirement of a statement of willingness to submit to a polygraph. Each of these steps may be appropriate at some later stage of the complaint investigation process, but

[8]Through the administrative analysis, it was ascertained that in several departments complaints may not be reduced to writing and as a result will not be followed by investigations.

none should be used as a prerequisite to the mere filing of a complaint.

Though a citizen's complaint may appear frivolous or unfounded, it is important to document the citizen's concern. The citizen who takes the time to report an incident generally considers the alleged act important and expects the department to respond in some manner. Perhaps the expectation of a full-scale investigation is not on the citizen's mind, but some degree of attention and responsiveness by the department is anticipated. One step in fulfilling this expectation is showing the citizen that the complaint is being documented. In many departments studied by IACP, minor complaints were not documented, but were handled informally. Often, this procedure resulted in citizen dissatisfaction, and in one department, it produced a rash of complaints from the community that the chief executive was insensitive to citizen concerns.

With a simple complaint reception report, citizen complaints, both minor and major, can be recorded with a minimum of time and effort. Such recording will not only satisfy the citizen but will also provide the agency with documented feedback to be used later for evaluation of the service delivery system. Citizen complaints, even those which might appear frivolous, provide this needed data. Also, such reports help to counter accusations that the department is not responsive to citizen allegations. Additionally, such documentation can later be used to justify budget, manpower or other resource needs. Benefits to be derived from this procedure were articulated in one agency's general order on the citizen complaint process:

> It is to the benefit of each member of this Department that every complaint registered by a citizen be taken courteously and recorded. Even if the complaint is known to be unfounded and a simple explanation of a procedure completely satisfies the citizen, that complaint could be a part of a justification for future budget requests for public education or information personnel. All complaints by citizens, real or imagined, are an essential item of required information.

Familiarity. The department should endeavor to familiarize the community with the basic steps necessary to file a complaint against the police. A system should be established to assure that all complaints are received by the appropriate officer. All officers should be familiar with proper responses to citizen complaints.

One method of assuring that citizens are familiar with their right to register complaints is for the department to announce its policy publicly. Many departments prepare policy statements which inform the employees that complaints will be accepted and investigated, but few make this policy known to the general public. Those departments that do make known procedures have prepared brochures or letters which state the citizen's right to file a complaint and identify how such a complaint may be filed. An example of this statement from one department illustrates the point:[9]

> The police department has recognized the fact that its officers are responsible to the public for their conduct. At certain times a conflict may exist between a citizen and a police officer in the performance of his duty.
>
> If you believe that a police officer has violated your rights in the performance of his duty, you should bring it to the attention of the on-duty supervisor of the officer being complained against. The supervisor will discuss the matter with you; and if the discussion reveals that a complaint is in order, he will assist you in the preparation of the complaint form. The initial contact may be made by telephone, letter, or a personal visit.
>
> Be sure to give all the information concerning the incident, including witnesses. Many details which seem small at the time may later prove to be of great value in the investigation. All valid complaints will be investigated per department procedures. After the investigation is completed, you will be notified of the results.
>
> This information has been prepared as an effort to promote better understanding between you and your police department.

Steps should also be taken to assure officer understanding of disciplinary procedures. While one might assume that officers possess such understanding, survey results indicated that an average of only 57 percent of the officers responding understood their department's procedure for receiving citizen complaints. In one department, only 41 percent of respondents expressed understanding, and in another only 43 percent of those officers surveyed understood procedures. Furthermore, in several departments where minor complaints were summarily handled without investigations, 45-59 percent of the officers responding thought that all complaints, no matter how minor, were investigated in their department, and in one department, where only written complaints were

[9] In order to obtain maximum exposure to the department's public policy, this department also prints this information in Spanish. Departments in jurisdictions with a large Hispanic population should consider similar practices.

accepted, 35 percent of the officers surveyed thought the department accepted all complaints. In analyzing differences across agencies, it was found that greater officer understanding was evident in those agencies which more clearly documented policies on citizen complaint procedures and internal disciplinary matters.[10] These results indicate that agencies should devote more efforts to familiarizing officers, as well as citizens.

Records and Forms. Forms should be provided for filing a complaint which will permit efficient collection of all necessary information. The initial complaint form should be designed to accommodate complaints (both internal and external) of alleged infractions by police employees, as well as those which relate to departmental policy or procedure. In designing a complaint form, the following points should be considered:

- The form should be designed so that all recording of information can be accomplished in a minimum amount of time
- Sufficient information must be captured on this form to assure follow-up if necessary
- Pertinent data from the source document should be easily retrievable in order to permit identification of undesirable trends or conditions
- Sufficient copies should be prepared so that the information will be distributed to appropriate persons and organizational units
- Each complaint should be recorded on a central log in order to facilitate processing the complaint and to assure follow-up.

Notification. As part of the complaint intake process, citizen complainants should be told that they will be notified of the outcome of complaints. It is necessary that citizens know what happened to their complaints, and what action was taken by the department as a result of the complaints. If there is no feedback from the department to citizens, they will lose confidence in the ability of the department to handle its own problems.

Many police agencies fail to notify the complaining citizen of the results of the investigation, while others have developed elaborate means of keeping the citizen informed. Generally, it has been found that those agencies which person-

[10] A statistical difference, (significant at the .001 level) was found between those four agencies in which officers indicated the greatest understanding (top 25 percent), and those from which officers expressed the least understanding (lowest 25 percent). Further information may be obtained from Appendix A, pp. 229-234.

ally contact the complainants and discuss the investigation and adjudication have a better relationship with the community.[11] One such agency, studied in this project, sends the complainant a letter acknowledging receipt of the complaint, and informs the citizen that the allegations are being investigated. Further, the letter states that the citizen will be advised of the results of the investigation within a certain period of time (generally three weeks, depending on workload). A copy of this letter is included below to provide further insight:

Date

Name
Address
City, State Zip Code

Dear _____ :

This will acknowledge receipt of the complaint made by you on _____, 19__ concerning the actions of a member(s) of this department.

An investigation will be conducted into the allegations contained in your complaint. You will be advised of the results of the investigation in approximately three weeks.

Very truly yours,

Chief of Police

Once the investigation is completed and a finding determined, the complainant is notified of results. Such notification may follow two forms: if the complaint is sustained, the citizen should be apprised that the agency does not condone such action and that corrective action will be taken. An example, in the form of a letter to the complainant, is provided below:

Date

Name
Address
City, State Zip Code

[11] National Advisory Commission on Criminal Justice Standards and Goals, *Report on Police* (Washington, D.C.: GPO, 1973), p. 478.

Dear _____ :

An investigation has been conducted into your report of misconduct by a member(s) of this Bureau.

The investigation established that the conduct of the concerned officer(s) was contrary to Bureau policy.

You may be assured that this Bureau does not tolerate such conduct and that appropriate disciplinary action has been administered.

Thank you for bringing this matter to our attention. If you desire further information in regard to the investigation or disposition, please contact the Internal Affairs Office, (telephone number and extension).

Very truly yours,

Chief of Police

If the officer is exonerated, the complainant should be advised that a thorough investigation was conducted to reach such a finding. An example of this form of letter follows:

Date

Name
Address
City, State Zip Code

Dear _____ :

Your report of misconduct by a member of this Bureau prompted a thorough investigation of the incident you described.

Careful examination and evaluation of the evidence established that the actions of the concerned employee were in accordance with the high standards of performance demanded of members of this Bureau.

Please be assured that we desire to provide the best possible police service and are appreciative when given the opportunity to clarify such matters.

If you desire further information in regard to the investigation or disposition, please contact the Internal Affairs Office, (telephone number and extension).

Very truly yours,

Chief of Police

Notification to citizens should not be a "once-in-a-while" practice. It should be established and codified in the written directive which explains the department's complaint procedures. Referring again to one department studied, a general order states:

> As the investigator receives the case folder, he or she shall immediately cause a letter to be sent, acknowledging the receipt of the complaint to the complainant. In cases where completion of investigation is delayed, an additional letter will be sent to the complainant with the assurance that the investigation is continuing. These letters shall be over the Chief's signature and copies of the same will be maintained in the case file. A record of these letters shall also be recorded on the worksheet within the case folder.

Where police departments fail to provide adequate procedures for handling citizen complaints, unrest and dissatisfaction in the community sometimes lead to legal action against the department. Courts are usually reluctant to interfere in police internal affairs. The latest statement on judicial noninterference in disciplinary systems was issued by the United States Supreme Court in January 1976. *Rizzo v. Goode,* 423 U.S. 362, 96 S.Ct. 598 (1976). The federal trial and circuit courts had directed the department to draft for the court's approval a comprehensive program for dealing with civilian complaints to be formulated in accordance with the court's detailed guidelines for revising police rules and procedures for handling citizen complaints. The United States Supreme Court, reversing the lower courts, held that the plaintiffs had not proven an affirmative link between the occurrences of various incidents of police misconduct and the adoption of any plan or policy by the department authorizing or approving the misconduct. Also, the Court decided that the plaintiffs lacked a personal stake in the outcome of the case; they had failed to establish the necessary case or controversy.

The Court ruled that the lower courts had exceeded their authority and had intruded into the discretionary authority of the police administrators. The

Court reasoned that the alleged acts which constituted a violation of individual citizen's constitutional rights were so few in number that there was no justification for the trial court to find a pattern of an unacceptably high number of incidents. The twenty incidents, conceded to be violations of constitutionally protected rights, did not establish a pattern of violations of constitutional dimension in a city of three million inhabitants with 7,500 police officers. However, the Court did not entirely foreclose federal judicial interference in internal departmental procedures. Plaintiffs in future litigation may prevail if they demonstrate a pattern of an unacceptably high number of incidents and a departmental policy responsible for such pattern. How many incidents of misconduct and how active the department must be in authorizing or approving the misconduct before a federal court will take jurisdiction of the case is left to future litigation.

Handling Complaints

Once a complaint is received by the department, decisions must be made as to how it is to be handled. Departmental written procedures should spell out most of the answers in this area. Some of the more difficult issues which must be addressed are the following:

1. Under what conditions should a complaint be referred to internal affairs for investigation?
2. Under what conditions should the first-line supervisor be responsible for investigation, and/or assessing punishment?
3. To whom should inspections refer a systems problem?
4. When should the supervisor refer a case to internal affairs for further investigation?
5. When should a case be referred to the district attorney for possible criminal prosecution?[12]

Investigation Responsibility: Division of Work. A question to be addressed in dealing with the investigation of allegations is the division of work. Should the internal affairs unit be responsible for the investigation of every complaint coming to the department's attention, or should some investigations be referred

[12] For a more complete discussion of the effect of criminal prosecution on administrative discipline, see page 68.

to the commanding officer of the organizational entity against whom the alleged personnel or service complaint is lodged? If, for example, it is determined that citizens are dissatisfied with response time, and the fault lies in the dispatch process, should the communications section be responsible for discovering the conditions and solutions relating to the difficulty? If an officer assigned to the patrol division is the subject of a discourtesy complaint, should the patrol division have the responsibility of investigating the officer's actions?

Logically, the answer to these questions depends on the following:

1. Who is in the best position to determine the facts honestly and without bias?
2. Who is best qualified to institute change?
3. Who has time available to investigate the allegation?

When an allegation of a relatively minor nature comes to the attention of the agency, it should be the responsibility of the officer's immediate supervisor to investigate the truth or falsity of the allegation. Incidents of major proportion should be assigned to internal affairs for investigation. In either case the internal affairs unit should maintain staff control over all ongoing investigations.

In many instances, the complaints made by citizens are against agency policy and procedure rather than against an officer. It often happens that an officer, in responding to a call for service, arrives at the scene only to find the citizen gone or extremely irate over the length of time which it took the officer to respond. In these cases, the complaint of the citizen is well-founded and such information is valuable in determining defects in the service delivery system.

In these situations, fault does not lie with the officer if he or she responded to the call upon receipt or at the earliest possible time. The cause of the defect may be improper manpower allocation, dispatch procedures, or a failure to prioritize incoming calls for services. Regardless of the reason for the defect, a citizen who is discontent with the level of service should be permitted to register a complaint. The officer on the scene is in the best position to capture this information or, if the citizen chooses, he or she may complain to headquarters. The point is that the citizen should in no way be dissuaded from making such complaints. The willingness of the department to accept such complaints clearly demonstrates the agency's responsiveness to citizen complaints. Furthermore, this feedback provides evidence which can be used to justify resource requests if it is determined that such resources might increase the level of service.

The division of work required to resolve procedural, process or service delivery system complaints is straightforward. The investigation and subsequent recommendations for change should be the responsibility of the unit carrying out the functional responsibilities most closely related to the complaint. For example, a citizen complaint about the failure of detectives to adequately follow up on an incident that is determined to be the fault of the report processing or workload should be turned over to the detective division to ascertain the cause of the backlog and methods of eliminating it. If the communication process is not effective and results in a lengthy response time, the communication section should investigate the procedure and devise ways to decrease the response time.

Although this concern might appear to deal with situations beyond the scope of a disciplinary study, experience indicates that many complaints against police officers arise from an inefficient process which does not maximize the department's capability to deliver police service promptly and efficiently. This type of fact finding should be coordinated with the inspections unit as discussed earlier in this report.

Internal Investigation Unit: Investigations and Staff Control. Staff control implies a centralization of the internal investigatory function of the organization. Such centralization is required regardless of where in the organization the actual investigation is conducted. Thus, even though an investigation of alleged officer misconduct is performed by a supervisor, the internal affairs unit should have knowledge of the ongoing investigation and maintain pertinent departmental records relating to the action.

As stated previously, the basic purpose of internal investigation is to establish the truth or falsity of complaints against police officers regardless of the seriousness of the alleged infraction. In large police organizations, this procedure can become a complex task which requires administrative safeguards to assure that all complaints are properly handled.

It should be clearly understood that the purpose of internal investigations is to examine, consistently and critically, all areas of police action which represent potential hazards to the integrity of the agency. Misconduct should be discovered as quickly as possible so that prompt corrective action can be initiated. In order to perform the internal investigation function, appropriate staffing is needed to assure that the workload can be effectively and efficiently performed. A suitable office, a records storage area, and an interview room will be required. The office should preferably be located away from the general flow of foot traffic, but not hidden in an undesirable part of the police building. The location of the Internal Affairs office should provide easy access to citizens. Some agencies have found it advantageous to place the internal affairs operation

in the same general area as administrative offices, i.e., chief or deputy chief. This stresses the importance of the unit to citizens.

The internal investigation unit should receive, process and file all complaints lodged against police employees, as well as establish and maintain absolute control of the conduct of investigations and all records pertaining thereto. Access to internal investigations files should be limited to those having a legitimate need for such access, as defined by departmental regulations.[13] The internal investigation unit should maintain an internal investigations control log, with complaints against officers transmitted to personnel in charge of the control log. After logging, complaints should be referred to the appropriate investigating officer, who may be in one of the line units or a member of the internal investigation unit. All records of investigations should be filed by number only, with access through an alphabetical master name index. The master index card should contain only the name of the officer, victim, complainant or witness, and the file number. All files, including the master name index, should be locked when not in use. Desks should be provided for all personnel, and all work papers and notes should be locked when the office is vacant. Unmarked vehicles should be allocated for internal investigations personnel.

Complaint investigation involves (1) formal investigation by members of the internal investigation unit of complaints against any personnel, and (2) staff supervision of complaint investigations conducted by line commanders. Line commanders should be aware of their individual and collective responsibilities in the areas of disciplinary control, and in investigation of complaints of misconduct against their subordinates.

The special investigations function involves confidential investigations affecting agency personnel. These investigations should be initiated only at the direction of the chief of police. Such investigations may arise as a result of official complaints lodged against an officer or may be of internal origin and have no connection whatsoever with an external complaint. Investigative work may have to be carried out covertly at times. For this reason, security precautions should be observed during active investigations.

The unit's administrative duties should also include the preparation of investigative summaries on a regular basis so that an accurate record may be maintained, not only of the total number of complaints received, but against whom they are made, and how often an officer is the subject of a complaint.

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[13] State freedom of information acts may contain provisions governing access to and the release of these files.

Quite often, patterns of irregular behavior will be discovered that otherwise might have remained undetected for a long period of time.

The internal investigation unit should also keep a suspense file of investigations which have been referred to line supervisors. Investigators should advise appropriate commanders if investigations are delinquent or inadequate.

Additional administrative functions should include the preparation of a response by letter, in person, or by telephone to those who contacted the police with complaints concerning real or imagined abuse of police authority or misconduct. Officers against whom complaints have been lodged should always be informed of the complaints unless doing so might jeopardize the ensuing investigation. Officers should also be informed of the results of the investigation. Officer morale in these instances is just as important as the need to satisfy the civilian complainant. Traditionally, many police agencies have overstressed the importance of maintaining internal satisfaction as opposed to citizen confidence.[14] Administrators must develop practices which achieve both of these objectives in order to realize sound discipline.

From IACP experience, it is clear that many agencies have difficulty in finding the correct formula for achieving these objectives. Perhaps the major reason is that departments do not sufficiently define the duties of the internal investigations unit and supervisors. Many agencies researched did not require staff control by internal affairs over investigations, did not clearly delineate the responsibilities of this unit as opposed to supervisors, and failed to notify all complainants of the receipt of a complaint, as well as its final disposition.

Suspensions

Suspensions Pending Further Action. It is common to provide in disciplinary procedures for the temporary relief of an officer from active duty, pending some further processing of the case. Such a suspension is distinguished from a suspension imposed as a punishment following a final determination of misconduct. The temporary suspension is generally, but not always, with pay. If without pay, and the officer is later exonerated, the officer is usually entitled to back pay. The purpose of such a suspension is generally to assure that the officer is available at all times to participate in any investigation or hearings which may take place, to relieve the officer from the burden of daily work while under the

[14]This situation may also serve as a detriment to control of police corruption. See Herman Goldstein, "Administrative Dilemmas," *Police Corruption–A Perspective on its Nature and Control* (Washington, D.C.: The Police Foundation, 1975), p. 32.

strain of an investigation, and to avoid any embarrassment or conflict which might arise from the continued service of an employee who is accused of, or charged with misconduct.

In some departments and under some circumstances, a line officer under investigation may be maintained on active status, but transferred to an administrative or staff assignment, such as communications. Or the officer might be attached to the inspections or internal affairs division, and instructed to remain at home and/or report periodically. Normally, this situation occurs when the investigation and resolution process is expected to be concluded quickly.

It is not necessary to hold a hearing prior to initiating a temporary suspension; under proper circumstances an officer may be summarily suspended or relieved from active duty. *Wilson v. Minneapolis*, 168 N.W.2d 19 (Minn. 1969); *Cain v. Civil Service Comm'n*, 411 P.2d 778 (Colo. 1966), cf., *Arnett v. Kennedy*, 416 U.S. 134 (1974). However, due process requires that the officer be given a right to a hearing before any permanent disciplinary action is imposed. *Perry v. Sindermann*, 408 U.S. 593 (1972), unless the officer serves at the will and pleasure of the appointing authority. *Bishop v. Wood*, 426 U.S. 341 (1976).

Effects of Suspension. As indicated earlier, the normal result of a suspension is to interrupt an officer's right or responsibility to perform his or her regular duties. A suspension may include a total revocation of the officer's police power, or it may be limited to an order not to report for work. The department official ordering the suspension normally may attach any lawful conditions deemed fit, so long as his or her power has not been limited by departmental rule. In some cases, departmental rules specify that a supervisor may relieve an officer from duty for only one day or for one work period; suspensions for a longer period require action by the chief, as do prohibitions of caring of firearms, exercise of arrest power, etc. Generally, a suspension is given in the form of a direct order to the officer. Violation of the terms of the suspension, e.g., carrying a firearm after being ordered not to do so, may constitute a further violation (e.g., disobedience of an order).

Duration of Suspension. A suspension is, by its nature, temporary. A permanent suspension would amount to a dismissal. A suspension may, however, be open-ended, and need not be imposed for a specific period. A "suspension until further notice" is proper. Also, a suspension may be set by its terms to expire at some future specified time, or upon the occurrence of some event, including an event within the control of the suspended officer. For example, an officer may be suspended pending the outcome of a criminal prosecution against the officer, or until he or she complies with an order to terminate improper out-

side employment. See generally, *Romanowski v. Board of Education*, 213 A.2d 313 (N.J. Super. 1965).

Suspension Without Pay. Police officers may be suspended without pay pending final disposition of the case. *Adams v. Rubinow*, 251 A. 2d 49 (Conn. 1968); *Arnett v. Kennedy, supra.* Normally, officers later acquitted on misconduct charges are reinstated with full back pay, but not necessarily. *Graham v. Asbury Park*, 174 A.2d 244 (N.J. 1961). Salary earned from other sources during the suspension may often be deducted under the doctrine of "unjust enrichment." Also, if officers are convicted of misconduct, but the verdict is later set aside or reversed on appeal, they may not be entitled to back pay. *Snider v. Martin's Ferry*, 260 N.E.2d 129 (Ohio Ct. App. 1970). Finally, if the charge of misconduct is upheld, disciplinary action may be imposed retroactively to the date of the offense, and any temporary suspension may count as part of the final punishment imposed.

Investigations

Perhaps the most critical aspect of any police internal discipline process is the investigation of an allegation of misconduct. More can go wrong at this stage, and with more serious consequences, than at any other point in the process. As with any investigation, the department must, using lawful procedures, gather all evidence pertaining to the allegation, so that a good faith decision may be made, whether to dismiss the complaint or continue with the charges against the officer. The investigation must be seen by the community, and by members of the department as diligent and impartial. A decision to exonerate an officer or to sustain a charge against the officer based on faulty or incomplete evidence will antagonize one party or the other, and detract from the credibility of management's adherence to its own objectives.

The process of gathering evidence is a familiar function of a police department. No detailing of investigative techniques is required in this report. However, when the investigation is for internal disciplinary purposes several important modifications, primarily of a legal nature, must take place. In general, there are fewer legal restrictions on an internal administrative investigation than on a criminal investigation. But the restrictions which do exist are rigid, and it is important that they be recognized and followed. The failure to do so may result in improperly gathered evidence being overturned upon appeal by the officer, just as a criminal conviction may be reversed for procedural error.

The legal restrictions on internal investigations stem primarily from judicial interpretations of constitutional provisions, but may also be found in

statutes such as the "Police Officer's Bill of Rights," or in collective bargaining agreements. They may also come from local ordinances or administrative regulations, such as civil service or personnel department rules. For purposes of the following discussion, only broadly applicable constitutional or common statutory provisions will be discussed.

Criminal Prosecution. At an early stage of any internal investigation, it is necessary to decide whether the evidence and the allegation warrant criminal prosecution of the police officer. If it appears that a criminal charge may be brought, the investigation must adhere to all of the restrictions of a normal criminal investigation. Search and seizure restrictions apply, and *Miranda* warnings must be given. (In two departments studied, investigators are required, either by contract or by the Police Officer's Bill of Rights, to give *Miranda*-type warnings to accused officers, even where it is certain that no criminal charges will be brought). An officer may face both criminal and internal charges, but evidence gathered for internal discipline which violates criminal investigative standards may not be used in the criminal prosecution. Therefore, careful consideration must be given to the method by which the department will proceed against the officer.

Failure to Cooperate. At the outset, it should be noted that whenever an officer may be legally ordered to take (or not to take) some action (e.g., answer questions or stand in a lineup) regarding an internal investigation, and fails to obey that order, such failure may be the basis for a further charge against the officer. The officer must be informed, however, that his or her failure to cooperate may lead to further disciplinary action, including discharge. *Seattle Police Officers' Guild v. Seattle*, 494 P.2d 485 (Wash. 1972). Whether the officer may be lawfully ordered to take some action is discussed below.

Questioning the Officer. One of the most efficient methods of investigating a complaint against an officer is to question the officer. The questions asked officers must be "narrowly and directly" related to the performance of their duties and the ongoing investigation. *Gardner v. Broderick*, 393 U.S. 273 (1968). In other words, officers may not be forced to answer questions having little to do with their performance as police officers or unrelated to the matter under investigation.

Police officers do not have the right to refuse to answer questions that are directly and narrowly related to their official duties. An officer who refuses to answer such questions may be ordered to do so. However, when an officer is being questioned about conduct that is or could be criminal, he or she should be advised of his or her *Miranda* rights prior to the interview. Any incriminating statements by an officer, obtained under direct order, will not be admissible in a

criminal prosecution unless the officer has been advised of his or her *Miranda* rights and has waived them. *Garrity v. New Jersey*, 385 U.S. 493 (1967). Incriminating statements obtained under direct order will, however, be admissible in an administrative hearing arising out of the alleged misconduct. Officers may not be forced to waive their privilege against self-incrimination under threat of losing their jobs. Such coercion makes the waiver involuntary. *Garrity supra; Varela v. Commissioners*, 283 P.2d 62 (Cal. Ct. App. 1951).

A slightly different, but related issue arises concerning the questioning of officers by grand juries. Officers being questioned regarding criminal activity by a grand jury may not be forced to waive their rights against self-incrimination, either by the grand jury or by the department. *Confederation of Police v. Conlisk*, 489 F.2d 891 (7th Cir. 1973), *cert. denied*, 416 U.S. 956 (1974). The department may, for internal purposes, ask the officer about the same criminal activity, but it may not discipline the officer simply for failure to answer grand jury questions.

Right to Counsel. There is no constitutional right to counsel during an internal administrative investigation. *Jones v. Civil Service Comm'n.*, 489 P.2d 320 (Colo. 1971). Therefore, in the absence of a statute, contract provision or personnel rule providing otherwise, an officer has no right to have counsel present while being interrogated, unless criminal prosecution is contemplated. *Boulware v. Battaglia*, 344 F.Supp. 889 (D. Del. 1972), aff'd, 478 F.2d 1398 (1973). However, if it appears that the presence of counsel will not disrupt the investigation, there is no good reason to prevent counsel's presence. The department should make it clear that it is not adopting a general policy of allowing counsel to be present, for then violation of that policy in a specific case might be deemed "arbitrary" and inherently unfair. If the department does adopt a general practice of allowing attorneys to be present, it should be careful not to violate that practice without clearly stated reasons.

In several departments researched, officials expressed a policy of allowing an accused officer to have an attorney present during questioning, although some would not allow the attorney to participate. Others stated that they have never been confronted with this situation, but would probably allow an attorney to be present upon request.

Polygraph. The law in most jurisdictions is clear that a police officer may be compelled to submit to a polygraph exam for internal purposes. *Roux v. New Orleans*, 223 So.2d 905 (La. App. 1969), *cert. denied*, 397 U.S. 1008 (1970). Polygraph results usually are not admissible in a criminal court. *Frazee v. Civil Service Board*, 338 P.2d 943 (Cal. App. 1959). The polygraph results may be admissible in an internal administrative hearing. *Chambliss v. Board of Fire & Police Commissioners*, 312 N.E.2d 842 (Ill. Ct. App. 1974). This is not true, however, in all jurisdictions.

Most all of the agencies visited during this study made use of the polygraph in internal investigations. It was found that these agencies had qualified operators on their staffs to administer the tests. Commonly, officers were disciplined for insubordination if they refused to take the polygraph.

Physical Tests. The law regarding the taking and use of nontestimonial evidence is the same for administrative purposes as for criminal prosecutions. Police officers may be compelled to submit to breath or blood tests, voiceprint exams, handwriting samples, hair samples, etc., and such evidence may be used against them. *Schmerber v. California*, 384 U.S. 757 (1966); *Krolick v. Lawrey*, 308 N.Y.S.2d 879 (1970), aff'g, 302 N.Y.S.2d 109 (1969).

Search and Seizure. Police officers have the right, under the Fourth Amendment, to be free from unreasonable searches and seizures. Fourth Amendment warrant requirements apply to any search of an officer's personal property including clothing, car, home or other belongings. *McPherson v. New York City Hsg. Authority*, 365 N.Y.S.2d 862 (1975). Evidence obtained from illegal searches cannot be used as evidence, even in administrative disciplinary proceedings. *Smyth v. Lubbers*, 398 F.Supp. 777 (W. D. Mich. 1975); *McPherson, supra.*

Departmental property used by the officer, such as lockers, vehicles, desks, etc., may be searched without a warrant. *People v. Tidwell*, 266 N.E.2d 787 (Ill. 1971). It is best that there be an announced department policy that such property is subject to search at any time, in order to vitiate any expectations of privacy. See *U.S. v. Katz*, 389 U.S. 347 (1968).

Wiretaps and Eavesdropping. The use of wiretaps, body transmitters, monitoring of conversations, etc., in an internal investigation is subject to the same restrictions which are applicable to citizens in general. 18 U.S.C.A. §2511; *Allen v. Murphy*, 322 N.Y.S.2d 435 (1971); *Boulware v. Battaglia, supra.* However, the monitoring of phones used exclusively for departmental business by one having authority to supervise and control the use of the phones may be permissible. *People v. Canard*, 65 Cal. Rptr. 15 (Ct. App. 1967), *cert. denied*, 393 U.S. 912 (1969).

Lineups. A police officer may be ordered to stand in a lineup to be viewed by witnesses or complainants of police misconduct. There is no need for probable cause and the officer may be disciplined for refusal. *Biehunik v. Felicetta*, 441 F.2d 228 (2d Cir. 1971), *cert. denied*, 403 U.S. 932 (1971). Of course, the lineup must be fairly constructed so as not to be unfairly suggestive. The same rule applies to photo arrays.

Entrapment. The defense of entrapment seems to have no application to administrative hearings. While the law on this subject is changing, and there is some dispute as to what constitutes entrapment (see *United States v. Russell*, 411 U.S. 423 (1973)), there have been no cases which have held that an officer may raise the defense at a discipline proceeding. One case holds that he may not. *Jones v. Civil Service Comm'n, supra.*

Other Investigative Tools. The law regarding the use of most other investigative tools is the same for police internal investigations as for criminal investigations. Constitutional concepts such as due process and right to privacy limit investigative methods to the same extent as in criminal cases. On the other hand, it must be remembered that even those methods which are constitutionally permissible may be restricted or prohibited by local statute, rule, or contract.

Charging

The formal filing of charges against an officer in an administrative disciplinary case serves the same purpose as the issuance of an indictment or an information in a criminal case. It serves to officially notify the officer that he or she is being charged with a violation of departmental rules, states the underlying basis of the charge, and informs the officer of steps to take to answer the charge. This step is often overlooked or inadequately handled by police departments, which often leads to later difficulty in upholding disciplinary action.

Effect of Criminal Charges. Often police misconduct may be of such a nature as to constitute a violation of the criminal law as well as of departmental rules. Where criminal charges are brought against the officer, there is a question as to what effect this has or should have on the filing of internal discipline proceedings. Likewise, when the criminal case has been resolved either by conviction or acquittal, there is a question as to the effect on discipline.

As to the latter issue, the law in most jurisdictions is that the criminal and administrative procedures are two entirely separate and unrelated events with no effect on one another. Thus, an acquittal of a criminal charge does not prevent the department from disciplining an officer for the same conduct. *Board of Education v. Calderon*, 110 Cal. Rptr. 916 (1974), *appeal dismissed*, 419 U.S. 807 (1975); *Howle v. Personnel Board of Appeals*, 176 S.E.2d 663 (Ga. 1970); *Simpson v. Houston*, 260 S.W.2d 94 (Tex. 1953); *Kryvicky v. Hamtramck Civil Service Comm'n*, 170 N.W.2d 915 (Mich. 1969); *Kavenaugh v. Paull*, 177 A. 352 (R.I. 1935). Cases which have held that an employee may not be disciplined where there has been an acquittal on criminal charges seem to have involved situations where the officer was charged by the department with "violation of the criminal law" *per se*, rather than with the underlying act. Thus, where the officer is acquitted of the crime, it is impossible to prove that he or she "violated the law" for internal purposes. Had the department charged the actual conduct rather than "a criminal act" (e.g., "larceny" rather than "violation of the penal code") it could have proceeded to prove the larceny by its own evidence, rather than having to dismiss the case because of a criminal acquittal. See *Reeb v. Civil Service Commission*, 503 P.2d 629 (Colo. Ct. App. 1972). It is often easier to prove a case in a disciplinary hearing than in a criminal court. Therefore, a criminal acquittal should not bar any administrative action.

The other issue regarding simultaneous criminal and administrative charges is delay of the administrative hearing pending the outcome of the criminal trial. This is not strictly a legal issue, but often the possibility of a criminal acquittal is cited as requiring the delay of the disciplinary action. As just pointed out, this is not a legal concern. More important is the tactical concern. The facts presented by the department in a disciplinary action are normally a matter of public record. Therefore, a defense attorney in a criminal action against the officer would have easy access to a great deal of the prosecution's evidence, which may be a disadvantage to the state.

On the other hand, the harm done by delaying the administrative hearing may outweigh the benefits. Criminal trials and appeals frequently drag out for months and years. For the department to delay bringing charges often means that the administrative case must be presented on stale evidence, witnesses have disappeared, old wounds are reopened, the community becomes agitated anew, and the officer and family are kept in limbo that much longer. If the department ultimately loses the disciplinary action, there may be a large amount of money to be paid in back wages. Finally, disciplinary action delayed for too long loses its deterrent effect on the remainder of the department. In fact, it may have the opposite effect. Police officers often complain about the delays in the criminal trial process. They should be careful to avoid building the same delays into departmental procedures.

Drafting Charges. The notice to the officer need not be in any particular form. A simple letter from the chief or other charging party is sufficient. However, the content of the notice must be sufficient to inform the officer adequately as to precisely what it is he or she is accused of doing, and the specific violation of departmental rules which is charged. The officer is also entitled to receive the notice sufficiently early to have a reasonable time to prepare an answer or defense to the charges. *Niazy v. Utica Civil Service Comm'n*, 206 N.W.2d 468 (Mich. Ct. App. 1973). If the officer fails to object to the lack of specificity or timeliness of the charges, there may be a waiver of any defect in

them. *Baker v. Woodbury*, 492 S.W.2d 157 (Mo. Ct. App. 1973). However, some courts may hold that such defects are fatal, and failure to object at an early stage does not constitute waiver. *Niazy, supra.*

In order to avoid problems of vagueness, it is advisable to draft charges in terms similar to a warrant or indictment. Thus, in addition to conclusory language (". . . did violate Art. 4 §13 of Department Rules, prohibiting acceptance of gratuities . . ."), the charge should include a brief statement of the facts underlying the charge (". . . in that the officer did, on October 4, 1975 at . . .").

A related aspect of the "vagueness" problem is that of inherently vague departmental rules, such as those on "conduct unbecoming an officer." Some courts have held that such rules are so broad that it is impossible for an officer to know what conduct is prohibited and what is not. Therefore, the courts have held, it is unfair to charge some specific act which the officer had no way of knowing in advance would be held "conduct unbecoming." See *Sponick v. Detroit Police Dept.*, 211 N.W.2d 674 (Mich. Ct. App. 1973); *Bence v. Breier, supra.* This is not a problem of drafting charges, but of formulating the rules of the department. If the rule itself is inherently vague, no amount of after-the-fact inclusion of facts will suffice to validate a charge under the rule.

Resolution

The law of most states and federal due process standards require that an officer be allowed a hearing on disciplinary charges. It is not mandatory that the hearing be before departmental personnel, or even that the police department offer a hearing at all. It is enough that at some point before any disciplinary action becomes permanent and final, the officer be given the right to a due process hearing. *Deering v. Seattle*, 520 P.2d 638 (Wash. 1974), *cert. denied*, 419 U.S. 1050 (1975); *Arnett v. Kennedy, supra.* Thus, officers may be suspended, demoted or discharged before an administrative due process hearing so long as they are given an opportunity to have a due process hearing within a reasonable time. However, if the officer serves at the will and pleasure of the appointing authority, no hearing is required. *Bishop v. Wood*, 426 U.S. 341 (1976).

The hearing requirement does not apply to probationary employees. Provisions for a period of probation for new employees usually specify that a probationer may be discharged from the department at any time, for any reason. Therefore, an employee on probation has no expectation of job security, and no "property interest" in the job. Since discharge does not, therefore, infringe on any property right, there is no need for a due process hearing. There are, however, three exceptions. A probationer is entitled to a hearing if:

1. The discipline is for the exercise of a constitutional right such as free speech. *Perry v. Sindermann, supra.*
2. The discipline is for any reason which would put in doubt the officer's good name, reputation, honor or integrity; for example, cheating on an exam or taking bribes. *Board of Regents v. Roth*, 408 U.S. 564 (1972);
3. The discipline action would bar the officer's reemployment by other government employers; for example, state law may provide that the dismissal from one police department would automatically prevent employment by any other department in the state. *Board of Regents v. Roth, supra.*

The hearing need not be conducted like a criminal trial, but basic due process must be afforded. At a minimum this means the right to call, confront, and cross-examine witnesses. In exception number one, the findings must be supported by the weight of the evidence; however, in exceptions two and three the probationer's right is only to record the facts.

Composition of Hearing Board. The persons before whom the hearing is held must be neutral, impartial and detached from prior proceedings in the matter. Beyond this general rule, there is no particular constitutional requirement regarding composition of the hearing board. In fact, it is not mandatory that there be a "board" at all; a single hearing officer is sufficient. In some areas, state law, local ordinance, or departmental rule mandate that certain persons constitute the hearing panel. So long as all such persons meet the "impartiality" test, any arrangement is permissible. There is no requirement that officers be judged by their "peers"; they are not constitutionally entitled to have officers of their own rank on the panel. Factors such as blood relationship to one of the parties, prior direct involvement in the case, a direct benefit in the outcome or any other such conflict of interest will be enough to support a motion for disqualification of a hearing officer. *Mank v. Granite City*, 288 N.E.2d 49 (Ill. Ct. App. 1972).

A majority of the departments studied by the IACP used internal disciplinary boards to advise the chief in disciplinary cases. Approximately 50 percent of these boards included a member of the accused officer's rank. According to questionnaire results, 85 percent of the officers surveyed thought that an accused officer should have the right to be judged by a group which included his fellow officers. While such representation is not mandated by law, it appears that inclusion of an officer of the accused's rank on disciplinary boards increases officer confidence in the disciplinary hearing process.

It was found in most agencies, however, that officers did not make full use of this hearing to question administrative actions. Many officers, as expressed during interviews, do not feel that internal hearing boards afford ample opportunity for full and objective review of the facts. It was stated during interviews that the lack of a concrete policy on the board's use and the lack of commitment by certain superior officers to an impartial hearing limit the usefulness of the board.

Right to Counsel. An officer does not have a constitutional right to counsel in an administrative disciplinary hearing. *Boulware v. Battaglia, supra.* There may be statutory or contract provisions for such a right, but it does not exist as a Sixth Amendment right. However, there are several reasons why the department might want to allow counsel to be present and participate fully in an internal hearing. First, counsel will often stipulate to facts and conclusions without full proof (to save time, expense and unnecessary presence of witnesses); second, the likelihood of the defense presenting irrelevant, irrational, incompetent or scandalous evidence or testimony is substantially diminished; third, issues and arguments presented after the conclusion of testimony are more narrow, direct and to the point; and fourth, it will avoid any later claim of denial of Sixth Amendment rights, and adverse resolution of such a claim, thus preserving greater control in the hands of the department.

Subpoenas. State or local law may give the department subpoena power in internal discipline cases. Where such administrative subpoena power exists it normally requires judicial enforcement. That is, the department may issue a subpoena, but if the subpoena is not obeyed, the department must go to court to obtain a court order compelling obedience to the subpoena. Noncompliance with the court order may be punishable as contempt.

Administrative subpoenas are useful, especially in obtaining production of documents such as medical records, bank records, telephone and other utility records, etc. However, the authority to issue such subpoenas must be established by law, not simply by departmental rule.

Open Hearings. An officer does not have a constitutional right to an "open" or public hearing. *Kelly v. Stern,* 299 A.2d 390 (N.J. 1973), *cert. denied*, 414 U.S. 822 (1974); *Klein v. Board of Police & Fire Comm'rs*, 318 N.E.2d 726 (Ill. Ct. App. 1974). On the other hand, the department may hold an open hearing even though the officer objects. *F.C.C. v. Schreiber*, 381 U.S. 279 (1965).

There are various reasons both for and against open hearings. In favor of closed hearings are the facts that public disclosure might give the hearings a punitive, rather than corrective atmosphere; open hearings might result in the

curtailment of liberal discovery proceedings due to sensitive information being presented; and public confidence in the agency might be undermined by exposure of every departure from departmental rules.

On the other hand, there is in the law a general policy favoring disclosure of administrative proceedings. Openness may promote public confidence in the integrity of the department and the fairness of the proceedings, and act as a restraint against the filing of frivolous or insubstantial charges against an officer. In order to overcome this legal preference for openness, the department must show a good reason for closing any hearing, especially where the officer has requested that it be open. *Fitzgerald v. Hampton*, 467 F.2d 755 (U.S. App. D.C. 1972).

Transcripts and Findings. A court reviewing a disciplinary action upon appeal will look only at the written record of the proceedings. No new evidence may be considered by the court, and the court will not presume any facts not stated in the record. Therefore, it is essential that a record of the proceedings be made (preferably a verbatim transcript), and it is essential that the hearing board clearly state the evidence on which its decision is based. A written opinion of the board, like a judicial opinion, should state the facts which the board believes to have been proved by the evidence, include reference to any pertinent documents upon which the board relies, and contain a clear statement of the reasons behind the board's final action. In general, an officer is entitled to a copy of the transcript in order to prepare an appeal. *Bowles v. Baer*, 142 F.2d 787 (7th Cir. 1944).

Witnesses and Cross-Examination. An essential element of a "due process" administrative hearing is the right to call and cross-examine witnesses (this is another area where administrative subpoena power is critical). If the officer or the board cannot compel the presence and testimony of essential witnesses, the hearing may not comply with requirements of due process. All available measures, including judicial subpoena, should be utilized to obtain necessary witnesses. See, generally, *Richardson v. Perales*, 402 U.S. 389 (1971); *Civil Service Comm'n v. Polito*, 156 A.2d 99 (Pa. 1959).

Rules of Evidence. In general, strict adherence to rules of evidence is not required in an administrative hearing. *Richardson v. Perales, supra*. Some state administrative procedures acts are applicable to law enforcement agencies; however, even those which do apply to such agencies do not usually require adherence to strict rules of evidence at internal discipline hearings. Therefore, a department hearing board is free to consider hearsay evidence and/or "expert" testimony, and need not require the laying of a foundation for receipt of evidence. *American Rubber Products v. NLRB*, 214 F.2d 47 (7th Cir. 1954). It is

generally provided that irrelevant, immaterial, and repetitive evidence shall be excluded, but the test for determining such conditions is loosely applied. Any evidence which is admitted shall be given its "natural probative effect." *Diaz v. United States*, 223 U.S. 442 (1912). That is, if the evidence is admitted, it is to be considered along with all other evidence, for whatever it is worth, in determining the facts.

Some kinds of evidence must be excluded. For example, the attorney-client or marital privileges still apply, and *illegally seized evidence is not admissible.* This latter rule is a corollary of the fact, discussed above, that an officer does not lose the right against illegal search and seizure. *Smyth v. Lubbers, supra; McPherson v. New York City Hsg. Authority, supra.*

Any officer's personnel record may be admissible for some purposes. If the officer is charged with incompetence, dereliction of duty, inefficiency or some such offense involving a pattern of behavior over a period of time, the record may be admitted to show the pattern. *Hughes v. Department of Public Safety*, 273 N.W. 618 (Minn. 1937). Most courts hold, however, that an officer's record is only admissible for purposes of determining the punishment to be imposed, not for determining guilt or innocence on the particular charge. *Millburn Twp. v. Civil Service Comm'n*, 16 A.2d 824 (N.J.1940).

Few, if any, of the departments studied adhered strictly to the rules of evidence at administrative hearings. In fact, many of the hearing officials interviewed were actively hostile regarding rules of evidence, viewing these as legal technicalities used by defense lawyers to keep the board from determining the facts of the case.

Standard of Proof: Burden of Proof. The "presumption of innocence," applicable in a criminal prosecution, is not applicable in an administrative hearing. Nevertheless, in bringing the charges, the department has the burden of presenting its case prior to the defense stating its case. *Heidebur v. Parker*, 505 S.W.2d 440 (Mo. 1974). The burden is on the department to prove guilt, and the officer need respond only after a *prima facie* case has been established.

In order to be upheld on appeal, any disciplinary action imposed must be supported by at least "substantial evidence." The usual standard in criminal cases is that guilt must be proved "beyond a reasonable doubt." In administrative hearings, however, the standard is lower. "Substantial evidence" or a "preponderance of the evidence" is the usual standard of proof in civil cases. This is the minimal standard for internal discipline cases. *Kammerer v. Board of Fire & Police Comm'rs*, 256 N.E.2d 12 (Ill. 1970); *Cruz v. San Antonio*, 440 S.W.2d 924 (Tex. Civ. App. 1969); *Kelly v. Murphy*, 282 N.Y.S.2d 254 (1967). This difference in the standard of proof is one reason why internal charges may be

brought even though a criminal prosecution may have been unsuccessful. It must be remembered, however, that a reviewing court will not go outside the record to determine if there is sufficient evidence to uphold the administrative action.

Final Administrative Action. As discussed above, all action taken by an administrative hearing board must be well documented and clearly explained. The officer is entitled to a statement of the facts found by the board and its reasons for taking action. In some departments, the discipline board merely recommends to the chief executive what action should be taken. In other departments, the board has the final authority to take action. In either case (and especially if the chief usually endorses the board recommendation without further investigation) a statement of findings and reasons is required. The officer should also be informed of any right to appeal the disciplinary action and any procedure for obtaining a stay of the action pending the appeal.

Officer perceptions of the internal process for investigating and resolving complaints were obtained through this project. Included in this survey were measures of perceived fairness of both internal and external review procedures, perceptions of the chief executive's actions, and reactions to the amount of time it takes to resolve internal disciplinary cases. Overall, it was found that officers are less satisfied with these review and disposition activities than with other management actions in the discipline process. It was determined that more positive perceptions are realized in those agencies which include peer representation on disciplinary boards, which more clearly codify disciplinary authority of immediate supervisors and mid-management personnel, and which establish either formal or informal time limits for investigations.[15]

Imposition of Punishment

When an officer is found guilty of misconduct, a variety of sanctions are available to the department. The most serious, obviously, is dismissal from the organization. Also available are a variety of fines, suspensions, reprimands, demotions, extra duty assignments, etc. Frequently overlooked are corrective measures such as mandatory special training courses which, in appropriate circumstances, offer the opportunity to use the disciplinary system in a positive rather than a negative manner.

Correction of Possible Causes of Misconduct. Selected agencies have found that corrective measures may not only prevent future violations, but also may be

[15] A statistical difference (significant at the .001 level) was observed between four agencies receiving highest scores on this measure (top 25 percent), and four agencies receiving lowest scores (lowest 25 percent). Further information may be obtained on this subject from Appendix A, pp. 242-247.

used to dissuade officers from initially engaging in misconduct. The police officer, in the daily performance of duties, encounters many stress-producing situations. The officer may also experience marital problems, financial difficulties, or other extra duty problems which affect his or her performance. Traditionally, law enforcement has used internal disciplinary measures to correct these undesirable situations. However, it has been found that this approach does not eliminate the problem or provide any information to management regarding future causes of misconduct.[16] Alternative means should be employed to rectify these problems and perhaps aid an officer who has much to contribute.

Two approaches which attempt to create more positive means for correcting stress-related problems are the "peer review panel concept," used by the Kansas City Police Department[17] and other agencies, and the "psychological services concept" used by the Dallas Police Department and other organizations.[18]

Peer review concept. This is a technique used to identify potential sources of misconduct arising from family problems, the identification of psychological disorders and/or personality characteristics which may affect job performance. Officers are referred to a panel of peers for consultation at their own initiative, at the request of other officers, or after receiving three or more external or internal complaints in one year. The panel uses peer pressure to foster self-awareness of difficulties and point out that similar problems are faced successfully by other officers. The strength of this approach is its emphasis on positive treatment of problems without exposure to the negative ramifications of control and punishment.

Psychological services concept. This is a proactive approach to preventing potential difficulties which relies on the identification of officers and resorts to counseling sessions to correct problems. Officers may be referred to this unit, consisting of qualified psychologists, by fellow members of the agency, superiors, or internal affairs personnel. The principal objective of the unit is to "better utilize and maintain manpower resources . . . . by providing an alternative or adjunct to strictly punitive, corrective measures."[19]

The success of these approaches is largely dependent on officer reactions to the use of counseling services. Police administrators should stress the advantages that may result from their use. One department visited by the IACP was in the process of developing a psychological services unit. The importance of officer acceptance (as opposed to skepticism and ridicule) was pointed out by the department psychologist. He stated that officers with difficulties will be able to recognize their own problems and their need for the counseling service, when there is a full commitment to the counseling unit by all agency personnel.

[16] James S. Hillgren and L. W. Spradlin, "A Positive Disciplinary System for the Dallas Police," *Police Chief*, XLII, No. 7, July 1975, p. 65.

[17] Kansas City, Missouri Police Department, "Peer Review Panel Office," Kansas City, Mo., 1973 (Mimeographed).

[18] Hillgren and Spradlin, p. 66.

[19] Hillgren and Spradlin, p. 67.

Legal Restrictions on the Imposition of Sanctions. The major consideration in imposing sanctions is that the "punishment" must fit the offense. If the sanction is excessive, unfair, or arbitrary in comparison to the harm done by the offense, a court may reduce the penalty. *Pell v. Board of Education*, 313 N.E.2d 321 (N.Y. 1974). Often a court will review the penalty in terms of whether it is so excessive as to "shock the conscience"; if not, the penalty will stand.

Few courts are willing to overturn an administrative decision regarding the imposition of a sanction. However, as more and more police discipline cases are subjected to binding arbitration under employee contracts, a greater number of penalties are being reduced by "impartial" arbitrators. A common tactic of an arbitrator, who is paid by both parties to the action, is to find that the employee has engaged in misconduct, but to reduce the penalty for the offense.[20]

Nevertheless, it is true that penalties may not be inconsistent or arbitrary. It often happens that because the composition of trial boards varies from case to case, widely disparate penalties are imposed for substantially similar conduct by officers with similar records. In such cases, it will be difficult for the department to justify the more severe sanction.

Clear reasons must be stated to support a finding of "guilt" in a disciplinary hearing; there also must be a clear statement of reasons for imposition of a particular sanction. The usual factors involved in the determination of a punishment will be the nature of the offense and the officer's prior record. These are legitimate factors to consider, but the particular significance accorded each factor must be stated. The more severe the punishment, the more it must be supported by the record.

In order to avoid problems of inconsistency in punishment, some departments have established a "schedule" of sanctions appropriate for various offenses. Just as each criminal offense carries a prescribed penalty, each offense has been assigned a certain type of penalty. Some departments assign a certain range of maximum and minimum penalties for each offense, in order to allow for other factors, such as previous record, to enter into the decision-making

[20] International Association of Chiefs of Police, *Public Safety Labor Reporter*, Discipline: 2-74 (1973).

process. Such a procedure of predetermined sanctions eliminates a great deal of potential abuse or inconsistency in setting penalties for misconduct. On the other hand, it may diminish the flexibility and discretion to consider such factors as extenuating circumstances and the officer's prior record.

Appeals

An officer has a legal right to appeal to a court any administrative disciplinary action. Even if there is no statutory provision for appeal (which exists in virtually all jurisdictions), such action could be appealed on grounds of a denial of due process of law.

Prior to appeal to a court, however, the officer must have exhausted his or her administrative remedies. That is, the officer must have taken advantage of available procedures to have the disciplinary action overruled or modified by the police chief or other executive officer, such as a civil service commission. There are a wide variety of administrative remedies established among the various states and localities. In some jurisdictions the department is the sole authority in discipline matters. In others, an agency outside the department has total control. Administrative review may range from a complete rehearing of the case, to merely examining the record to assure that a fair hearing was held and enough evidence was admitted to support the finding.

Judicial review, also, may include a trial *de novo* of the entire case, or simply a review of the evidence presented and procedures utilized. In most cases, however, judicial review of administrative action is limited to a determination of whether enough legal evidence was produced to support the findings and action. The court will confine its review in such cases to an examination of the record of the administrative action.

Another method of appealing disciplinary action against an officer is through the process of arbitration. Some state statutes and union contracts contain clauses requiring binding arbitration of grievances. When disciplinary action against an officer becomes the subject of a grievance, it is open to modification by an outside independent civilian arbitrator or arbitration panel. Again, the arbitrator will look primarily at whether the evidence supports the administrative action, including the penalty imposed. The arbitrator may uphold, modify or rescind any part of the disciplinary action. As stated above, a common strategy of arbitrators is to uphold the findings of misconduct by the officer, but to reduce to a minor level the penalty imposed on the grounds that the punishment set by the department was "too harsh." This is especially true when the employee has a relatively "clean" record, regardless of the severity of

the misconduct. For this reason, it is essential that police administrators assure that the record contains ample discussion of the reasons for imposition of a particular penalty.

Officer attitudes regarding external appeals were researched in this project. It was found that most officers were uncertain about the fairness of external procedures. More negative perceptions were obtained in those agencies in which appeals were most numerous, indicating that greater familiarity, in this case, breeds dissatisfaction. This finding does not in itself indicate that external procedures are unfair, but does provide evidence that officers have little confidence in the actions of government officials in many jurisdictions.[21]

Discovery of Personnel and Internal Affairs Files

Although the subject of discovery of personnel records and internal affairs files in criminal and nondiscipline civil cases may seem to be somewhat peripheral to the discipline system, this type of discovery has a serious impact upon the effective functioning of the system. Police agencies may become reluctant to record complaints, investigations and dispositions if these materials will be made available to civil plaintiffs and criminal defendants. Witnesses may be loathe to testify, and investigators may be hesitant to write detailed reports. It is essential to the proper functioning of the discipline process that internal affairs files be confidential and not available to litigants in criminal court cases and nondiscipline civil cases.

Criminal Cases. Defendants in criminal cases increasingly are seeking discovery of personnel and internal affairs files of all officers who will be called upon to testify in the criminal trial. The rationale for requesting discovery is to find negative information in the files which may be used during cross-examination of the officers. Many courts have disallowed such discovery on the grounds of governmental privilege and irrelevancy of the records to the criminal case. Other courts have granted discovery on the basis that the criminal defendant needed the information to prepare his or her defense.

It has been successfully argued that police personnel records are confidential. Routine exposure of such files to public inspection would undermine the police department's ability to fully and accurately record officer performances. This line of thinking stems from the United States Supreme Court ruling in *United States v. Reynolds*, 345 U.S. 1 (1951), that a court may not auto-

[21] Further information on officer perceptions of outside appeal procedures is included in Appendix A, pp. 248-250 and p. 252.

matically grant an examination of confidential governmental files without a prior showing, by the one demanding the records, that they were necessary to the litigation before the court.

A common procedural device used by defense counsel to compel discovery of personnel and internal affairs files is a *subpoena duces tecum*. In order to prevent such discovery, the prosecutor may file a motion to quash the subpoena. To support the subpoena, the defense will attempt to demonstrate that the production of the documents is relevant and material to the controversy at hand and will facilitate the ascertainment of facts and a fair trial. Frequently the prosecution or the police department, through its own attorney, will allege that a governmental privilege bars discovery of official information whose disclosure is implicitly against the public interest. Of course, the final determination in granting inspection lies within the sole discretion of the court.

When deciding whether to permit discovery of police personnel files, the court must first consider whether the party seeking the information has at least plausible justification for inspection. *Joe Z. v. Superior Court*, 91 Cal. Rptr. 594 (1970). A recent California decision seems to suggest that the determination should be based upon a rule of relevancy; that is, the judge should decide whether the evidence sought would tend logically, and by reasonable inferences, to establish any material fact in support of the requesting party's position, or to disprove the opposing party's position.

> An accused in a criminal prosecution may compel discovery by demonstrating that the requested information will facilitate the ascertainment of the facts and a fair trial. The requisite showing may be satisfied by general allegations which establish some cause for discovery other than a "mere desire for the benefit of all information which has been obtained by the People in their investigation of the crime." *Pitchess v. Superior Court*, 522 P.2d 305 (Cal. 1974).

However, it has also been held that the right of an accused to obtain discovery is not absolute even upon a showing of good cause:

> In criminal cases, the Court retains wide discretion to protect against the disclosure of information which might unduly hamper the prosecution or violate some other legitimate governmental interest. *Joe Z. v. Superior Court, supra.*

In many states, the courts recognize a qualified privilege against disclosure. In such circumstances, a subpoena duces tecum will not have to be honored unless the person issuing the subpoena can show that:

1. The documents sought are evidentiary and relevant
2. The information cannot be obtained in advance of trial through reasonably diligent efforts
3. The person cannot otherwise properly prepare for trial, and delay might be caused
4. The person is acting in good faith.

United States v. Nixon, 418 U.S. 683 (1975).

Thus, discovery of police personnel files was refused in two 1973 New York cases. In *People v. Norman*, 350 N.Y.S.2d 52 (1973), the judge opined:

> [T]he courts in this state have recognized a privilege against discovery where a public interest will be served. . . . This Court is of the opinion that it is in the public interest to maintain confidentiality of personnel folders of police officers. The Court recognizes the fact that the Police Department conducts thorough investigations of police candidates before they are appointed because of the sensitive nature of their employment, the position of public trust which they will hold and the formidable power entrusted to them by virtue of their statutory functions. . . . It is not a condition of a police officer's employment that his life story should be the subject of perusal by judges, prosecutor and defense counsel each time he makes an arrest. To impose such a burden on the officer would be tantamount to an unconstitutional deprivation of his right to privacy.

In another New York case, the requisite good faith was found lacking in a litigant who was seeking inspection on the mere possibility that the records would reveal some "bad act" that would be useful in impeachment. *People v. Fraiser*, 348 N.Y.S.2d 529 (1973).

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1 OF 5

The District of Columbia Court of Appeals relied upon the Nixon case, *supra*, in quashing a subpoena duces tecum issued by a criminal defendant charged with the negligent homicide of a police officer. *Cooper v. United States*, 353 A.2d 696 (D.C. 1975).

In California, an assertion of privilege was sustained at an *in camera* hearing where neither defense nor prosecution were represented. The Court reasoned that the file of the policeman contained nothing not already known to counsel or which could possibly have aided in the defense. Thus, the defendant's request, based on the contention that the police officer had a propensity for violence, was properly denied. *People v. Woolman*, 115 Cal. Rptr. 324 (Ct. App. 1974). This is in accordance with the general view that requests for discovery may be denied when the inspection constitutes nothing more than a "fishing expedition." *People v. Fraiser, supra*; *Cooper v. United States, supra*; *Ballard v. Superior Court*, 49 Cal. Rptr. 302 (1966).

It must be emphasized that the privilege against release of information is not absolute, just as the right of a party seeking discovery is not without bounds. When ruling upon the question of discovery of police files, courts will balance the justification for confidentiality with the need for disclosure, and attempt to reach a result which best serves the interests of justice. Under such an analysis, it has been held that the prosecution cannot commence criminal proceedings and then invoke its governmental privileges to deprive the accused of anything that might be material to the accused's defense. *Pitchess v. Superior Court, supra.*

In another case, an Arizona court ordered an *in camera* inspection of internal affairs records of officers who would be testifying against the defendant, stating, "If any records are found to have materiality or possible usefulness to the defendant, they will be turned over to the defendant. . . ." *State v. Franze*, No. A-21630, Superior Court of Pima Co., Ariz. (1973). In *Brady v. Maryland*, 373 U.S. 83 (1963), the Supreme Court stated that "the suppression by the prosecution of evidence favorable to the accused upon request violated due process where the evidence is material either to guilt or to punishment irrespective of the good faith or bad faith of the prosecution." A recent District of Columbia decision holds that police personnel files might constitute "evidence favorable to the accused," and hence be subject to discovery under the Brady rule. *United States v. Akers* (D.C. Super. Ct., November 24, 1975).

When a court orders a police department to produce personnel or internal affairs records, the particular records listed on the order must be produced. Failing to respond to such an order amounts to contempt of court. An alternative to complying with the order would be to have the prosecutor dismiss the case. *Pitchess, supra.* This choice is the same as the one available to the government when faced with an order to disclose the identity of a confidential informant.

Civil Cases. Generally, the discovery of records is more wide ranging in civil cases than in criminal cases. However, more extensive discovery is becoming the rule in criminal cases. This pattern has been illustrated in the analysis of discovery of personnel and internal affairs records of officer-witnesses in criminal cases. Civil litigants seek personnel and internal affairs records of officer-witnesses as well as of officer-defendants in order to impeach the witnesses and defendants and to prove a propensity for violence or other misconduct of officer-defendants.

Three basic approaches have been followed by courts in ruling on discovery of these records in civil cases. Some courts have granted discovery. *Ogilvie v. City of New York*, 353 N.Y.S.2d 238 (1974). Other courts have permitted limited discovery. *Gaison v. Scott*, 59 F.R.D. 347 (D. Haw. 1973). Thirdly, judges have denied discovery. *McMillan v. Ohio Civil Rights Comm'n.*, 315 N.E.2d 508 (Ohio Ct. C.P. 1974).

In allowing interrogatories to discover information about discipline records, the court in *Los Angeles v. Superior Court*, 109 Cal. Rptr. 365 (1973) stated:

> These interrogatories seek to discover matters of fact and not opinions, speculations or conclusions. Conceivably a particular officer's suspensions could be so numerous and grow out of such serious charges that an employer would be put on reasonable notice that the officer was not fitted to perform the duties of a peace officer. Conceivably the dates and reasons for such suspension could serve to warn an employer that the officer was not suited to perform, either temporarily or permanently, the particular duties to which he had been assigned. If the suspension record of Officer Murphy were to suggest these possibilities, then an amendment of plaintiff's complaints to add other causes of action might be appropriate. For these reasons we think information about suspensions of Officer Murphy . . . is relevant to the subject matter of the action and might become relevant to the issues in an amended complaint. The Superior Court correctly required defendant to answer these interrogatories.

Limited discovery including that of factual police reports, has been permitted by several courts, while discovery of evaluative summaries, opinions and

conclusions has been disallowed. In *Boyd v. Gullett*, 64 F.R.D. 169 (D. Md. 1974), the court granted limited discovery.

> Although no general privileges against discovery of police files exists, certain restrictions on discovery would be appropriate. Thus investigatory files relating to investigations currently in progress may properly be withheld. The names of informers, if any, may be deleted from records subject to discovery. Material of a non factual nature, i.e., official criticisms, recommendations of action, policy recommendations or opinions of supervisory personnel may be submitted to the court for *in camera* review. Although the latter materials could well be relevant to the plaintiff's case, some supervision of discovery may be necessary to protect the decision-making process in the various government agencies involved in this case. Because of the delicate information which may appear in the discovered materials, only the plaintiffs' attorneys of record and designated paralegals and law students may see and consider any items discovered as a result of this opinion.

Refusal to grant discovery may be based upon confidentiality of internal investigations records, impairment of the department's capacity to investigate misconduct, diminution of the department's ability to control officer accountability, violation of officers' rights of privacy or imposition of a chilling effect on internal investigations. *McMillan v. Ohio Civil Rights Comm'n, supra.* The rationale of lack of relevancy may not be as persuasive in civil litigation as it has been in criminal cases because of the greater acceptance by courts of liberal discovery in the former cases than in the latter.

In criminal prosecutions, the government may opt for dismissing the prosecution in lieu of permitting discovery of police records. *Pitchess, supra.* This choice is not available to officers and departments that are defendants in civil litigation. In such cases, the police department may protest the discovery, seek to limit the scope of the discovery or request the court to examine the documents *in camera* before turning any of them over to the plaintiff. If internal affairs records are segregated from personnel records, the department may have a stronger argument for confidentiality of internal affairs records than if these records are combined with personnel records. The chilling effect of discovery on internal investigations rather than upon all personnel records should be a compelling argument to the judiciary.

4

The Human Element in Discipline

INTRODUCTION

All activities of any organizational entity, including operational and special staff units, are defined through management directives and carried out by individuals. The success of these entities in accomplishing objectives is dependent on human competence and motivation. Specific tasks cannot be completed successfully without well-conceived personal effort and ample direction. Managing the human enterprise has for these reasons become a fundamental and most important task of organizations.

Many current issues in law enforcement revolve around this central question: How can management make the best use of available resources to confront the day-to-day problems of police administration? This theme pervades all attempts to improve police operations. A recent analysis of the success of progressive patrol strategies, innovative experiments and sophisticated equipment concluded that:

> In most of these efforts, however, it has been apparent that eventual success depends on the critically important element of human resources. Sound personnel practices, therefore, may well be the single most vital consideration in the quest for effective law enforcement.[1]

[1] O. Glenn Stahl and Richard A. Staufenberger, eds., *Police Personnel Administration* (Washington, D.C., 1974), p. iii.

In the typical law enforcement agency, many organizational units become involved in carrying out discipline. The authority and responsibility of these units differ by agency, and the amount of input of each often varies according to a particular situation. Units, however, have one thing in common—each is composed of individuals performing necessary tasks in the management of discipline. Since the outcome of disciplinary practices is based on actions by these units, it is clear that discipline cannot be carried out effectively without "just" and "suitable" behavior by the assigned individuals.

In police organizations, as in other walks of life, it is often difficult to detect and analyze behavioral problems. Analysts of human behavior agree that a myriad of psychological, physiological, and sociological factors affect performance. Thus, it may be difficult to determine why one individual or an aggregate of individuals performs in a particular way. Such analyses, nevertheless, are necessary if human behavior is to be understood and controlled—an outcome essential to the achievement of organizational goals and objectives.

Private industry has for many years realized the importance of such insight, and in many cases conducted rigorous research for purposes of evaluating performance. By contrast, the study of behavior in the public sector, and especially in law enforcement, is an emerging concern. Much can be learned from the experiences of private enterprise, as well as from the few available studies of behavior in police agencies. Moreover, additional research should be undertaken to obtain further information on job performance.

Much insight can be gained not only from intensive research, but from practical every day situations involving human interactions. Differing values, personalities, communications techniques, leadership styles, and roles are all examples of situations that can lead to poor interpersonal relationships which consequently act as deterrents to the achievement of goals and objectives. Management can and must keep abreast of these potential problem areas by periodically monitoring employee daily performance. This may be accomplished by detecting problem areas, isolating the specific human problems, and developing strategies to alter attitudes and/or behavior. Unfortunately, many police organizations are not equipped to conduct such analyses and, therefore, are unable to resolve personnel problems.

This chapter will explore some typical human problems relating to discipline. Several concepts will be analyzed in light of IACP experience with the seventeen police agencies studied, and from the perspective of tried and tested managerial practices in other types of organizations. Numerous employee-related problems are discussed and recommendations offered. Throughout the chapter, emphasis is placed on the need for management to assume a proactive posture in identifying and rectifying human problems.

A predominant focus throughout the chapter is on the responsibilities of the chief executive. However, sophisticated management is a team effort; many of the stated concepts and recommendations apply equally to top level commanders, mid-management, and supervisory level personnel. A crucial problem in many police organizations is the failure of these managers to recognize their individual and collective roles in resolving human problems. Such recognition and positive action are needed at all levels of the organization to attain management goals and achieve effective disciplinary practices.

ACHIEVING EFFECTIVE MANPOWER UTILIZATION

In most law enforcement agencies, the chief executive is responsible for administering internal discipline. Experienced practitioners and management theorists alike endorse this form of operations. It is not good practice, however, for the administrator to personally assume the authority for completion of all disciplinary tasks. The chief executive's duties are multifaceted; with his or her time usually divided between a variety of administrative responsibilities. The chief may, therefore, be unable to give adequate attention to the numerous dimensions of discipline. In most cases the chief will not, without staff assistance, be able to research and draft policies regarding proper employee conduct, give thorough consideration to the many personnel issues involved in a particular case of misconduct, and monitor the organization to identify potential sources of policy infractions. The chief executive will be able to deal with these tasks appropriately only if a program of staff assistance is devised which "brings to him the considered judgment and advice of subordinate personnel, covering a wide range of disciplinary actions."[2]

Such assistance is invaluable not only in large municipal police departments, but also in suburban and rural agencies. Disciplinary issues have become too complex for an administrator to resolve independently. Court mandates, labor organization agreements, and interest group demands, all accent the need for quick and effective disciplinary practices which will withstand legal scrutiny and be acceptable to both employee and citizens. Because the chief cannot be an expert in all phases of management, it is necessary that staff members capable of rendering proper recommendations in this crucial and sensitive managerial concern be selected and assigned specific tasks.

As noted in IACP field investigations, many police chief executives do not

[2]George D. Eastman and Esther Eastman, *Municipal Police Administration* (Washington, D.C., 1971), p. 205.

have available the type of staff assistance necessary for effective discipline. There are two primary reasons for this problem.

First, many chief executives do not recognize the need for specific staff input. There is a tendency to try and complete all disciplinary related work independently since many decisions are sensitive in nature. Also, many chief executives who do have available staff do not make appropriate use of their talents. Often, the need for planning and research personnel to review all policies and procedures is overlooked, or similarly, inspections personnel are used only for mundane purposes, such as issuing and inspecting equipment. The potential of these and other work units is not realized because of the narrow perspective of the chief executive.

To illustrate, in one agency visited, training personnel were used solely as armorers (those who issue and inspect weapons). They did not participate in either recruit or in-service training programs, and generally were uninformed of any revisions in policy or procedures. This situation is most inadequate. Training personnel should communicate frequently with other staff and operational units to keep apprised of changes in management expectations. Most revisions in policies or procedures should be explained either by training personnel or by supervisors. In the event supervisors explain such changes, training personnel should monitor performance to determine if correct expectations are conveyed.

Secondly, appropriate staff may not be available due to financial constraints. In agencies where this problem surfaced, it was generally explained that government officials do not understand the need for such staff input. The feeling was expressed that city or state officials were interested primarily in reducing crime and did not desire to finance programs which could not be related to street activity. A misconception among such officials is that staff efforts do not directly affect on-the-job performance. This sentiment may be accurate if the administration is using staff ineffectively, but to simply deny management the tools necessary to support operations is inappropriate. Proper use of staff assistance in the areas of planning, legal review, inspections, and internal investigations not only supports operational personnel, but renders the entire organization more effective and makes the realization of goals and objectives possible.

In order to acquire the best qualified staff input, the chief administrator should first engage in human resource planning. Such planning is essential for effective management in general and for efficient and just discipline in particular. This concept has been defined as follows:

> Human resource planning is a department-wide systematic, and coordinated approach to placing an adequate number of the right persons in the right places at the right time. It is essential in order to provide for the continuous and proper staffing of the police agency.[3]

Through human resource planning, the administrator can select individuals with special talents. It is a mistake to assume that any successful patrol officer or experienced supervisor may fit the role of a "planner" or an "investigator." These positions require unique abilities not possessed by all officers. The chief administrator can identify these skills only through a continuing assessment of personnel capabilities.

Chief executives in large departments cannot, in most cases, complete the task of human resource planning without assistance. These executives must delegate this work to specialists with knowledge and experience in conducting personnel planning. It seems only logical that this task should be assigned to the personnel unit. Unfortunately, this often causes difficulty because the agency will not have experienced staff available, such as specially trained personnel experts, to handle these matters.[4]

Successful human resource planning is based on a six-step approach to select staff members for certain key positions.[5] The first step concerns the interrelationships between organizational planning and manpower; goals and objectives will not be realized unless sufficient manpower is assigned to each task. Most police managers do not seem to give ample consideration to this dependency. Secondly, human resource planning involves the ascertainment of manpower requirements for particular task requirements, possibly by defining job descriptions. Thirdly, manpower inventories should be undertaken to identify personnel capable of meeting job criteria. This task should include skill assessment, as well as the determination of availability. Determining "net manpower requirements" constitutes the fourth step in planning.[6] In this step, the importance of factors such as age, training and experience should be assessed. Decisions made at this stage then become the basis for action. Once these decisions are made, however, there may be a need for further training in specific areas. This is the fifth phase in the human resource plan. The chief executive

[3] Peter Smith Ring and Frank Dyson, "Human Resource Planning," ed. O. G. Stahl and R. A. Staufenberger, *Police Personnel Administration* (Washington, D.C., 1974), p. 460.

[4] Personnel experts could possibly be recruited as civilian staff, or sworn officers could attend specialized training courses to acquire such knowledge.

[5] This six-step approach combines models proposed by P. S. Ring and F. Dyson, pp. 45-56, and by Leon C. Megginson, *The Management of People at Work* (New York, 1965), pp. 405-406.

[6] The term "net manpower requirements" has been used by Megginson to describe the process of assessing the impact of many personal variables on staff member selection.

should carry out the sixth and final stage of the plan by ensuring that the agency is prepared for the future by continuing to identify individuals best suited for certain staff positions.

Law enforcement agencies generally have not adopted a human resource planning capability, although some departments are considering methods of personnel assessment. These agencies are undoubtedly the exception. In conducting field work, the IACP could not identify such thorough planning in any agency studied. Most personnel units are not equipped to carry out such an involved task. The chief executive, in this case, is obliged to personally conduct all human resource planning, possibly with the assistance of an outside firm knowledgeable in this specialized area.[7] The chief, in such situation, should personally maintain all sensitive information on manpower skills. This is not to say, however, that the agency in this situation could not work toward developing its personnel function to provide data for decision-making.

DELEGATING APPROPRIATE AUTHORITY

Some police administrators fail to give unit commanders sufficient authority to complete tasks. These executives may feel that since they have ultimate responsibility for all department operations, they should take it upon themselves to make sure that all work is completed, even without adequate time to do so.

It is imperative that, upon analyzing human capabilities and selecting unit commanders, the chief executive take steps to ensure that the authority of commanders is commensurate with responsibility. The importance of delegating this authority for direct responsibility for the completion of tasks cannot be minimized, for it establishes the "right to manage" on the part of division and unit commanders.

Most chief administrators in the seventeen agencies studied by the IACP did seem to realize the importance of delegating authority. For the most part, each administrator made an attempt to surround himself by qualified staff members who were given authority to get the job done. However, there seemed to be a tendency among some of these administrators to override commanders' authority in sensitive disciplinary cases. If, for example, a serious allegation of brutality surfaced, the chief would be apt to take immediate action without waiting for commanders to conduct a thorough investigation and to make a

[7]This may be the case, particularly in smaller agencies with limited finances.

recommendation. It is understandable that the chief would desire to take immediate action when so demanded by public opinion. Nevertheless, the commanders have been given the responsibility to carry out objective and thorough investigations and suggest appropriate action. If the chief continually subverts this process, commanders may lose the motivation to do a good job and question their actual authority.

One problem evident in many police agencies is that first supervisors rarely are delegated appropriate authority to detect and resolve disciplinary situations. When they are granted even small amounts of authority, they are often not knowledgeable in the best way of using it, because supervisory responsibilities are not clearly delineated and made known through training programs.

One area of specific research in this project was officer perceptions of supervisory actions. It was found by correlating administrative analysis results with questionnaire findings that officer perceptions of supervisors were higher in those agencies which did clearly define first-line management responsibilities and trained supervisors in their role.[8] In those agencies that did not define the supervisors' role, it was common practice for these first-line managers to exercise unauthorized responsibilities in discipline; this situation often led to inconsistent enforcement of internal rules.

Delegating appropriate authority sets the stage for carrying out discipline. It is essential, however, that management realize that certain human factors may limit actual authority to perform tasks. The concept of authority in police organizations brings to mind the formal chain of command in which the superior officers are empowered to control many actions of their subordinates. This conception, however, is rather limited for it frequently implies in bureaucratic organizations only the "right to command" and "duty to obey."

Perhaps a more complete understanding of authority can be obtained through a discussion of power. Pfiffner and Sherwood have stated that power is the politics of how things get done.[9] Power in organizations may be held by people without authority. The union official, the old line patrol supervisor, and the expert in a particular field such as law or psychology may all exhibit power in a police organization from the standpoint that they can influence attitudes and behavior. The chief executive, as well as the top subordinates and unit supervisors, must be able to identify and deal in a positive manner with these indivi-

[8]A statistical difference (significant at the .001 level) was found between the four agencies in which highest scores were noted and four agencies in which lowest scores were obtained. For further information, see Appendix A, pp. 234-238.

[9]John M. Pfiffner and Frank P. Sherwood, *Administrative Organization* (Englewood Cliffs, New Jersey: 1960).

duals if set policies are to be carried out. Unfortunately, this does not always occur in police organizations because the administrator often refuses to deal with informal leaders, and instead attempts to use more authority for purposes of controlling the organization. Leavitt has addressed the weakness of this approach stating that managers relying on this style of leadership emphasize simplicity and speed in administration. Leavitt points out the disadvantage of this tactic by stating that:

> [Employees working in such a system] who expect to be censured whenever they are caught loafing may learn to act busy (and when to act busy) and also that the boss is an enemy. They are thereby provided with a challenging game to play against the boss: who can think up the best ways of loafing without getting caught; a game in which they can feel that justice is on their side and a game they can usually win.[10]

Moreover, the manager's reaction to this situation is often too elementary. When recognizing that authority has been "'undermined' by the 'sabotage' of subordinates, the supervisor ... may assume that what he needs is more authority, because authority is the only tool he knows."[11]

Such a management style may be inappropriate for contemporary law enforcement. Administrators (both the chief executive and unit commanders) must learn the intricacies of organizational politics and use them to their advantage. This is especially true if these commanders wish to instill in employees the will to voluntarily comply with policies and procedures.

Many managers have not yet learned how to apply such principles in police organizations. Administrators frequently apply the traditional management philosophy that all officers should comply with expectations simply because they are told to do so. This approach is workable in theory, but does not result in voluntary compliance. Officers will learn how to "get around" such system, as was confirmed by interviews in this project, and thus fail to carry out management intentions.[12]

A fundamental message for police managers is evident from this discussion. In addition to delegating authority commensurate with responsibility, they must

[10] Harold J. Leavitt, *Managerial Psychology*, 3rd. ed. (Chicago, 1972), pp. 171-175.

[11] Leavitt, pp. 171-175.

[12] A sample of officers was interviewed in each agency. These officers frequently stated that total self-discipline "may not be a realistic goal in their agency," and that management should endeavor to recognize individual differences.

alert commanders to the pitfalls of managing only through the formal system; any administration which ignores the influence of powerful individuals or groups on employee attitudes and behavior will not achieve full officer compliance to rules and procedures.[13]

ENCOURAGING EMPLOYEE PARTICIPATION ON POLICY FORMULATION

As with all other forms of police administration, it is important that the chief executive solicit input regarding rules of conduct and disciplinary procedures from all levels of the organization. Both lower echelon and supervisory personnel will undoubtedly have opinions about the efficacy of certain rules and procedures, and will be able to provide information concerning employee attitudes on particular policies. This input is invaluable to administrators for it enables them to identify the practical ramifications of a change in policy. Such input often may uncover unanticipated consequences leading to problems in the delivery of police services. Further, this managerial technique facilitates employee conformance to policies, in that representatives of various ranks have input in the policy formulation.

The benefits of participative management have been realized by private industry for many years. Empirical research has demonstrated that several advantages may be gained by bringing employees into the decision-making process. One study in particular, designed to measure the effects of hierarchical as opposed to participative styles of management, indicates that participative techniques result in significant increases in the following: degree of satisfaction with supervisor's ability to represent employee needs, extent to which managers were perceived to be "employee oriented," and extent to which employees felt responsibility to see that work gets done.[14] This same project concluded that although administrators using hierarchical styles of management may realize short term successes in productivity, "this increase is obtained ... at a cost to the human assets of the organization."[15] Costs such as "increased hostilities; a greater reliance on authority; decreased loyalties; reduced motivation to produce, together with increased motivation to restrict production, and increased turnover are the prices management must pay for adhering to non-participatory forms of administration."[16]

[13] For further information, see Eastman and Eastman, p. 200.

[14] Rensis Likert, *New Patterns of Management* (New York, 1961), pp. 64-67.

[15] Likert, p. 71.

[16] Likert, p. 71.

Furthermore, other studies have shown that giving employees a voice in the "how" and "when" of the work process tends to raise self-esteem and enhance productive motivation and general performance. Through such processes employees begin to identify with managerial goals and objectives which they have helped establish.

Through its examination of disciplinary practices in seventeen law enforcement agencies, the IACP has discovered very few practices which actually work to solicit officer input. This conclusion is supported by a question concerning employee perceptions of the climate for recommending changes in directives. When responding to the statement "[o]fficers feel free to suggest new or revised written directives to superiors," only 49 percent elicited a positive response, 17 percent were uncertain, and 34 percent responded negatively. The fact that in most departments surveyed (ten of sixteen agencies) less than 50 percent of the respondents answered this item positively tends to support the hypothesis that typical law enforcement agencies do not provide adequate mechanisms for establishing participatory management schemes.

An analysis of management practices in these agencies indicates that traditional practices such as the "open door policy" and the "suggestion box" are wholly inadequate. Instead, management should actively seek officer input through an established procedure whereby meetings are held and documentation is maintained, and/or through an informal system designed to enable lower echelon personnel to meet with top management in a very personable and human manner, possibly during off-duty hours away from the headquarters facility. Only a few examples of such procedures were noted in the agencies studied. Four distinct approaches, however, seemed workable and are worthy of mention.

In one agency, management appointed separate work groups, consisting of officers of different ranks, to research and draft new policies. These groups developed several new general orders, including a revised hairstyle rule. From all indications, it appears that this approach is workable and resulted in greater officer acceptance of the new rule.

One other agency used an informal task force as a sounding board for all new policies, as well as a feedback device for ascertaining employee perceptions of various policies or procedures. This group met once every week and did not use a structured agenda. The group consisted of only patrolmen, and minutes of meetings were not kept. In the opinion of departmental staff, informality and lack of documentation was the key to the success of this group in raising several issues of concern to lower echelon personnel and subsequently realizing appropriate changes in operation.

The third and fourth techniques selected for discussion here were both used by one organization. The first approach was a formal structured one, whereby officers were permitted to submit memorandums to Planning and Research, suggesting new policies or revisions in current general orders. If the idea was considered worthy of further development, the memo was returned to the suggestor for further input. This technique seemed quite workable in that the officer could continue to be involved in the process and formal documentation was retained. The only disadvantage may be that Planning and Research, upon being deluged with memorandums, could possibly turn down suggestions with particular merit simply due to a lack of time and/or manpower for adequate review.

The second style observed in this agency for soliciting officer opinion was quite informal. The organization's chief executive, during off-duty hours and in civilian clothes, traveled to the homes of officers and met with the individual's entire family. This procedure tended to reduce the formality existing during work hours and enhanced candid conversations and was considered quite satisfactory among line officers. It gave them a chance to appreciate the problems a chief executive must face, as well as an understanding of the rationale for particular rules and regulations. The difficulty with this technique is that its success depends on the time availability of the chief executive.

This combined formal and informal system of seeking employee suggestions and feedback seemed to establish the feeling among officers that top level management does have the interests of the troops in mind, and therefore tends to instill greater support for administrative decisions and policies. Officers in this agency responded more positively to the question concerning "feeling free to suggest new or revised directives" than did officers in any other organization. A total of 72 percent of the respondents elicited affirmative answers, 7 percent were undecided, and 21 percent answered negatively. These scores were appreciably higher than those obtained in any other agency (the amount of agreement was 11 percentage points higher than for any other organization; the amount of disagreement was equal to one other department and five percentage points lower than for any other organization).

It can be concluded that the best system for seeking input may utilize both a formal, structured approach as well as an informal style. Two observations may be made in favor of this combined approach. First, the officer making a suggestion has direct contact with persons of sufficient rank and authority to initiate change—an approach which would seem to produce workable results. And secondly, these persons in authority provide some form of recognition to

the officer. Both of these desirable characteristics are absent in traditional forms of seeking input.

The above techniques of seeking officer input are innovative. The fact that several agencies are experimenting and having success with such concepts demonstrates that nontraditional styles of management can be effective and should be used to obtain full compliance to directives. Police administrators, through their own experience, are aware of the wide latitude of discretionary power inherent in the patrol function, and should realize that conformance will not occur solely because an administrative decree is made.

Forward looking executives have implied that the future of professional law enforcement rests with patrol officers who have been trained to use their discretion properly to "resolve conflicts that threaten public order."[17] However, is it enough to say that police officers can be taught to use their powers correctly, or will there always be the temptation to stretch the meaning of a general order to legitimitize certain activity, or to simply ignore management directives altogether with the hope of not getting caught. It is possible that the latter analysis is more realistic. Management should strive to analyze reasons for noncompliance and take appropriate steps to correct particular problems.

One reason for nonconformance is differing perceptions of police goals. As noted by Johnson during field research, an officer subculture exists, with distinct norms and values other than those shared by supervisory personnel or top management, having "the means to neutralize the organizational goals that patrolmen (sic) do not consider 'appropriate' to the role enactment of a patrolman (sic)."[18] Through participative management techniques, administrators should be able to identify these expectations of officers and do whatever is possible to integrate these needs with organizational goals. Such an effort may result in the assimilation of management goals and objectives by officers.

Examples of differences in goals between management and patrol officers were evident in IACP field research.[19] While many agencies, through the administration, selected the admirable goal of accepting and investigating all citizen complaints, only 30 percent of the officers responding to the questionnaire thought that all complaints should be investigated. Also, patrol officers felt

[17]The National Advisory Commission on Criminal Justice Standards and Goals, *Report on Police* (Washington, D.C.: GPO, 1973), p. 22.

[18]Thomas A. Johnson, "A Study of Police Resistance to Police Community Relations in a Municipal Police Department" (Ph.D. dissertation, University of California, Berkeley, 1970), p. 315.

[19]For a full review of variations in perceptions according to rank and seniority, see Appendix A, pp. 258-261.

much more strongly than did supervisors or commanders about officer input in the internal review process. It is the general feeling that patrol officers desire more certainty than is presently evident in disciplinary decision-making.

There are several reasons for this apparent lack of sensitivity to seeking input in the planning and decision-making process, not the least of which is the inability of management to create a mechanism for obtaining this input.[20] However, the most dominant influence may be the organizational structure itself and the traditional militaristic mode of operation. By reviewing the principles underlying the bureaucratic model of controlling human behavior as set forth below, it is not difficult to determine that little, if any, room is left for entertaining ideas of subordinates and apprising employees of work plans. Traditional assumptions about decision-making and use of employees do not provide the opportunity for obtaining such input. A review of basic propositions of the traditional, bureaucratic organization highlights reasons for this lack of sensitivity:

1. The only relations that matter between people in organizations are those defined by charts and models;
2. The behavior of people is governed by explicit logical thinking;
3. The subordinate will do what the objectives and circumstances of the organization require if the rules and regulations are clear and if the incentives reward their logical behavior;
4. Major problem solving and decision-making are the responsibility of the administrator;
5. The way to get things done is through the power of the leader's position; and
6. Employees will be more efficient if they are not required to be responsible for evaluating the quality of their work.[21]

Creativity is not intentionally stifled in such a system, but rarely occurs due to many impediments. Communication is designed to flow downward in this system with interpersonal interactions occurring on a one-to-one basis between, for example, the officer and his or her sergeant, or the sergeant and the lieu-

[20]In many agencies administrators may not be aware of proper methods to use to obtain employee input.

[21]Chris Argyris, *Interpersonal Competence and Organizational Effectiveness* (Homewood, Illinois: 1962), pp. 36-37.

tenant. The officer who seeks to suggest a change in policy consequently must submit the idea to the immediate superior and then just hope it is communicated accurately to an individual possessing the experience and authority to either carry the suggestion forward or explain why it is not feasible. There is little opportunity for the officer who initiated the idea to be rewarded if, in fact, the suggestion leads to a change in policy. And even if this input does get to the office of the chief, it is most likely that a high level commander will communicate the idea personally rather than direct the officer to discuss the matter with the chief.

Moreover, reliance on the above stated principles is reinforced through promotional processes. Managers developed within this system usually will have little experience in resolving human problems which transcend the bureaucratic structure (e.g., employee morale problems, employee organization demands, etc.). This is unfortunate, for these managers will often come face to face with such problems upon reaching top level positions. Such a system is not conducive to developing strategies for maximizing employee input. It is up to the chief executive to devise a workable procedure and ensure that managers are trained in its proper use.

MONITORING THE ORGANIZATION TO DETECT HUMAN RELATED DEFICIENCIES

The chief executive is invariably the last person in the chain of command to be formally apprised of many types of police officer misconduct. The chief must determine why such incidents occurred, as well as what appropriate findings and sanctions should be applied. To do this requires that much information be obtained concerning not only the facts of the case, but also what administrative actions may have led, either directly or indirectly, to this incident. For example, some questions the chief might ask are: Is the supervisor negligent in not informing the individual officer of police directives, or has the supervisor condoned similar behavior in the past simply because the consequences were not as grave? Was mid-management responsible for not ensuring supervisor objectivity in dealing with personnel problems, or were these managers remiss in not requiring supervisors to document all allegations of improper behavior, regardless of severity? Was the division or bureau chief negligent in not recognizing high levels of employee dissatisfaction with and open disregard for a particular policy? Perhaps this commander should have detected serious amounts of line-supervisor hostility in his division and taken steps to avert any negative occurrences. These questions, among others, must be raised by the chief executive if, in fact, the chief is to control organizational disorders creating disciplinary problems. Similar inquiries should also be raised by unit commanders in order to detect and correct problems before they become disciplinary cases.

Such prevention does not often occur, however, for in most police organizations internal discipline is crises oriented. As illustrated by the National Advisory Commission on Criminal Justice Standards and Goals: "Most agencies simply react to employee misconduct. They do a good job of investigating after incidents have occurred, but they do little to prevent them."[22] Further, few agencies maintain thorough record systems of disciplinary actions to facilitate analyses of organizational defects tending to create disciplinary situations. Instead, these departments will most likely document within an employee's personnel jacket only allegations of misconduct together with dispositions. Individual officers often do violate agency norms, and therefore should be subjected to some type of punitive or corrective action. Much can be learned by diagnosing cases, particularly those which tend to reoccur, for officers may not be completely negligent in their misconduct. A particular policy, for example, because of the way it is worded or explained may conflict with other directives given the officer, therefore, creating confusion. Or, many human errors, some of which were discussed above, may establish an environment not conducive to good discipline or achieving voluntary compliance to norms and policies.

The questions that the administrator must ask in diagnosing these cases are: To what extent was the officer guilty of improper behavior? and To what extent were other factors involved? If accurate responses are obtained to these questions, the administrator will most likely learn of many organizational problems requiring attention. Management must change its tendency of simply looking at the officer who is charged as the sole perpetrator of misconduct, and hence the object of discipline. This approach is not adequate for rectifying organizational problems, as demonstrated by the following experience of the IACP during this project.

The chief executive in one large agency was under considerable pressure from the city government to increase the department's responsiveness to citizen complaints. Many instances of misconduct were being publicized, and citizens were alarmed. When these cases were processed, often including external hearings, all adverse results would be reflected on both the chief in terms of negative publicity and the officer involved in terms of disciplinary sanctions. Top com-

[22]The National Advisory Commission on Criminal Justice Standards and Goals, p. 492.

manders and/or mid-level administrators would rarely be affected by the cases. This particular chief became disturbed at these results when realizing that several supervisors had knowledge of previous incidents involving the same officers. These supervisors, however, had failed to take corrective action and document incidents, thereby giving the impression that such activity was not considered serious. Further, mid-management personnel, through past experiences, had not required supervisors to report and document all cases of misconduct.

The chief executive resolved this situation by instituting a directive that all allegations of misconduct, regardless of how minor, were to be documented by supervisors, reviewed, and maintained in the office of shift commanders. This chief advised his management personnel that, in future incidents, they would be held accountable for omissions of their responsibility or any improper actions. If an officer was to be disciplined and management was found negligent, punitive action would also be taken against the concerned supervisor or commander. This action by the chief seemingly established an atmosphere in which individuals at all levels of the organization recognized their responsibility and therefore took actions to prevent future misconduct.

One other problem, as reported to IACP consultants during field work, was a double standard among ranks in complying with rules of conduct. When asked in the employee questionnaire why they felt certain rules were not enforced fairly and reasonably, many respondents replied that "superior officers do not follow this rule." The officers gave this response in regard to many rules, especially the following: use of alcohol off duty, residency, personal debts, hairstyles, mustaches and beards, and off-duty employment. Apparently, in some agencies management level personnel are not held to a standard of conduct as strict as are subordinates. This practice is detrimental to good discipline and should be corrected.

Inconsistent enforcement or a double standard of compliance to rules gives officers the impression that it is not important to abide by these rules. This type of officer reaction is quite natural since perceptions of a particular rule are based not only on formal pronouncements issued by top management, but also on the demeanor, attitudes and behavior of supervisors in communicating and abiding by such rules. As stated previously, the essence of a rule is its inflexibility. If exceptions are to be made, it is far better to completely eliminate the particular rule. To do otherwise simply weakens the department's policy respecting rules. As stated by Whisenand and Ferguson:

> The success of internal controls as applied to such matters appears to be dependent upon two major factors: (1) the attitude and commitment of the head of the agency to policies being enforced and (2) the degree to which individual officers and especially supervisory officers have a desire to conform.[23]

If the policy of the department is strict enforcement to rules, then all members, individual officers and supervisory personnel, must abide by the standard.

Here again, the often-neglected role of the supervisor is vital. While supervisors are frequently given primary responsibility for explaining new or revised written directives (normally at roll call), they receive little or no training in skills necessary to make such explanations properly. Additionally, the explanation given to supervisors of new rules and the rationale behind them is often inadequate.[24] Supervisors should be trained in the explanation function and apprised of the vital importance of accuracy. Those who do not recognize the importance of this task, or do not explain directives in a thorough and clear manner, will probably not elicit as much confidence among subordinates as supervisors who do explain changes in detail.[25]

RECOGNIZING VALUE CONFLICTS AND DIFFERING EXPECTATIONS

A concern in contemporary police management is the lack of recognition by chief executives and other key administrators of shifts in organizational and societal values. Several proponents of change in police administration have suggested that the manager must operate within the framework of these changes and recognize that all organizational actions will be judged at least in part by individuals with varying value systems. The chief executive must be able to identify and control value conflicts between the organization and the community, and among staff and line members.

Individual members come to the police department with a set of their own values and often are influenced through societal pressures to retain their philosophies or possibly to adopt new values. Additionally, internal value conflicts often arise concerning methods of accomplishing a particular job, or between

[23] Paul M. Whisenand and R. Fred Ferguson, *The Managing of Police Organizations* (Englewood Cliffs, New Jersey: 1973), p. 199.

[24] When asked in interviews why they did not explain changes in policy, supervisors in several agencies visited stated that management had not informed them of the change.

[25] The ability of supervisors to explain directives was one important difference in those agencies with highest perceptions of supervisors and those with low ratings. A statistical difference (significant at the .001 level) was found between these two groups. Further information may be found in Appendix A, pp. 234-238.

differing levels of the organization (e.g., the chief and high level commanders may follow one value system which differs appreciably from those of supervisory personnel or line members). Such conflict is not necessarily harmful. In fact, it is considered an attribute of a healthy organization. Active debate between the chief executive and top commanders on a proposed policy, for example, is often beneficial in that alternative strategies for achieving quick implementation and officer adherence are identified. And, differences in opinion among mid-management personnel regarding methods of securing compliance to this policy may lead to the development of more workable supervisory techniques for coping with rule violations.

Unfortunately, however, this conflict in expectations does have negative implications which limit conformity to rules and policies. It is the responsibility of the chief executive and other administrators to identify these harmful conflicts and to devise a method of integrating the myriad of values inherent in the organization so as to best achieve managerial goals. This is often a most difficult task for police management, and in many cases, is not accomplished satisfactorily. To illustrate, one objective for effective management is uniformity in disciplinary practices, regardless of rank, assignment or other criteria. Although many police administrators may ascribe to this goal and enact general orders setting forth their expectations, it is often difficult to achieve full compliance among employees. Managers at all levels of the organization use different methods of resolving incidents of misconduct. Such practices range from the formal processing and documentation of all incidents, irrespective of how minor, to mere oral admonishment for most cases of improper behavior.

Many factors affect this decision-making process. However, the most predominant influence may be the value system of the manager. Does this administrator, for example, believe that first time violators should only be warned verbally, with no records being maintained of the specific action? Or, will he or she be prone to issue formal records of all warnings, records that may be sent to the personnel division, maintained within the particular work unit and/or kept by the individual manager in a personal record system?

Additionally, managerial values often influence enforcement practices concerning rules of conduct. While a manager will demand strict adherence to grooming and personal conduct standards, he or she may tend to overlook minor violations of operational policies due to a feeling that the nature of police work dictates that a wide latitude in enforcement discretion should be given the patrol officer. Another supervisor, perhaps working in the same division, may feel that infringements of operational policies have more serious consequences for the organization than do violations of rules on personal conduct. It is easy to see

why such variations may present serious problems of inconsistent disciplinary practices.

Personal value structures in police organizations frequently lead to a double standard of justice. The IACP has learned that too often misconduct by mid-management or top level administrators is apt to be treated less severely than would similar actions by patrol officers. Further, seniority and personality seem to have an impact on the nature of dispositions, as indicated through field interviews. Both of these inconsistencies are detrimental to effective discipline.

The employee questionnaire used in the IACP study provides evidence that officers of divergent ranks were treated differently. When asked if "the internal review process (the system whereby cases are forwarded through the chain of command and a decision rendered) worked consistently for officers of any rank charged with misconduct," 47 percent of all respondents answered negatively, while 28 percent were uncertain and 24 percent responded positively. The results showed further that for sixteen of the seventeen departments studied, 40 percent or more of the respondents elicited negative answers. These findings certainly suggest a disparity in discipline according to rank.

Field interviews and reviews of disciplinary records serve to confirm this finding, as well as the conclusion that officers in different divisions are often afforded varying treatment. In one organization in particular, the patrol unit commander indicated that a varying standard of conduct existed between the patrol division and the investigation division. He stated that this disparity was widely known and is the cause of much dissatisfaction throughout the department. Apparently, actions of patrol officers were viewed much more strictly than those of investigative personnel. This inconsistency, from all indications, occurred due to the feeling that detectives have reached a certain plateau in their career where they may act more independently and will, as a result of their experience and professionalism, tend not to violate norms of conduct as frequently as patrol officers. This feeling may, in fact, have merit in some organizations, but as indicated through IACP investigations, is not justified by actual conditions in many agencies.

In one other agency, IACP consultants were told that investigators actually did engage in more incidents of misconduct than did patrol officers. This was not the first indication of such difference.[26] Problems of misconduct in the investigative unit are exacerbated by the greater latitude and autonomy enjoyed by these officers. The opportunity for improper behavior in this unit may be

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[26]Bernard Cohen, *The Police Internal Administration of Justice in New York City* (New York, 1970), p. 19.

greater and less likely to be detected. The misconception that detectives do not require close scrutiny in the performance of their duties is thus invalid. There is an evident need for management to realize this and act promptly to correct such problems.

Such an inconsistency restricts achievement of managerial objectives, for once improper behavior is overlooked policies will most likely not be practiced uniformly. This is a necessary prerequisite to achieving internal control of police misconduct as indicated by the National Advisory Commission:

> Once policy is uniformly applied throughout the police agency, prosecution policies and those of police agencies can be coordinated at the administrative level rather than handled case-by-case by operational personnel.[27]

Not all value conflicts stem from internal conditions in the policy agency. Frequently, individual officers are influenced by members of their family, friends, individuals with whom they come in contact while on the job, and by pervasive social values. The present age of an increased emphasis on personal independence in both work and non-work related matters exemplifies a value pattern with particular relevance for police administration. Such values affect the performance of all individuals, and thus organizational entities. This impact may lead to both an overt and a covert disregard for managerial policies, especially if values are shared by groups of officers. Unfortunately, such implications have not always been realized in police organizations. It has been assumed that personal values will be considered less important than organizational goals and therefore not affect individual performance. Studies in other bureaucratic institutions have shown such a philosophy to be inappropriate and have indicated that values are not easily changed. Many times such values are semiconscious, manifesting themselves only when challenged.

Variations in value judgments of patrol officers and administrators were clearly demonstrated in this project. Patrol officers in general, and oftentimes mid-management personnel, expressed considerable discontent with internal rules governing off-duty conduct (e.g., moral conduct, off-duty employment, residency) and personal behavior (e.g., hairstyles). Those officers who disagreed with these rules did so primarily because they felt that such action was "none of the department's business," or that such rules "place undue restrictions on my

[27]The National Advisory Commission on Criminal Justice Standards and Goals, p. 24.

personal rights." There was a markedly different attitude for these rules between younger patrol personnel and senior administrators.

When sensing unfairness or inconsistency in disciplinary matters, officers may feel that essential fairness does not exist, and therefore rebel against the organization either by becoming apathetic or by ignoring policies and procedures to whatever extent possible. Similarly, rules and regulations perceived as overly restrictive on personal rights may be violated either openly (e.g., by growing one's hair longer) or covertly (e.g., by knowingly violating a policy on use of force). The importance of these situations in the management of discipline cannot be minimized. To control behavior, the administrator must identify personal value conflicts and take appropriate steps to alter either behavior or attitudes. This is not an easy task, but one which should be accomplished.

A combination of psychological and sociological techniques has been considered the most favorable strategy for modifying attitudes and behavior.[28] The utilization of such techniques is becoming an increasingly important managerial function, especially in regard to handling disciplinary problems. The administrator should consider these approaches and adopt methods which permit successful handling of value conflicts.

COPING WITH ROLE CONFLICTS

Just as value conflicts may restrict achievement of organizational goals, role conflicts between individual members and among groups or work units may adversely affect performance. Role conflicts are pervasive in all organizations and can produce intense emotional strain and dissatisfaction. The degree to which undesirable factors occur tends to be dependent on management's ability to detect and reduce conflict, as well as the individual's capacity to cope with these phenomena through psychological adjustment. Role conflict in law enforcement takes many forms; the administrator's inability to resolve such conflict has been detrimental to effective discipline.

A common type of role conflict in law enforcement is competition between divisions, bureaus, sections or other work units. This conflict stems largely from specialization and division of labor. In police organizations, goals and objectives are set by the administration and determine overall direction for all work units. A certain amount of flexibility is given to each unit, however, so that each entity may develop strategies to achieve its portion of the total job.

[28]Several management theorists present prototype plans for influencing behavior and attitudes. One excellent treatment of this subject is provided by Leavitt, pp. 171-175.

This sub-organization is often characterized in police agencies by distinctive sets of policies and procedures for each division. Such sub-organization is necessary, but tends to create competition in that each element may act at cross purposes.

This condition was observed through field investigations in several agencies. In one organization, professional jealousy and competition were readily apparent. These qualities are not necessarily harmful, but when coupled with altering disciplinary practices, such as varying standards of conduct and different methods of disposing of investigations, they produce negative results.

Divisional competition in this agency, as well as in other sample organizations in which intergroup conflict was apparent, was accompanied by a lack of communication, a lack of understanding, a sense of hostility, and "perceptual distinction and mutual negative stereotyping." These problems were readily evident between shifts in one division. Each of these conditions tends to limit organizational uniformity, in that unit members sense a lack of consistency in the methods of handling discipline, and hence may be less inclined to follow organizational policies.

Another example of intergroup role conflict occurs between the internal investigations unit and operational units. The previously cited comment concerning intergroup stereotyping applies specifically in this case. The IACP discovered that there is little officer understanding of what internal investigations does, as well as a great distrust of officers assigned to this unit. Such perceptions stem apparently from a lack of communication and little sensitivity to the difficult job undertaken by internal investigators. Officers and detectives alike tend to view internal investigators as the "hatchetmen who sneak around the organization attempting to get the goods on everyone." This perception, while obviously exaggerating the investigative function, is nevertheless a serious concern in police agencies.

Questionnaire results confirmed this conclusion. A total of 34 percent of all respondents responded negatively to the statement "I have a good understanding of the responsibilities of this department's unit for internal investigations," and 19 percent stated that they were uncertain (a result which may be interpreted as undesirable). Mistrust and cynicism toward this unit may have skewed these answers. However, these feelings and a lack of knowledge were undoubtedly caused by management's failure to adequately explain the internal affairs function in recruit or in-service training. This conclusion is supported by analyzing results in departments where the internal affairs role was clearly delineated in directives, and/or covered in training programs. Internal investigation duties and responsibilities were more clearly documented in two departments in which officers displayed greater understanding.

Furthermore, much can be said for programs designed to increase awareness and understanding of the internal affairs function. One program involves the transference of officers out of internal affairs every two years in order to limit psychological stress on the part of the investigators. It has also been considered advisable in some organizations to assign many individual officers to internal affairs for one or two days so they become familiar with the investigator's role. Such a program may be successful in reducing hostility, since officers will be better able to understand the need for internal affairs and the sensitivity of this work function.

Tactics such as the above have merit and should be considered for use in all police agencies. These techniques may be successful due to the priority of establishing workable channels of communication and common goals among organizational units. Recognition of common problems may result from such an approach and serve as a precursor of mutual cooperation.

Applying this approach to police organizations, positive results may be obtained by having top commanders of the patrol unit and the investigation unit agree to common goals. For example, a decrease in citizen complaints or the speedier processing of all complaints may be mutually acceptable objectives established to enhance achievement of organizational goals. Too often, however, these approaches are not initiated, and each unit is left to resolve disciplinary problems as it sees fit with little or no input from other concerned work groups. Such is the case with competing divisions and between an operational unit and internal affairs or inspections unit.

While the value of recognizing and successfully coping with intergroup conflict is an indispensable managerial function, it is also important that administrators learn to deal with intragroup conflict; that is, conflict which occurs within groups because of personality differences, varying frames of reference, and divergent expectations. Each of these situations may seriously restrict achievement of organizational goals if not resolved successfully.

The supervisor and mid-manager in law enforcement must recognize that individuals are influenced by groups other than that formal unit to which they are assigned. Such influence is often manifested by subgroups or informal entities which may alter opinions and set differing expectations. Schein has stated that three types of informal groups exist within complex organizations. First, it is his contention that horizontal groups exist consisting of individuals of approximately the same rank. Secondly, vertical groups made up of individuals within the same bureau or division often share common feelings and aspirations based on the type of work they do (officers of different ranks in the traffic division or the investigative unit may belong to a vertical group). And finally,

mixed groups exist drawing individuals from many entities into a common bond (the most typical example of this group in law enforcement is the employee organization).[29]

Additionally, the individual's frame of reference may not be based totally on membership in formal and informal groups; that is, this officer does not have to be a member of the group to accept the group's definition of a particular situation and act accordingly. The police officer may be influenced by several groups, those to which he or she may aspire, and those which enjoy status within the organization.

All influences do not emanate solely from groups. The individual officer may be persuaded by a partner, or by another officer whom he or she may emulate. The term "peers" is often used to distinguish such frames of reference, although this phrase may imply common rank or area of assignment.

Finally, frames of reference may be either positive or negative. Both forms of input serve as determinants of individual perceptions of events and hence attitudes and behavior. To illustrate, one patrol officer may perceive an employee organization position calling for increased employee input into the disciplinary process as favorable, although this officer may not be a member of the union. As a result, this officer may show some hesitancy to express this view, and bide his or her time waiting to see how others react. When this officer ascertains that a previous partner, whom the officer dislikes, opposes this position the officer may be more apt to come out in favor of the union stance. In this instance, two inputs from the employee's frame of reference have helped guide the decision.

The important message in this analysis is that individuals do have different expectations and therefore one managerial strategy will not always work satisfactorily for all employees. All police administrators, whether they be top level executives or first-line supervisors, should be aware of such human differences existing in the work group. Management should then develop alternative strategies for coping with role differences. This is perhaps one of the more effective ways to achieve compliance with organizational norms.

It may be necessary to devise alternate explanations and control strategies to gain compliance with new policies and procedures. While one group of patrol officers may immediately see the need for a particular general order, others may not, due to varying role expectations or other problems. The second group of

[29] Edgar H. Schein, *Organizational Psychology* (Englewood Cliffs, New Jersey: 1965), p. 83.

officers may, however, indicate understanding when asked direct questions by their supervisor, and then not follow this policy in field operations.

A strong supervisor should be able to detect any signs of confusion or resentment in the work group and take appropriate action to ensure conformance, whether this necessitates individual counseling sessions or strict admonishment to control improper behavior. Such actions are often taken once improper behavior is detected. However, to be successful, a supervisor must act before the undesirable conduct occurs. To do so, he or she should be aware of individual strengths and weaknesses of work groups, and be familiar with expectations and individual peculiarities. This, in essence, is proactive management which identifies problems before they take place and applies steps to correct improper behavior. As stated by Likert:

> Supervision is, therefore, a relative process. To be effective, and to communicate as intended, a leader must always adapt his behavior to take into account the expectations, values, and interpersonal skills of those with whom he is interacting.[30]

He states further that no simple set of supervisory practices will always yield the best results, and that perceptions of supervisory actions are affected by many variables. However, it is this perception which leads to a particular reaction on the part of the subordinate. The message is clear—supervisors must adapt managerial behavior to individuals and group differences, especially if they expect to achieve compliance to organizational goals and objectives. First-line supervisors have key roles to play in inducing compliance. It is this individual who, because of day-to-day contact with subordinates, is most familiar with individual peculiarities and therefore should be more aware than anyone of what it takes to achieve motivation in subordinates.

Unfortunately, supervisors do not seem to make the best use of their role. As is indicated by the field questionnaire used in this project, the majority of patrol officers had very favorable impressions of their supervisors.[31] First-line

[30] Likert, p. 95.

[31] A detailed analysis of supervisory behavior showed that 77 percent of all officers surveyed either strongly agreed or agreed with a variety of supervisory actions, while 20 percent were uncertain and 3 percent expressed either disagreement or strong disagreement. Further information on this subject may be obtained in Appendix A, pp. 234-238.

managers, in most cases, were perceived favorably, because they did not exercise their full authority to correct improper behavior.[32]

It is the responsibility of mid-management to determine when supervisors are remiss in their duties and take appropriate action. From all indications of this research, such action rarely occurs.

The interpretation should not be made that managing according to individual differences will lead to a compromising of organizational policies. Goals and objectives as delineated in rules and general orders should not be altered for individual convenience. The task at hand is one of "integrating" group and individual objectives with organizational policies.

ACHIEVING INTEGRATION

Several managerial traits designed to achieve integration have been evaluated in private industry, and in many cases, have been proven effective. Many of these techniques could be utilized by executives, mid-managers or supervisors of any law enforcement agency to realize integration of organizational goals with individual needs.

It should be remembered, however, that these concepts are not panaceas which can be adopted easily. It takes leadership to put these principles in practice and make them work. This implies more than mere supervision which is used to carry out day-to-day duties or fill "role prescriptions" (those basic acts required of an individual in a job description).[33] Leadership goes beyond simply expecting mechanical obedience to directives. To be an effective leader, the manager should take into consideration personal differences and needs, and by acting within parameters of situations, ensure that individual goals and organizational needs are integrated to the best possible extent. The quality of leadership is a fundamental determinant which should not be overlooked in the management of discipline.

The following discussion of managerial traits is presented to provide examples of strategies which have been used to realize better productivity in organizational units, improved attitudes toward management, a reduction in

[32]Through interviews, it was learned that many supervisors will ignore many acts of misconduct, or simply give oral warnings to officers for repeated incidents meriting either more serious punishment or some form of retraining.

[33]The term "role prescriptions" has been used to denote those activities which are authorized through the formal organization and undertaken to complete certain tasks. Use of this term, however, does not imply management of the human enterprise.

absenteeism, and overall conformance to management directives. For the most part, these managerial techniques have not been used to a great extent in police organizations, and were not readily noticeable in IACP investigations. Certainly, it would be desirable to test the effects of such managerial styles in police agencies. This is a task for future research.

Using Supportive Relationships

An individual's reaction to management directives is predicated largely by his or her perception of that directive. It is therefore essential that supervisors recognize how employees see things and consider these perceptions when evaluating performance. Further, the subordinate expects a supervisor to behave in a manner that is consistent with the boss's personality, and behavior which is contrary to this expectation may cause confusion and resentment. In essence, all employee reactions are affected by individual background, experience and expectations. To cope with variations in these phenomena, supervisors should take steps to:

> Ensure a maximum probability that in all interactions and all relationships with the organization each member will, in light of his background, values and expectations, view the experience as supportive and one which builds and maintains his sense of personal worth and importance.[34]

As indicated from the IACP research, this principle is not applied frequently in police agencies. Perceptions do differ by such background characteristics as seniority, experience in discipline, experience in suggesting changes in the organization, and perhaps most strongly satisfaction with one's career and assignment.[35] However, police administrators seem, for the most part, to manage through the formal channels with emphasis on authority rather than consideration.

[34]Likert, p. 103.

[35]A complete review of significant correlations between perceptions and background factors may be found in Appendix A, pp. 258-261.

Increasing Managerial Competence and Knowledge of Expectations

Employee perceptions of administrative goals and objectives are influenced largely through the supervisor's ability to adequately explain policies, his or her capacity for resolving confusion regarding the proper method of carrying out a certain task, and his or her propensity for adhering personally to these expectations. Therefore, it is extremely important that all supervisors, regardless of rank, become fully aware of management intentions and be trained in methods to carry them out. Training of supervisors should take place at three levels: an intensive initial training program to introduce new supervisors to their roles as managers, in-service training to review and expand on the principles espoused in the initial training program, and specialized instruction on new rules, explaining the meaning and rationale of each. Of these three, the last two have been neglected in many of the police organizations studied.

Based on IACP field investigations, subordinates in many departments do not perceive supervisors to exhibit overall competence. When asked in interviews "How well are supervisors able to explain directives and indicate the need for such policies?" many officers responded that supervisors were not able to do so "because they did not understand the directive themselves." Such result occurs in many instances because of inadequate supervisory training and poor mid-management practices in communicating policies.

Working with Groups to Achieve Organizational Goals

As previously discussed, the importance of both formal and informal work groups cannot be minimized. After identifying group memberships and frames of reference, the supervisor should use the work group as a means to accomplish certain tasks, and take steps to mold the organizational unit into a cooperative one with peer group loyalty and a high level of interpersonal communication.

The line supervisor, in following this approach, should measure performance of the shift as a whole, and by collaborating with the unit, set realistic goals for the work group. When directives are issued, this supervisor would make sure that the entire shift is aware of proposed changes in operation. He or she should also establish a system of mutual support whereby if one officer is confused over a certain policy, other officers will give assistance. If resentment or morale problems in the work unit are apparent, the supervisor should use the impact of the group to resolve these problems.

Although not researched specifically, it was evident in field research that most supervisors do not make full use of the work group to achieve tasks. Instead, there is an ever present reliance on individual performance. Most assessments of productivity are determined through individual measures.

Improving Morale and Motivation

The concepts of employee morale and motivation have been the subject of considerable research, and in some cases a dimension of focus in organizational development. Simply put, the problem in police organizations is motivating employees to conform to managerial directives. A spin-off question concerns measures of motivation in relation to productivity. Both of these tools of analysis are new concepts in law enforcement which have not, in most agencies, been utilized fully or evaluated.

There is little evidence to conclude that high morale leads to better productivity (largely due to inadequate measures of productivity); or in the realm of discipline, that overall satisfaction and acceptance of norms of conduct leads to self-conformance to policies and procedures. However, it has been demonstrated that employees are not motivated solely by authoritarian styles of management or by an administration accenting performance over employee needs. The individual officer has far greater needs than pure monetary reward for performance. In addition, each officer is motivated by physiological needs, safety needs, belongingness needs, esteem needs, and self-actualization needs.[36] Formal, authoritarian styles of management oftentimes meet the first three of this hierarchy of needs, but do little to satisfy personal needs for social esteem and self-fulfillment in a task well done. Further, evidence exists showing that "employee-centered" supervision promotes resolution of morale problems and has desirable effects on performance. The significance of this approach becomes noticeable in all areas of supervisor-subordinate interaction.

Certainly, the time has come for law enforcement to experiment with these concepts, as well as others, and to develop accurate measures for evaluating performance and productivity. It is not enough to say that the officer will abide by rules and procedures simply because directives are promulgated by management. Experience shows that this approach in itself is not satisfactory, in that

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[36] It has been suggested through rigorous research that individuals possess both conscious and sub-conscious needs. Abraham Maslow has postulated that a hierarchy of needs exists and that man is continually motivated to reach the top level of this pyramid, thus realizing self-actualization. For further information on this subject see A. H. Maslow, "A Theory of Human Motivation," *Readings in Managerial Psychology*, ed. J. Leavitt and Louis R. Pondy (Chicago, 1964), pp. 8-12.

many officers knowingly violate policies and procedures. It is idealistic to assume that management will always be able to integrate the needs of individuals and work groups with the goals and objectives of the administration. However, many behavioral problems may be resolved by this approach. To be able to cope with these problems successfully is an objective seldom realized in police agencies. This objective should be the utmost priority if, in fact, managerial intentions are to be carried out as designed.

5

A Guide To Key Operational Requirements For Effective Discipline

The practicing police manager with specific interests and needs regarding discipline will want to evaluate the possibility of making organizational changes. Change is possible at many points in a department's operations. Three important areas to explore were chosen as the topics of the preceding chapters: the tools of discipline, the processes used, and the people involved.

As a guide to the operational factors which bear most directly on the effectiveness of discipline, this chapter is a compilation of principles and suggestions in the form of concise statements. Each statement is indexed by page number to passages in the preceding chapters which elaborate on the principle and point to specific management actions for implementation.

The first section of statements refers to the *structural* resources of management which are analyzed in Chapter Two. Improving the design and use of these tools, such as units for inspection, investigation and research, will lay a foundation for solving many discipline problems. When these recommended actions are taken together with those in the other two areas, an integrated approach to organizational change is developed.

PRINCIPLES FOR IMPROVING THE USE OF STRUCTURAL RESOURCES

The following section of statements refers to discipline procedures and processes, which are analyzed in Chapter Three. These recommendations emphasize the actions and activities which are involved when the organization uses its resources to deal with disciplinary cases.

PRINCIPLES FOR IMPROVING THE USE OF HUMAN RESOURCES

This final section of statements refers to the human resources of the management system as discussed in Chapter Four. The success of disciplinary management is dependent on human competence and motivation. Specific tasks cannot be carried out effectively unless there is brought to bear well-conceived personal effort.

This chapter has served as a concise collection of action guides for improving the management of the disciplinary function. The next chapter provides a substantive model to aid departments in developing the written directive component of disciplinary management.

6

Designing Rules and Procedures for Discipline

INTRODUCTION

Previous chapters of this text have presented a narrative discussion of the issues involved in police discipline. The need for written directives—establishing rules of conduct and procedures for handling discipline cases—has been clearly shown. Some recommendations have been made regarding specific policies and procedures. This chapter now seeks to implement the policies discussed by translating them into prototype general orders. These prototypes, establishing rules of conduct and discipline procedures, are intended to serve as guidelines or references for administrators who wish to modify their discipline systems along the lines suggested in this report.

The prototypes are written in the format of some departmental general orders, but the descriptive or illustrative commentary found in many general orders has been eliminated from the rules and procedures. Following each section, however, is a commentary section which explains the policy considerations and legal principles underlying the section and illustrates its application. This commentary may be used by a drafting committee as a guideline in adapting the models to local use or may be developed into a training resource document to accompany the implementation of the prototype.

The prototypes are drafted to reflect legal principles and policies which are broadly applicable to law enforcement agencies today. They do not take into account local political or legal factors. The procedural model also assumes that the police internal discipline process is self-contained and totally under the

control of the chief administrator of the department. In many jurisdictions statutes, court decisions, departmental organization, local custom, and other factors will require extensive modification of the prototypes. Also, the type and size of the law enforcement agency may have a bearing on the applicability of particular sections to the agency. In utilizing the prototypes for individual departments, consideration must be given to the interrelationship of various aspects of the rules and procedures, so that changes in one section are not made without attention to effects on other parts of the system.

The prototypes include only the fundamental provisions or structures necessary to the efficient functioning of the system. While many departments have incorporated into rules of conduct and procedure much more than is included in these models, it is recommended that general orders on discipline be limited to those provisions which may be dealt with effectively in one or two short paragraphs. More elaborate rules, requiring several paragraphs or pages for presentation should be dealt with in a separate general order on the specific topic.

Finally, the models assume the presence of various units within the department; however, these units themselves owe their existence to some other departmental mandate. For example, substantial responsibility for handling internal discipline matters is delegated to the Internal Affairs Division, but the existence of such a unit depends upon its establishment in some other departmental general order. Thus, to some extent these models are not self-contained. The department seeking to adapt the prototypes must be aware that other regulations or general orders may be necessary in order for the model system to function (see Figure 6.1).

Also, several rules refer to established departmental procedures or are in need of examples for clarification. These procedures and examples should be set out in separate general orders that delve into specific provisions and situations.

For a complete understanding of these prototypes, reference should be made to the commentary following each section, to the earlier discussion, and to Appendix B.

PROTOTYPE RULES OF CONDUCT

§1.01 Violation of Rules

Officers shall not commit any acts or omit any acts which constitute a violation of any of the rules, regulations, directives or orders of the Department, whether stated in this General Order or elsewhere.

DEPARTMENTAL GENERAL ORDER _____
_____ POLICE DEPARTMENT DATE _____

Index as:
Internal Affairs Division
Procedures for Handling Allegations Against
Departmental Personnel/Procedures

FUNCTIONS OF INTERNAL AFFAIRS DIVISION

PURPOSE: The purpose of this order is to establish responsibility for the centralization of authority over investigations into complaints made against Departmental procedures or personnel. This responsibility shall be assigned to the Internal Affairs Division.

I. INTERNAL AFFAIRS PROCEDURES

A. Overview of Responsibilities

As described in this order, Internal Affairs Division (IAD) shall be the centralized authority for maintaining control over all internal affairs activities. IAD's responsibilities shall include the following:

1. Maintain staff control over all internal investigations.
2. Maintain a central file of all complaints against service/personnel.
3. Maintain a control log for complaints against service/personnel.
4. Notify by letter the citizen (unless the complainant is anonymous) making a complaint that the complaint is being investigated.
5. Notify the attorney (city, county or state) of matters which may result in civil action against the department.

B. IAD Responsibility for Review, Assignment and Staff Control Over Internal Investigations.

1. IAD shall review each complaint received by the department.
IAD shall assign a control number to each complaint received and record the number in a log book and on the IAD copy of the Complaint Form.
The numbering system shall be sequential, prefixed by the year (for example, 75-001, 75-002, 75-003, etc.).
2. The Commander of IAD shall decide on responsibility for performing the investigation as follows:
   a. investigatory responsibility may be assigned to the accused officer's commander.
   b. the investigation may be performed by IAD.

Fig. 6.1 General order for internal affairs division

3. IAD will assume responsibility for the investigation under the following circumstances:
   a. when directed to do so by the Chief of Police.
   b. when the matter is such that security is desirable until the investigation is completed.
   c. when the investigation is so complex that it would be impractical for the accused officer's commander to undertake the task.
   d. when several officers of various commands are involved.
4. If the officer, who originally interviewed the complaining citizen, indicates on the report that the complaint was resolved to the citizen's satisfaction, the IAD shall recontact the citizen (by telephone or in person) to acknowledge receipt of report and determine if the citizen is fully satisfied.
   a. If the citizen indicates satisfaction and no further action appears warranted, the case shall be closed.
   b. If the citizen indicates satisfaction, but, in the judgment of the IAD Commander, further investigation is warranted, the case shall remain active and investigatory responsibility assigned as described in Section B,2 above.
   c. If the citizen indicates dissatisfaction with the action, the IAD Commander shall assign the active investigation as indicated in Section B,2 and determine the reason for the reporting officer's closure.
5. When the complaint is assigned for investigation, either to be conducted by IAD or the accused officer's commander, a 3 x 5 "Pending Card" shall be completed. This card shall identify the IAD investigator responsible for the case or the commander to whom the case was referred. The card shall also state the date on which the investigation shall be completed. All investigations shall be completed 10 calendar days from date assigned unless extensions are requested by the assigned investigator or commander.
6. The pending file shall be checked daily. If an investigation is not completed on the date due, a memorandum shall be directed to the commander who originally received the investigative assignment. An additional two-day extension shall be automatically granted.

II. ADMINISTRATIVE FUNCTIONS

A. IAD shall be responsible for maintaining a master control file of all service/personnel complaints.

B. The following Control Cards shall be prepared and maintained by IAD:

   1. A 3 x 5 card shall be made for each complainant. The card shall contain the following information:
      a. Name of complainant—log number. Anonymous complainants shall be so listed.

Fig. 6.1—*continued*

      b. Complainant's address and telephone number.
      c. Brief description of nature of complaint (excess use of force, discourteous, etc.)
      d. Date and time occurred
         Date and time reported
         Date and time received by IAD.
      e. Other officer(s) involved (if more than one officer is the subject of the complaint)
      f. The finding shall be entered when the investigation has been completed.
   2. A 3 x 5 alpha card shall be made for each officer against whom a complaint is made. The card shall contain the following information:
      a. Name of officer—log number.
      b. Organizational entity to which officer is assigned.
      c. Brief description of circumstances (including other officers involved in the complaint).
      d. Date and time occurred
         Date and time reported
         Date and time received by IAD.
      e. Complainant's name.
      f. The findings and disposition shall be entered when the case is completed.

C. A case folder shall be prepared by IAD. Each case folder shall be marked with the log number and shall be filed sequentially. The case folder shall contain a copy of the original report submitted to IAD and every subsequent document relating to the case. The case folder shall be maintained in a locked file.

D. Each citizen making a complaint shall be notified by letter acknowledging receipt of the complaint. This will include an approximate time of completion. In cases where completion of investigation is delayed, an additional letter will be sent to the complainant with the assurance that the investigation is continuing. These letters shall be over the Chief's signature and copies of the same will be maintained in the IAD Case Folder.

E. A letter shall be forwarded to the office of the attorney (city, county, or state), over the signature of the Chief, informing the attorney of the receipt of any serious complaint or complaint which may result in legal action against the (officer, department, etc.). The letter shall set forth the date, the nature of the complaint and the names of police personnel against whom the complaint is made. A copy of this letter shall be forwarded to the Department legal advisor.

Fig. 6.1—*continued*

F. Upon disposition of a complaint against an officer, the complainant shall be notified by letter from the Chief whether the officer was exonerated or the complaint sustained.

Similarly, if the complaint is against Departmental procedures or policy, the citizen shall be informed by letter of the Department's position on issues of policy or procedure. If the citizen's complaint against Departmental policy or procedure has merit, the citizen shall be so informed.

Fig. 6.1—*continued*

Commentary. This section makes it a disciplinary offense for an officer to violate any rule of the department. Thus, by inclusion of this section, the department avoids the cumbersome process of specifying in every rule that "violation of the rule subjects the violator to disciplinary action."[1] It is necessary to be specific when drafting charges; thus, it would not be sufficient to charge an officer with a violation of §1.01 alone. The particular offense committed and the specific rule violated must always be specified. See Chapter Three for a discussion of drafting charges.

§1.02 Unbecoming Conduct

Officers shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the Department. Conduct unbecoming an officer shall include that which brings the Department into disrepute or reflects discredit upon the officer as a member of the Department, or that which impairs the operation or efficiency of the Department or officer.

Commentary. For reasons discussed in detail in Chapter Three, rules on "conduct unbecoming an officer" are extremely controversial today. In some cases, courts have struck them down as being unconstitutionally vague and, in other cases, such rules have been upheld. This rule must be distinguished from §1.01 which relates to violations of any other defined rules of the department.

[1]This section is to be used for violations of any department rules, regulations, directives, orders or policies which are not included in the prototype rules of conduct.

The basic purpose of an "unbecoming conduct" rule is to serve as a catch-all, prohibiting acts which are not otherwise proscribed. Because departments cannot possibly define in advance all the acts which are inappropriate for a police officer, it is essential to have such a general rule. Departments should have specific rules to cover foreseeable misconduct. In each instance, before charging an officer with "unbecoming conduct," a department should examine all other rules to ascertain whether a specific rule violation is applicable. If a particular rule applies, it should be used instead of "unbecoming conduct." See Appendix B for cases dealing with specific types of unbecoming conduct.

§1.03 Immoral Conduct

Officers shall maintain a level of moral conduct in their personal and business affairs which is in keeping with the highest standards of the law enforcement profession. Officers shall not participate in any incident involving moral turpitude which impairs their ability to perform as law enforcement officers or causes the Department to be brought into disrepute.

Commentary. This section is subject to many of the same challenges as "unbecoming conduct"—vagueness and a variety of interpretations. It is difficult to define with any exactness what is immoral conduct. An acceptable standard must be established against which to judge the morality of the conduct. Section 1.03 includes a number of standards which should be specific enough to give the rule real meaning. First, there is the "highest standard of the law enforcement profession." This phrase may have meaning through the officer's oath of office, the Law Enforcement Code of Ethics, or his or her status as an officer of the court or a public official. Second, the concept of "moral turpitude" is well established in the law and has a fairly precise meaning. Third, impairment of ability to perform as a law enforcement officer refers to the individual's loss of respect among the community or other officers to the point that the notorious nature of the individual's personal character overshadows the authority of his or her office so that he or she can no longer effectively exercise that authority. Fourth, causing the department to be brought into disrepute refers to the same situation as the third factor above, with the exception or addition that the individual's conduct reflects adversely on the department as a whole, where, for example, the individual's conduct is generalized by the community to involve the entire department, and thus interferes with every officer's effectiveness.

It is important to note that when a department charges an officer with conduct which interferes with the effectiveness or the reputation of the officer or the department, it is necessary to prove, as one of the elements of the offense,

that damage has, in fact, been done to the effectiveness or reputation of the department or the officer.

§1.04 Conformance to Laws

A. Officers shall obey all laws of the United States and of any state and local jurisdiction in which the officers are present.

B. A conviction of the violation of any law shall be prima facie *evidence of a violation of this section.*

Commentary. This section also is a general provision. Subsection A is intended to establish clearly that violation of any law is a departmental disciplinary offense as well as an illegal act subjecting the violator to criminal penalties. It is not necessary, under this section, to establish that the illegal act in any way affects departmental operation or that the officer has been convicted of the crime. However, the rule must be applied with caution, especially where the criminal act is minor.

Subsection B applies to an officer who has been convicted of a crime. Since proof beyond a reasonable doubt has been established, disciplinary action against the officer is appropriate.

§1.05 Reporting for Duty

Officers shall report for duty at the time and place required by assignment or orders and shall be physically and mentally fit to perform their duties. They shall be properly equipped and cognizant of information required for the proper performance of duty so that they may immediately assume their duties. Judicial subpoenas shall constitute an order to report for duty under this Section.

Commentary. Because many police operations function on a shift basis around the clock, it is important that officers going on duty be prompt and prepared to assume their duties as soon as the earlier shift is relieved. Also, while there are judicial penalties for ignoring a subpoena, this section provides for administrative action if an officer fails to respond to a subpoena.

§1.06 Neglect of Duty

Officers shall not read, play games, watch television or movies or otherwise engage in entertainment while on duty, except as may be required in the performance of duty. They shall not engage in any activities or personal business which would cause them to neglect or be inattentive to duty.

Commentary. This rule is more narrowly drafted than most departmental neglect of duty rules. It covers conducting personal business or attending to personal pleasures which might distract officers from their responsibilities or hamper them from responding to calls for service.

§1.07 Fictitious Illness or Injury Reports

Officers shall not feign illness or injury, falsely report themselves ill or injured, or otherwise deceive or attempt to deceive any official of the Department as to the condition of their health.

Commentary. This section is aimed at preventing misuse of sick leave. While most departments have procedures for reporting illness, with medical certification required in some instances, this section adds administrative penalties to the false reporting of illness or injury. The section is also aimed at preventing false claims of injury for purposes of workman's compensation or disability retirement. Of course, care must be exercised in distinguishing between an outright false report or claim, and one involving an honest difference of medical opinion.

§1.08 Sleeping on Duty

Officers shall remain awake while on duty. If unable to do so, they shall so report to their superior officer, who shall determine the proper course of action.

Commentary. Sleeping on duty is a serious problem for some police officers. Irregular hours, emergency situations, and long periods of relative inactivity, take their toll on the human body. However, sleeping on the job is not only dangerous, it is a waste of the taxpayers' money and harmful to the reputation of the department when a sleeping officer is discovered by a citizen. If an officer is not able to stay awake on the job, the supervisor should take appropriate action such as relief from duty, reassignment or disciplinary measures.

§1.09 Leaving Duty Post

Officers shall not leave their assigned duty posts during a tour of duty except when authorized by proper authority.

Commentary. An officer's failure to remain on his or her assigned post can have serious repercussions which endanger the safety of other officers and the public. There may, however, be occasions when an officer's duties will require him or her to leave his or her post. Those occasions which can be anticipated should be described in a separate general order on this subject.

§1.10 Meals

Officers shall be permitted to suspend patrol or other assigned activity, subject to immediate call at all times, for the purpose of having meals during their tours of duty, but only for such period of time, and at such time and place, as established by departmental procedures.

Commentary. Most departments place fairly rigid restrictions on when and where an officer may take his or her meals while on duty. This section serves to enforce those rules. The restrictions themselves are often necessary to assure that not all officers on the shift are eating at the same time, and that they do not go too far from their assigned post for a meal.

§1.11 Unsatisfactory Performance

Officers shall maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions. Officers shall perform their duties in a manner which will maintain the highest standards of efficiency in carrying out the functions and objectives of the Department. Unsatisfactory performance may be demonstrated by a lack of knowledge of the application of laws required to be enforced; an unwillingness or inability to perform assigned tasks; the failure to conform to work standards established for the officer's rank, grade, or position; the failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving police attention; or absence without leave. In addition to other indicia of unsatisfactory performance, the following will be considered prima facie *evidence of unsatisfactory performance: repeated poor evaluations or a written record of repeated infractions of rules, regulations, directives or orders of the Department.*

Commentary. This rule covers unsatisfactory performance and includes several methods of establishing unsatisfactory performance or incompetency. Most of the occasions for use of this rule will arise from an officer's failure to perform as required. Failure to perform, or inaction, is usually more difficult to prove than a specific act of misconduct. If specific acts amounting to neglect of duty are present, §1.06 should be charged. If a pattern of poor evaluations or rule violations is present, this rule applies. Other instances covered by this section are spelled out. The standards set by the department for job performance may be used for comparison with a particular officer's knowledge, abilities, or actions.

§1.12 Employment Outside of Department

A. Officers may engage in off-duty employment subject to the following limitations: (1) such employment shall not interfere with the officers' employment with the Department; (2) officers shall submit a written request for off-duty employment to the Chief, whose approval must be granted prior to engaging in such employment; and (3) officers shall not engage in any employment or business involving the sale or distribution of alcoholic beverages, bail bond agencies, or investigative work for insurance agencies, private guard services, collection agencies or attorneys.

B. Approval may be denied where it appears that the outside employment might: (1) render the officers unavailable during an emergency, (2) physically or mentally exhaust the officers to the point that their performance may be affected, (3) require that any special consideration be given to scheduling of the officers' regular duty hours, or (4) bring the Department into disrepute or impair the operation or efficiency of the Department or officer.

Commentary. Departments have taken a variety of positions on this type of rule. The alternatives range from a total ban on outside employment, to permitting limited kinds of jobs, to allowing most types of employment, to no rule on outside employment. Although courts have upheld a complete ban on second jobs, there is usually unequal enforcement of the rule because some kinds of outside income are not covered. For example, the officer may own a farm, the officer's family may operate a store, or the officer may build cabinets to sell or trade. Officers who responded to the IACP questionnaire strongly favored being allowed to have a second job. It is difficult to argue effectively that an officer should be prohibited from working at another job when other activities, such as hobbies or schooling, can be as disruptive to the officer's work performance as a second job. The best solution seems to be a compromise policy, permitting certain types of employment, under certain conditions, such that there will be no conflict of interest nor interference with the primary duty to the police department. This section seeks to implement such a policy. The particular types of employment which are prohibited should be carefully evaluated by the department. Local modifications may be necessary.

§1.13 Alcoholic Beverages and Drugs in Police Installations

Officers shall not store or bring into any police facility or vehicle alcoholic beverages, controlled substances, narcotics or hallucinogens except alcoholic beverages, controlled substances, narcotics or hallucinogens which are held as evidence.

Commentary. Police officers should not have drugs in police facilities unless the drugs are being held as evidence. Also, in order to avoid the appearance of impropriety or temptation, police facilities should not be used for personal liquor.

§1.14 Possession and Use of Drugs

Officers shall not possess or use any controlled substances, narcotics, or hallucinogens except when prescribed in the treatment of officers by a physician or dentist. When controlled substances, narcotics, or hallucinogens are prescribed, officers shall notify their superior officer.

Commentary. Since nonprescription possession or use of controlled substances is in most cases a criminal act, this section does not add to the rules of conduct any prohibition not applicable to the general public or applicable to the officer through §1.04. However, this section is specific to drugs, and it requires the officer to notify the department of any authorized medical use of such substances. This notification alerts the department to possible physical or mental effects of drug use and gives the department an opportunity to take appropriate action.

§1.15 Use of Alcohol on Duty or in Uniform

A. Officers shall not consume intoxicating beverages while in uniform or on duty except in the performance of duty and while acting under proper and specific orders from a superior officer.

B. Officers shall not appear for duty, or be on duty, while under the influence of intoxicants to any degree whatsoever, or with an odor of intoxicants on their breath.

Commentary. This section prohibits officers from drinking alcohol while on duty or in uniform except when under orders to do so. Some departments may choose to modify this rule to permit officers to drink on duty in certain limited situations, such as when in plain clothes and at some social or business functions. The rule also applies to off-duty drinking which impacts in certain ways upon the officer's duty time.

§1.16 Use of Alcohol Off Duty

Officers, while off duty, shall refrain from consuming intoxicating beverages to the extent that it results in impairment, intoxication, or obnoxious or offensive behavior which discredits them or the Department, or renders the officers unfit to report for their next regular tour of duty.

Commentary. This section prohibits off-duty drinking which results in discrediting officers or the department or which causes officers to be unfit for scheduled assignments. Officers, who were interviewed by IACP staff, frequently stated that off-duty drinking, as other off-duty behavior, was their own private business and should not be interfered with by the department. This rule is drafted to be a reasonable approach to the officers' contentions, as well as a protection to the department's legitimate interests.

§1.17 Use of Tobacco

Officers, when in uniform, may use tobacco as long as (1) they are not in a formation, (2) they do not have to leave their assignment or post for the sole purpose of doing so, and (3) they are not engaged in traffic direction and control. When they are in direct contact with the public, officers must obtain permission to use tobacco from the public with whom they are in direct contact.

Commentary. Use of tobacco by officers in uniform is primarily a question of "public image." Obviously, an officer should not smoke during a formal ceremony, when in formation, nor when the officer has to leave an assignment to do so. When in direct contact with the public, the officer should be aware that, to some people, smoking is offensive. For a variety of reasons, a citizen who is offended, even slightly, by a public employee, such as a police officer, may complain about the matter more strongly and publicly than if the offending party were in the private sector.

§1.18 Insubordination

Officers shall promptly obey any lawful orders of a superior officer. This will include orders relayed from a superior officer by an officer of the same or lesser rank.

Commentary. Failure to obey a lawful order is a clear case of misconduct. The only question which may arise is whether the order is lawful or is in conflict with another order. This situation is addressed in §1.19.

§1.19 Conflicting or Illegal Orders

A. Officers who are given an otherwise proper order which is in conflict with a previous order, rule, regulation or directive shall respectfully inform the superior officer issuing the order of the conflict. If the superior officer issuing the order does not alter or retract the conflicting order, the order shall stand. Under these circumstances, the responsibility for the conflict shall be upon the superior officer. Officers shall obey the conflicting order and shall not be held responsible for disobedience of the order, rule, regulation or directive previously issued.

B. Officers shall not obey any order which they know or should know would require them to commit any illegal act. If in doubt as to the legality of an order, officers shall request the issuing officer to clarify the order or to confer with higher authority.

Commentary. This section provides procedures for an officer to follow if the officer is given an order which conflicts with other orders or is issued an order which the officer considers to be illegal. If an officer receives conflicting orders, the officer must notify the superior officer so that the conflict may be resolved. Failure to do so may render the officer liable for disobedience of both the order and this section. An officer who receives an order which he or she reasonably believes would require him or her to commit an illegal act must at least question that order, and refuse to obey it if not satisfied as to its legality. An officer may not be disciplined for questioning the legality of an order.

§1.20 Gifts, Gratuities, Bribes or Rewards

Officers shall not solicit or accept from any person, business, or organization any gift (including money, tangible or intangible personal property, food, beverage, loan, promise, service, or entertainment) for the benefit of the officers or the Department, if it may reasonably be inferred that the person, business, or organization:

1. seeks to influence action of an official nature or seeks to affect the performance or nonperformance of an official duty, or

2. has an interest which may be substantially affected directly or indirectly by the performance or nonperformance of an official duty.

Commentary. There is a heightened awareness among most public officials of the controversy surrounding gifts, gratuities, bribes, and awards. Some officials construe gifts and gratuities as personal courtesies, and dismiss any connection with official position, while most officers are able to distinguish between those gifts which are personal in nature from those which bear some relation to official responsibilities. Also, a public official's own interpretation of the situation may be inaccurate or not acceptable to the public.

The language of this section draws heavily from the New York City Board of Ethics Opinion No. 210, issued in the wake of the Knapp Commission hearings. See Figure 6.2 for a complete general order on the subject of gifts and bribes, which establishes guidelines construing the rule. The order reflects the view that absolute prohibitions of gratuities are unenforceable, and that administrators should therefore draw up standards permitting the acceptance of minor gratuities, under certain conditions. An opposing viewpoint prevalent among police administrators is that all gratuities, no matter how minor, should be banned because of their corrupting influence.

Often the discussion of gratuities focuses on whether an officer should be allowed to accept a free cup of coffee.[2] The general order illustrates a practical approach to this issue. It allows an officer to accept a free cup of coffee only if he or she has offered to pay for it and the payment has been refused.

§1.21 Abuse of Position

A. Use of Official Position or Identification. Officers shall not use their official position, official identification cards or badges: (1) for personal or financial gain, (2) for obtaining privileges not otherwise available to them except in the performance of duty, or (3) for avoiding consequences of illegal acts. Officers shall not lend to another person their identification cards or badges or permit them to be photographed or reproduced without the approval of the Chief.

B. Use of Name, Photograph or Title. Officers shall not authorize the use of their names, photographs, or official titles which identify them as officers, in connection with testimonials or advertisements of any commodity or commercial enterprise, without the approval of the Chief.

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[2] See Herman Goldstein, *Police Corruption*, pp. 28-29, 1975.

Commentary. This section prohibits an officer from loaning or abusing identification cards or badges, as well as commercial exploitation of official position.

DEPARTMENTAL GENERAL ORDER _____
_____ POLICE DEPARTMENT DATE _____

Index as:
Gifts and Gratuities

GIFTS AND GRATUITIES

PURPOSE: The purpose of this order is to establish fair and reasonable guidelines construing Rule 1.20 of the Rules on Conduct. Seeking or Accepting Gifts, Gratuities, Bribes or Rewards by employees of the _____ Police Department.

I. DEPARTMENTAL POLICY

This Department construes Rule 1.20 of the Rules on Conduct to mean that officers shall not place themselves in a position where the officers' private interests may appear to or may actually conflict with their official duties or by reason of which the officers' loyalty, objectivity or judgment may be impaired. The appearance which officers project, as well as their actions, are deemed by the Department to be important elements in determining whether or not there is compliance with or a violation of Rule 1.20.

Certain conduct which might seem to violate Rule 1.20, if it were to be liberally construed, does not appear to the Department to raise any genuine question concerning conflicts of interest. This order sets forth guidelines for compliance with Rule 1.20.

II. PERMISSIBLE ACTIONS

A. An officer may accept an individual serving of a non-alcoholic beverage offered for free or at a reduced price if the officer has offered full payment for it and such payment has been refused.

B. An officer may accept unsolicited advertising or give-away material such as pens, pads, calendars, diaries or similar items of little or nominal value.

Fig. 6.2 General order regarding gifts and gratuities

III. PROHIBITED ACTIONS

Except as provided in §II of this order, officers shall not accept any:

A. Food

B. Beverage

C. Goods

D. Services

for free or at a reduced price, if it may reasonably be inferred to be connected with the officer's official position.

IV. REPORT AND DISPOSITION OF UNSOLICITED GIFTS

A. Report

1. Any officer receiving an unsolicited gift, which may reasonably be inferred to be connected to the officer's official position, shall immediately report the receipt of such gift to the Chief who shall determine its disposition.
2. During the officer's next tour of duty, the officer shall file a written report with the Chief.

B. Disposition

The Chief shall dispose of the gift in an appropriate manner and shall notify the original recipient of its disposition.

Fig. 6.2—*continued*

§1.22 Endorsements and Referrals

Officers shall not recommend or suggest in any manner, except in the transaction of personal business, the employment or procurement of a particular product, professional service, or commercial service (such as an attorney, ambulance service, towing service, bondsman, mortician, etc.). In the case of ambulance or towing service, when such service is necessary and the person needing the service is unable or unwilling to procure it or requests assistance, officers shall proceed in accordance with established departmental procedures.

Commentary. In order to avoid any possibility of the appearance of conflict of interest or "kickback" arrangements, officers must be prohibited from recommending particular products or services related to the performance of their duties. Usually, this section will apply to an officer's dealings with persons outside the department. Although general information may be provided, there must

be no appearance that the officer or the department has taken any part in selecting the product or service, except as stated.

§1.23 Identification

Officers shall carry their badges and identification cards on their persons at all times, except when impractical or dangerous to their safety or to an investigation. They shall furnish their name and badge number to any person requesting that information, when they are on duty or while holding themselves out as having an official capacity, except when the withholding of such information is necessary for the performance of police duties or is authorized by proper authority.

Commentary. Officers should be required to carry their identification at all times, on or off duty. If it becomes necessary for the officer to take police action while off duty, the officer must be able to identify himself or herself. The only exceptions to this requirement apply to officers in covert operations where revelation of the officer's identity might be dangerous, and situations where the officer is at home or outside his or her jurisdiction, or has no practical way to carry his or her identification.

§1.24 Citizen Complaints

Officers shall courteously and promptly record in writing any complaint made by a citizen against any officer or the Department. Officers may attempt to resolve the complaint, but shall never attempt to dissuade any citizen from lodging a complaint against any officer or the Department. Officers shall follow established departmental procedures for processing complaints.

Commentary. It is the responsibility of every officer to record complaints from citizens regarding police service or performance. An officer may attempt to explain an incident or a department policy to a citizen. Any officer receiving a citizen's complaint shall record the complaint on the appropriate forms and forward them to the appropriate persons.

§1.25 Courtesy

Officers shall be courteous to the public. Officers shall be tactful in the performance of their duties, shall control their tempers, and exercise the utmost patience and discretion, and shall not engage in argumentative discussions even in the face of extreme provocation. In the performance of their duties, officers shall not use coarse, violent, profane or insolent language or gestures, and shall not express any prejudice concerning race, religion, politics, national origin, lifestyle or similar personal characteristics.

Commentary. More citizen complaints result from police discourtesy than from almost any other cause. Discourtesy may include overt rudeness, annoyance, abusive or insulting language, racial or ethnic slurs, overbearing attitude, sexual or social references, disrespect, or a lack of proper attention or concern. In the performance of their duties, officers must maintain a neutral and detached attitude, without indicating disinterest or that a matter is petty or insignificant.

§1.26 Requests for Assistance

When any person applies for assistance or advice, or makes complaints or reports, either by telephone or in person, all pertinent information will be obtained in an official and courteous manner and will be properly and judiciously acted upon consistent with established departmental procedures.

Commentary. Like discourtesy, inattention, delay in response or failure to respond to requests for assistance are major causes of complaints against a police department. To the party requesting assistance, the matter is of paramount importance and an attitude indicating a lack of concern or a failure to respond efficiently is irritating. If the department knows that a request cannot be handled immediately, the requesting party should be informed of the nature and reason for the delay. It is improper for an officer to intentionally and unreasonably fail to respond to or delay response to a call for service.

§1.27 Associations

Officers shall avoid regular or continuous associations or dealings with persons whom they know, or should know, are persons under criminal investigation or indictment, or who have a reputation in the community or the Department for present involvement in felonious or criminal behavior, except as necessary to the performance of official duties, or where unavoidable because of other personal relationships of the officers.

Commentary. The underlying policy which this section seeks to implement is that persons of notoriously bad character or reputation must be avoided because of the appearance of impropriety and the danger of contaminating an officer's character or reputation. The rule is drafted so as to take into consideration that persons, who have had notoriously bad characters or reputations, may

have been rehabilitated; therefore, associations with such persons is no longer prohibited. Some flexibility is allowed in unavoidable personal relationships, such as when the officer's spouse or child are included with the prohibited associations.

§1.28 Visiting Prohibited Establishments

Officers shall not knowingly visit, enter or frequent a house of prostitution, gambling house, or establishment wherein the laws of the United States, the state, or the local jurisdiction are regularly violated except in the performance of duty or while acting under proper and specific orders from a superior officer.

Commentary. Except in the performance of duties, a law enforcement officer should not be in a place where the officer knows illegal activity is taking place. Of course, some leeway must be granted, for if the officer has no reason to know of illegal activity, he or she should not be held strictly accountable. Also, if the illegal activity is occasional or sporadic, or limited to a few persons in a public establishment (such as a bookie working out of a bar) the officer should not always be presumed to have knowledge of the illegalities. On the other hand, if it can be shown that the officer had actual knowledge, or at least should have known, the officer should be held accountable.

§1.29 Gambling

Officers shall not engage or participate in any form of illegal gambling at any time, except in the performance of duty and while acting under proper and specific orders from a superior officer.

Commentary. While not all forms of gambling are illegal, those which are should not be engaged in by police officers any more than should other forms of illegal activity. All illegal activity is prohibited by §1.04 of course; this section simply serves to point out the specific policy in regard to gambling. It also serves to clarify that gambling may be authorized when necessary to the performance of the officer's duties; for example, when the officer is operating undercover in a gambling investigation.

§1.30 Public Statements and Appearances

A. Officers shall not publicly criticize or ridicule the Department, its policies, or other officers by speech, writing, or other expression, where such speech, writing, or other expression is defamatory, obscene, unlawful, undermines the effectiveness of the Department, interferes with the maintenance of discipline, or is made with reckless disregard for truth or falsity.

B. Officers shall not address public gatherings, appear on radio or television, prepare any articles for publication, act as correspondents to a newspaper or a periodical, release or divulge investigative information, or any other matters of the Department while holding themselves out as representing the Department in such matters without proper authority. Officers may lecture on "police" or other related subjects only with the prior approval of the Chief.

Commentary. This section recognizes the officer's First Amendment rights to freedom of speech, as well as the need of the Department to operate without unlawful or destructive criticism. A blending of these factors is present in the rule, which as been upheld by a federal district court in the *Magri* case listed in Appendix B. The second segment of the rule limits officers' statements when officers are holding themselves out as representing the Department.

§1.31 Personal Appearance

A. Officers on duty shall wear uniforms or other clothing in accordance with established departmental procedures.

B. Except when acting under proper and specific orders from a superior officer, officers on duty shall maintain a neat, well-groomed appearance and shall style their hair according to the following guidelines.

1. *Male Officers*
   - (a) *Hair must be clean, neat and combed. Hair shall not be worn longer than the top of the shirt collar at the back of the neck when standing with the head in a normal posture. The bulk or length of the hair shall not interfere with the normal wearing of all standard head gear.*
   - (b) *Wigs or hair pieces are permitted if they conform to the above standards for natural hair.*
   - (c) *Sideburns shall be neatly trimmed and rectangular in shape.*
   - (d) *Officers shall be clean shaven except that they may have mustaches which do not extend below the upper lip line.*
2. *Female Officers*
   - (a) *Hair must be clean, neat and combed. Hair shall not be worn longer*

than the top of the shirt collar at the back of the neck when standing with the head in a normal posture. The bulk or length of the hair shall not interfere with the normal wearing of all standard head gear.

(b) Wigs or hairpieces are permitted if they conform to the above standards for natural hair.

Commentary. Departments may require their employees to be neat, presentable, and well-groomed. This extends to keeping the uniform clean and pressed, shoes shined, hair properly cut, and so on. The most frequent problem to arise in this area involves grooming standards. For example, as fashions change in the larger society, police department hairstyle standards often lag behind. Frequent conflicts arise because officers wish to adopt the grooming styles of the larger society of which they are a part; they view their police officer role as only one, limited, aspect of their personal identity, and do not wish to limit their appearance to that applicable to only a single element of their lives. On the other hand, the Department may have sound reasons for establishing somewhat restrictive standards, including the desire for uniformity of appearance, considerations of safety and equipment usage, local community standards, and others. The rule as drafted has taken into consideration the departmental need for some uniformity of appearance and the relationships between hairstyle and the job of a police officer.

§1.32 Political Activity

A. Officers shall be permitted to:

1. *Register and vote in any election;*
2. *Express opinions as individuals privately and publicly on political issues and candidates;*
3. *Attend political conventions, rallies, fund-raising functions and similar political gatherings;*
4. *Actively engage in any nonpartisan political functions;*
5. *Sign political petitions as individuals;*
6. *Make financial contributions to political organizations;*
7. *Serve as election judges or clerks or in a similar position to perform nonpartisan duties as prescribed by state or local laws;*

8. *Hold membership in a political party and participate in its functions to the extent consistent with the law and consistent with this Section;*
9. *Otherwise participate fully in public affairs, except as provided by law, to the extent that such endeavors do not impair the neutral and efficient performance of official duties, or create real or apparent conflicts of interest.*

B. Officers are prohibited from:

1. *Using their official capacity to influence, interfere with or affect the results of an election;*
2. *Assuming active roles in the management, organization, or financial activities of partisan political clubs, campaigns, or parties;*
3. *Serving as officers of partisan political parties or clubs;*
4. *Becoming candidates for or campaigning for a partisan elective public office;*
5. *Soliciting votes in support of, or in opposition to, any partisan candidates;*
6. *Serving as delegates to a political party convention;*
7. *Endorsing or opposing a partisan candidate for public office in a political advertisement, broadcast, or campaign literature;*
8. *Initiating or circulating a partisan nominating petition;*
9. *Organizing, selling tickets to, or actively participating in a fund-raising function for a partisan political party or candidate;*
10. *Addressing political gatherings in support of, or in opposition to a partisan candidate;*
11. *Otherwise engaging in prohibited partisan activities on the federal, state, county or municipal level.*

Commentary. State statutes similar to the federal Hatch Act regulate political activity by public employees such as police officers. Restrictions on such activity are necessary to avoid favoritism in hiring and promotion of public employees, to prevent the building of political "machines," and to assure impartial administration of the laws. First Amendment protections limit the kinds of restrictions which may be placed on political activity. The United States Supreme Court has upheld the Hatch Act and other similar statutes insofar as

they limit partisan political activity by public employees or use of a public office to influence an election. Most other political activity may not be restricted. "Partisan" refers to an organized political party. The list of activities permitted and prohibited in this section is substantially similar to rules issued by the United States Civil Service Commission (5 C.F.R. 733) and approved in *United States Civil Service Commission v. National Ass'n. of Letter Carriers*, 413 U.S. 548 (1973); see Appendix B.

§1.33 Labor Activity

A. Officers shall have the right to join labor organizations, but nothing shall compel the Department to recognize or to engage in collective bargaining with any such labor organizations except as provided by law.

B. Officers shall not engage in any strike. "Strike" includes the concerted failure to report for duty, willful absence from one's position, unauthorized holidays, sickness unsubstantiated by a physician's statement, the stoppage of work, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment for the purposes of inducing, influencing or coercing a change in conditions, compensation, rights, privileges or obligations of employment.

Commentary. Public employees have a constitutional right to join labor organizations. Laws prohibiting such actions are void. Persons may not be punished for exercising a constitutional right. However, while the Constitution allows police officers to join a union, it does not require the employer to recognize or negotiate with that union. Some states have statutes which do require the public employer to recognize a collective bargaining organization under certain conditions. Other states have laws which declare a contract between a public employer and a union unenforceable. An "employee association" is not substantively different from a union unless it is a purely social group and does not seek to represent members' interests with an employer.

§1.34 Payment of Debts

Officers shall not undertake any financial obligations which they know or should know they will be unable to meet, and shall pay all just debts when due. An isolated instance of financial irresponsibility will not be grounds for discipline except in unusually severe cases. However, repeated instances of financial difficulty may be cause for disciplinary action. Filing for a voluntary bankruptcy petition shall not, by itself, be cause for discipline. Financial difficulties stemming from unforeseen medical expenses or personal disaster shall not be cause for discipline, provided that a good faith effort to settle all accounts is being undertaken. Officers shall not co-sign a note for any superior officer.

Commentary. Some administrators question whether a police department should have a regulation regarding payment of debts by officers, while other administrators think that such a rule is essential.

The usual reasons given in favor of a rule prohibiting "bad debts" are as follows: (1) financial difficulties may lead to corruption and bribe-taking, (2) it is embarrassing to the department to have a "deadbeat" as a police officer, (3) financial irresponsibility may be indicative of other personality or character defects which may have a negative impact on job performance, and (4) the paperwork necessary to administer a garnishment or wage assignment of an employee's wages is costly and time-consuming for the agency.

In the private sector, the latter factor is a major reason behind personnel rules dealing with bad debts. Private employers do not get involved with the employee's creditor at all, unless a court judgment has been obtained. Police departments, on the other hand, often are asked by creditors to step in and pressure the officer to pay his or her bills, even without a garnishment having been obtained. Departments often comply with such requests out of a fear of "embarrassment."

There are many reasons why assisting a creditor is inappropriate, the most important of which is that the officer may have valid legal reasons for not paying the debt. The department is in no position to determine the validity of the creditor's claim against the officer, and should not get involved in a nonadjudicated claim of indebtedness. Were the department to take a "hands-off" policy toward officer financial matters requests by creditors for pressure on the officer might substantially diminish.

The Consumer Protection Act of 1972 provides that an employer cannot discharge an employee for a single garnishment. If, however, the administration of garnishments is a serious problem for the department, it may legitimately take disciplinary action against an employee with a history of garnishments. The conduct of the officer in such a case may be found to be clearly "job-related." If the department is concerned that, because of financial problems, the officer may be a target for corruption, it should deal with the corruption problem directly or assist the officer in straightening out his or her financial difficulties, or both.

§1.35 Residence

Officers shall reside within the jurisdiction served by the Department. New

officers shall reside within the jurisdiction within one year of their appointment.

or

Officers shall reside within [thirty (30) minutes travel time] [fifteen (15) miles] of any duty station maintained by the Department. New officers shall reside within [thirty (30) minutes] [fifteen (15) miles] of any duty station within one year of their appointment.

Commentary. Some departments are required by law to establish a particular residency rule for officers. Where there is no such law, the department may elect one of the alternatives proposed by this section, depending largely on the particular local circumstances. In determining whether or not to require residency within the jurisdiction, the department should consider the availability of housing and other essentials, the need to develop community awareness and rapport with citizens, and officer response time to emergency calls. The latter could be handled by requiring officers to live within certain minutes or miles of any duty station. Another alternative is to require residency in close proximity to the officer's present duty station. Of course travel time may vary due to road conditions, traffic and weather.

§1.36 Telephone

Officers shall have telephones in their residences, and shall immediately report any changes of telephone numbers or addresses to their superior officers and to such other persons as may be appropriate.

Commentary. Police officers may be called to active duty at any time. The police department must have an efficient means of getting in touch with its officers in emergency situations. Therefore, it is necessary that each officer have a telephone—the most efficient method of communication in such circumstances. The cost of maintaining the telephone in most departments is the responsibility of the officer, just as is the cost of getting a haircut and of travel to the work site.

§1.37 Dissemination of Information

Officers shall treat the official business of the Department as confidential. Information regarding official business shall be disseminated only to those for whom it is intended, in accordance with established departmental procedures. Officers may remove or copy official records or reports from a police installation only in accordance with established departmental procedures. Officers shall not divulge the identity of persons giving confidential information except as authorized by proper authority.

Commentary. Police officers regularly come into possession of information of extreme sensitivity. The confidentiality of this information must be maintained. Confidential information must not be used to the officer's personal benefit, nor to damage the reputation of any person, nor to assist any person in avoiding the consequences of criminal acts.

§1.38 Intervention

A. Officers shall not interfere with cases being handled by other officers of the Department or by any other governmental agency unless:

1. *Ordered to intervene by a superior officer, or*
2. *The intervening officer believes beyond a reasonable doubt that a manifest injustice would result from failure to take immediate action.*

B. Officers shall not undertake any investigation or other official action not part of their regular duties without obtaining permission from their superior officer unless the exigencies of the situation require immediate police action.

Commentary. Each police officer in a department draws his or her police authority from the same source—generally the state law. Within the confines of whatever administrative restrictions may be placed upon him or her, each officer's power to make arrests is exactly the same as every other officer's power. For purposes of administrative efficiency, some officers are assigned primary responsibility for certain kinds of offenses—vice, for example, or organized crime. Where such assignment of responsibility has taken place, it would disrupt department operations for officers to involve themselves in cases assigned to other units or officers.

Occasionally, two units or officers will find their areas of involvement overlapping and possibly conflicting—as where the vice unit wishes to arrest and bring charges against a person, but the narcotics unit wishes to have the person free to act as an informant. In such cases, it should be mandatory that the decision be left to a ranking officer with authority over both units or officers.

§1.39 Departmental Reports

Officers shall submit all necessary reports on time and in accordance with

established departmental procedures. Reports submitted by officers shall be truthful and complete, and no officer shall knowingly enter or cause to be entered any inaccurate, false, or improper information.

Commentary. The integrity of the departmental record system must be maintained. This must include both criminal and administrative records.

§1.40 Processing Property and Evidence

Property or evidence which has been discovered, gathered or received in connection with departmental responsibilities will be processed in accordance with established departmental procedures. Officers shall not convert to their own use, manufacture, conceal, falsify, destroy, remove, tamper with or withhold any property or evidence in connection with an investigation or other police action, except in accordance with established departmental procedures.

Commentary. Maintenance of the "chain of evidence" is essential to a criminal investigation. Improper handling of evidence may imperil the prosecution of the offender. Police officers frequently come into possession of quantities of very valuable property, and the department must be diligent in preventing loss, destruction, or alteration of such property. Systems and procedures for its protection must be established, so that any impropriety is discovered immediately and the persons responsible are identified. Possession of property or evidence outside of the established system or chain should be *prima facie* evidence of improper conduct.

§1.41 Abuse of Process

Officers shall not make false accusations of a criminal or traffic charge.

Commentary. This section is designed to prevent false charges. Withholding and manufacturing of evidence are covered by §1.40.

§1.42 Use of Department Equipment

Officers shall utilize Department equipment only for its intended purpose, in accordance with established departmental procedures, and shall not abuse, damage or lose Department equipment. All Department equipment issued to officers shall be maintained in proper order.

Commentary. Police officers are entrusted with a great deal of very valuable equipment and must exercise the utmost caution in its use and maintenance. Also, especially in the case of vehicles, officers should not be permitted

to use departmental equipment for personal business, except where specifically provided for by the department. If officers are allowed to use departmental equipment, including radios or uniforms, in any outside employment, such as private guard services, the potential for conflict of interest and legal liability are great.

§1.43 Operating Vehicles

Officers shall operate official vehicles in a careful and prudent manner, and shall obey all laws and all departmental orders pertaining to such operation. Loss or suspension of any driving license shall be reported to the Department immediately.

Commentary. Police officers, especially patrol officers, spend a lot of time operating motor vehicles, and citizens observe and complain about bad driving by police officers. This undercuts the Department's enforcement of the motor vehicle laws.

§1.44 Carrying Firearms

Officers shall carry firearms in accordance with law and established departmental procedures.

Commentary. The Department should issue specific general orders relating to carrying firearms on duty and off duty. Examples of when to carry and when not to carry firearms off duty should be cited.

§1.45 Truthfulness

Upon the order of the Chief, the Chief's designee or a superior officer, officers shall truthfully answer all questions specifically directed and narrowly related to the scope of employment and operations of the Department which may be asked of them.

Commentary. This section requires an officer to respond truthfully to any questions under certain conditions. The section is not limited to internal investigations. An officer who is the subject of an internal investigation may be ordered to answer questions, even though the answers might incriminate the officer. Failure to obey an order to answer all questions may result in discipline of the officer. However, the answers which the officer gives in such a situation may not be introduced against him or her in a criminal prosecution of the officer. If it is intended that the officer's statements be used in a criminal prosecution, the

officer must be given *Miranda* warnings. See Chapter Three for a more extensive discussion.

§1.46 Use of Polygraph, Medical Examinations, Photographs, and Lineups

A. Polygraph Examinations. Upon the order of the Chief, officers shall submit to polygraph examinations when the examinations are specifically directed and narrowly related to a particular internal investigation being conducted by the Department. Whenever a complaint from a citizen is the basis for the investigation, the matter is noncriminal, and no corroborating information has been discovered, officers shall not be required to submit to polygraph examinations unless the citizen also submits to a polygraph examination which is specifically directed and narrowly related to the complaint.

B. Medical Examinations, Photographs, and Lineups. Upon the order of the Chief or the Chief's designee, officers shall submit to any medical, ballistics, chemical or other tests, photographs, or lineups. All procedures carried out under this subsection shall be specifically directed and narrowly related to a particular internal investigation being conducted by the Department.

Commentary. A police officer may be compelled to submit to a polygraph examination for purposes of an internal investigation.. While there usually is other evidence in addition to the polygraph results to support a disciplinary action, polygraph results may be admissible in an internal hearing for whatever they are worth. When an officer is ordered to submit to a polygraph exam, the questions asked must be directly related to the matter under investigation. An officer should not be ordered to submit to a polygraph exam if he or she is the subject of a criminal investigation. Only if the officer is given *Miranda* warnings and then consents, should a polygraph be given in a criminal case. Even then, in most jurisdictions, the results are not admissible in court.

Frequently a citizen complains of abuse by a police officer, but there are no witnesses or other outside evidence, and the officer denies the offense. In a "one-on-one" situation, there may be no more reason to suspect the officer of lying than to suspect the complainant of doing so. In such cases, it may be unfair to require the officer to submit to a polygraph, unless the complainant is also willing to submit. On the other hand, this type of restriction could seriously hamper the effective completion of an investigation if all other investigative efforts are fruitless. In addition, such a restriction may appear tantamount to the undesirable practice of not accepting a citizen's complaint unless he or she appears in person or signs a sworn statement.

Just as a criminal suspect may not refuse to give "nontestimonial" evidence against himself or herself, an officer in an internal investigation may be required to give such evidence. The only restriction is that the evidence be related to the particular investigation. See Chapter Three for further information.

§1.47 Financial Disclosure

Upon the order of the Chief or the Chief's designee, officers shall submit financial disclosure statements in accordance with departmental procedures in connection with a complaint in which this information is material to the investigation.

or

Officers shall submit financial disclosure statements in accordance with departmental procedures. These statements are to be maintained by the Chief and shall not be available for public disclosure.

Commentary. Upon appropriate orders, or when an officer is the subject of an internal investigation, the officer may be required to submit personal financial data. In some jurisdictions, local law requires certain public employees to file regular "financial disclosure" statements to guard against conflicts of interest.

§1.48 Treatment of Persons in Custody

Officers shall not mistreat persons who are in their custody. Officers shall handle such persons in accordance with law and departmental procedures.

Commentary. Mistreatment of persons in custody might in some cases fall into the category of misuse of force and could be charged as such. However, because of the extreme degree of control over prisoners, there is the possibility of mistreatment other than by use of excessive force. Therefore, a separate section is necessary to address this issue. The department should issue detailed instructions specifying how prisoners are to be handled, taking into consideration such factors as safety, security and personal needs.

§1.49 Use of Force

Officers shall not use more force in any situation than is reasonably necessary under the circumstances. Officers shall use force in accordance with law and departmental procedures.

Commentary. This section follows the general rule on use of force, i.e., use only that amount of force which is reasonably necessary under the circumstances. Departmental procedures should spell out the details for use of force.

§1.50 Use of Weapons

Officers shall not use or handle weapons in a careless or imprudent manner. Officers shall use weapons in accordance with law and departmental procedures.

Commentary. No weapons should be handled improperly. Departmental procedures should establish the proper methods for use of weapons.

§1.51 Arrest, Search and Seizure

Officers shall not make any arrest, search or seizure which they know or should know is not in accordance with law and departmental procedures.

Commentary. Officers should make only those arrests, searches and seizures which are legal and in accord with departmental procedures.

COMMENTARY: DISCIPLINE PROCEDURES

Before studying the suggested disciplinary procedures which follow, it is essential to keep in mind that these procedures represent an "ideal." The prototype should not be implemented until a careful analysis has been made of local conditions including laws, collective bargaining agreements, civil service rules, etc. This theme has been stated previously in the manual and must be reiterated. The prototype disciplinary process which follows is intended to offer ideas. These ideas must be shaped to meet particular departmental needs and resources. If the prototype procedures are overly complex for a department, they must be streamlined. Conversely, if the procedures are too simplistic or do not meet a particular need, obviously an adjustment must be made. The prototype procedures which follow are intended as a guide to creative thinking. The suggestions must be studied and debated before reaching a conclusion on appropriate procedures for any particular agency.

The prototype discipline procedures establish a fair and efficient system for dealing with complaints against officers and against the department. These procedures are not intended to be used for every violation of departmental rules no matter how minor the violation. Many extremely minor violations can best

be handled verbally by an officer's first-line supervisor as part of his or her routine counseling and supervision of the officer.

It is difficult, however, to determine exactly which violations are extremely minor. Even violations that are minor in many instances can be aggravated in others. Certainly there is a difference between reporting for duty two minutes late and two hours late, but at what point does the violation become serious enough to warrant formal corrective or disciplinary action: at five minutes, thirty minutes, sixty minutes? Similarly, how many times must an officer repeat the same minor violation, for which he or she has previously been counseled, before formal corrective or disciplinary action is imposed? All too often, these decisions are totally within the discretion of the officer's first-line supervisor.

Since major and minor violations and their respective gradations cannot be defined with sufficient precision, it is necessary to use other means to insure that a disciplinary system is used uniformly. It would be patently unfair for one officer to be disciplined for the same misconduct which would be ignored if committed by another officer.

In response to these problems, the following guidelines are suggested. All citizen complaints should be recorded on a complaint form. When, however, an officer initiates an allegation of misconduct, the officer should fill out a complaint form if he or she believes that the possible violation of a departmental rule is serious enough to warrant formal corrective or disciplinary action. If a complaint has not been filed and a supervisor believes that a violation would warrant formal corrective or disciplinary action only if repeated, the supervisor should counsel or warn the officer and record this fact on a counseling form. These counseling forms should be used to record counseling sessions between a supervisor and an officer regarding deficiencies and corrections which do not warrant formal corrective or disciplinary action. They are not disciplinary records. Both the officer and the supervisor should sign the form. These forms will be very important in proving a course of conduct in any later disciplinary proceedings. They will also be useful in performance evaluations. To insure that supervisors are using counseling forms uniformly, the internal affairs division (IAD) and inspections division should review them on a regular basis.

The prototype procedures specify a variety of formal corrective or disciplinary measures the department may utilize in cases of misconduct. These measures consist of corrective training, counseling, written reprimand, suspension, demotion, discharge, or any combination of these actions. Disciplinary records will be kept of each instance in which corrective or disciplinary measures are imposed.

Many of the features incorporated in the discipline procedures have been discussed in previous chapters and in connection with the Prototype Rules of Conduct. The commentary on the prototype procedures frequently refers to Chapter Three, Discipline Procedures and Processes, particularly in regard to the legal basis for the procedures.

The following paragraphs summarize the prototype discipline procedures. A more detailed discussion is included in the commentary following each section of the procedures.

When a complaint is lodged against an officer, a copy of the complaint form is sent directly to IAD (Section One). The officer's immediate supervisor begins a limited, preliminary investigation of the alleged misconduct, unless stopped by his or her unit commander or IAD (Section Two). The results of this investigation are sent through the chain of command to the officer's unit commander (Section Three). The unit commander reviews the case, completes the investigation, if necessary, and makes recommendations for the disposition of the case. These recommendations are forwarded through the chain of command to IAD (Section Four). If IAD approves the recommendations, the unit commander implements them. If IAD believes that the recommendations are inappropriate, the case is referred to the Conduct and Procedures Review Board which reviews it, makes recommendations regarding its disposition, and forwards the recommendations to the unit commander for implementation (Section Five). The unit commander implements tne recommendations by 1) exonerating the officer, 2) ordering corrective action, or 3) issuing charges and recommendations for corrective or disciplinary action on a charging form (Section Six).

IAD may assume control of and conduct an internal investigation at any time. At the conclusion of an IAD investigation, IAD forwards its report to either the officer's unit commander or to the Conduct and Procedures Review Board for recommendations regarding the disposition of the case. A case is referred to the latter if it involves a large number of officers or officers from different units (Section Five). The unit commander's recommendations must be reviewed by IAD; the Board's recommendations are sent to the unit commander for implementation (see preceding paragraph).

An officer who has been charged may demand a hearing before either the Trial Board or the Conduct and Procedures Review Board. If the officer does not demand a hearing, the case goes directly to the chief (Section Seven). The Trial Board provides the officer with a formal due process hearing (Section Eight). The Conduct and Procedures Review Board provides an informal hearing (Section Nine). At the conclusion of a hearing, the hearing board forwards its findings and recommendations for the disposition of the case to the chief. After reviewing the case the chief determines what action the department will take against the officer (Section Ten). Figures 6.3 and 6.4 summarize the prototype disciplinary process. *(The figures are on the following two pages).*

PROTOTYPE DISCIPLINE PROCEDURES

Definitions

Channels—The chain of command, excluding the chief.

Corrective Action—Corrective training, counseling, or both.

Corrective or Disciplinary Action—Corrective training, counseling, written reprimand, suspension, demotion, discharge or any combination of these actions.

Officer—Any sworn member of the Department with law enforcement duties.

Probationary Officer—An officer in the probationary period immediately following his or her employment as an officer.

Suspension—A period of time during which an officer's salary is withheld for disciplinary reasons.

Section One: Complaints

§1.01 A. All complaints, including anonymous complaints, against an officer or against the Department shall be recorded on a Complaint Form as soon as practicable. An officer shall record a complaint on a Complaint Form or shall refer the complaint to a superior officer or to the Internal Affairs Division (IAD) for recording on a Complaint Form.

B. The officer recording the complaint shall forward one copy of the Complaint Form directly to IAD.

§1.02 Anonymous complaints are to be accepted and investigated in the same manner that all other complaints are handled.

§1.03 Every citizen complaint shall be recorded on a Complaint Form. If the officer recording a complaint from a citizen resolves the complaint to the citizen's satisfaction, the officer shall note such on the Complaint Form and forward one copy directly to IAD.

§1.04 Any officer who is complained against shall be immediately notified by IAD of the complaint, unless to do so might jeopardize the investigation of a complaint.

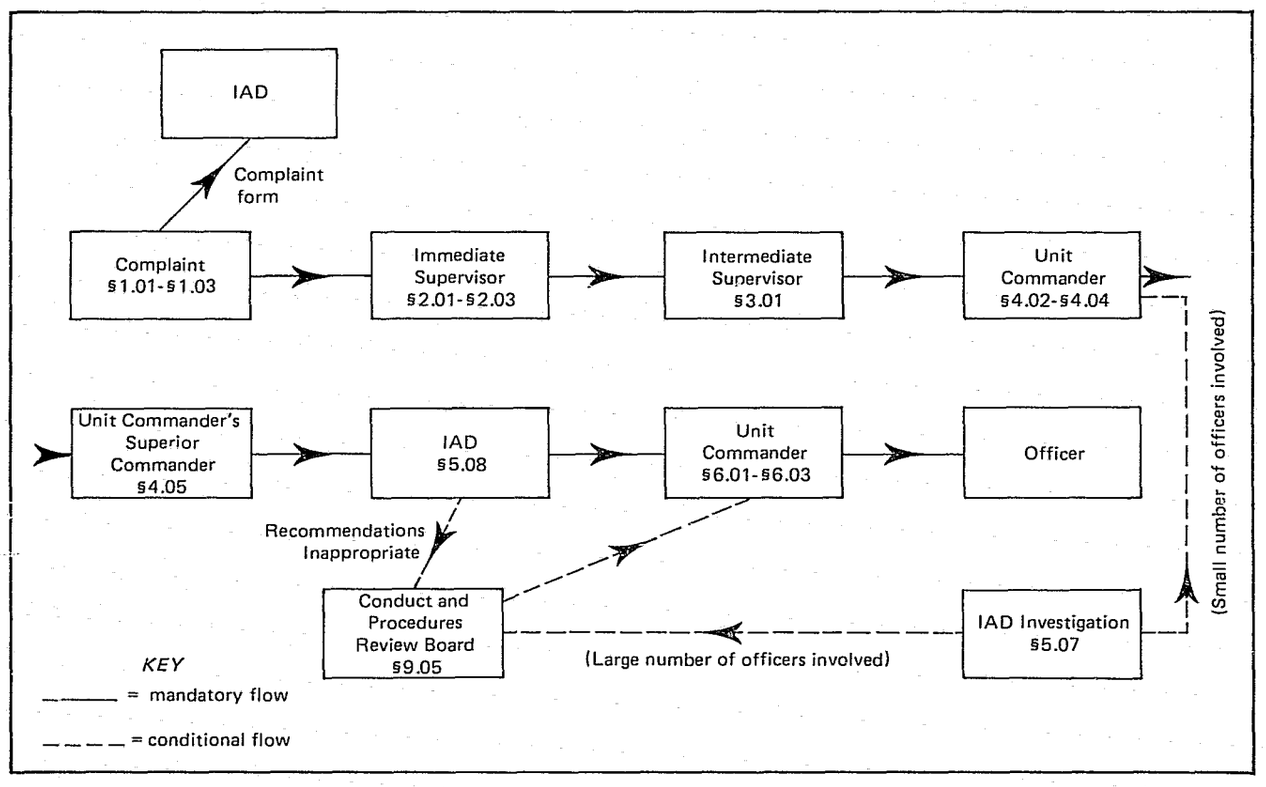

Fig. 6.3 Prototype discipline procedures: investigation, charging, and disposition without charges

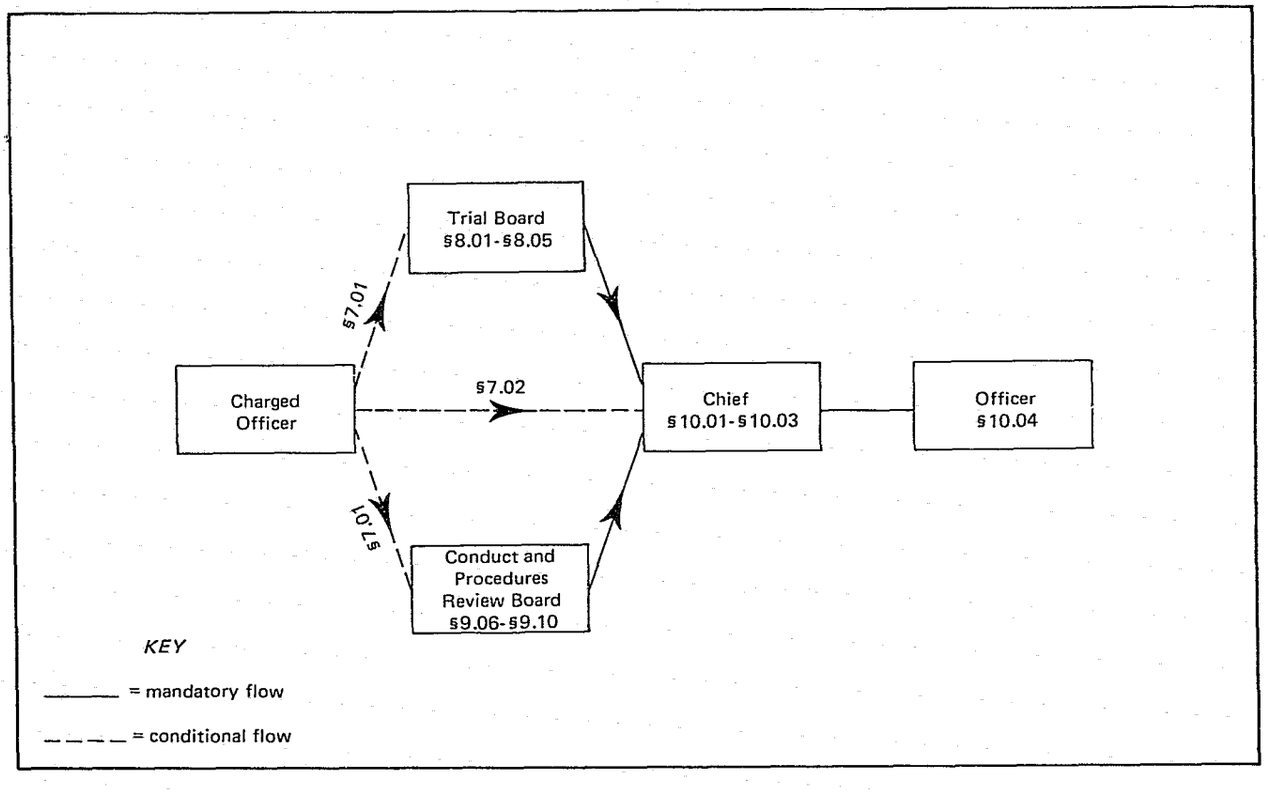

Fig. 6.4 Prototype discipline procedures: appellate process

Commentary. Section One describes the process for recording complaints. A complaint may be made by a citizen or by any officer. All complaints, regardless of the source, must be recorded on a complaint form. Any officer may record a complaint, or may refer it to a superior officer or to IAD for recording. An officer may not refer a complaint to a subordinate for recording.

Copies of the complaint form are sent directly to IAD instead of going through the chain of command. Each department should establish an efficient means of notifying the immediate supervisor of the officer complained against in the complaint. For example, the officer recording the complaint could be required to send a copy of the complaint form to or otherwise notify the immediate supervisor, particularly if both officers are under the same immediate supervisor. Alternatively, IAD may be responsible for notifying the immediate supervisor. In any case, the complaint form should indicate whether the immediate supervisor of the officer complained against has been notified or is aware of the complaint.

All citizen complaints must be recorded even if the complaint is resolved to the citizen's satisfaction. Recording these complaints will help prevent cover-ups and provide the Investigations Unit with a valuable source of information (see Chapter Three). IAD should check their accuracy and file these complaint forms.

Section Two: Supervisor's Action

§2.01 A. Upon becoming aware of a possible violation of Department rules, the immediate supervisor of the officer complained against shall, as soon as practical, begin a preliminary investigation to determine whether a violation occurred.

B. The unit commander or IAD may, at any time, order the immediate supervisor of the officer complained against to stop a preliminary investigation.

§2.02 The preliminary investigation shall be limited to questioning officers under the immediate supervisor's direct supervision, questioning witnesses and complainants who are immediately available and gathering evidence which may be lost if not secured immediately. The immediate supervisor shall not take any investigative action which might jeopardize a simultaneous or subsequent investigation. The preliminary investigation shall be completed within two work days.

§2.03 Immediately after following the appropriate procedures in §2.02, the immediate supervisor shall forward, through channels, to the unit commander

1. *a report of the alleged violation*
2. *all additional documents relating to the investigation, and*
3. *if the investigation has yielded sufficient evidence, recommendations for*
   - *(a) charges and corrective or disciplinary action*
   - *(b) corrective action, or*
   - *(c) exoneration.*

Commentary. Previous chapters have discussed why first-line supervisors are primarily responsible for enforcing departmental policies and taking action in the face of violations. In the prototype procedures, the immediate supervisor of an officer against whom a complaint has been filed is responsible for conducting an immediate, limited investigation, unless ordered not to do so by IAD or by his or her unit commander. The intent of this procedure is to allow IAD to maintain staff control over the investigatory process in the agency.

In many instances, particularly those involving minor violations (e.g., late for duty, sloppy uniform), all the necessary information will be obtained during the preliminary investigation. More complex cases will require further investigation by the unit commander.

At the conclusion of a preliminary investigation, the immediate supervisor must forward the results of his or her investigation, through channels, to the unit commander. If there is sufficient evidence, the immediate supervisor also forwards recommendations for the disposition of the case.

Section Three: Intermediate Review

§3.01 An intermediate supervisor below the unit commander who receives a report and recommendations, if any, pursuant to §2.03 from a lower ranking supervisor shall review the report and recommendations and either approve or disapprove them, stating reasons therefore. Within one work day after receipt of these materials, the report and recommendations, if any, together with the intermediate supervisor's comments and all additional docu-

ments relating to the investigation, shall be forwarded, through channels, to the unit commander.

Commentary. Supervisors between the immediate supervisor and the unit commander are required to review the immediate supervisor's report and recommendations and approve or disapprove them, stating their reasons. Intermediate supervisors cannot order further investigation or change the recommendations. They can, however, add their comments before forwarding the case to the unit commander.

Section Four: Command Action

§4.01 A unit commander receiving a report and recommendations, if any, pursuant to §2.03 or §3.01 shall immediately forward, through channels, to IAD one copy of the report, recommendations, if any, and all additional documents relating to the investigation.

§4.02 A. The unit commander shall review the case. If the unit commander believes that further investigation is necessary, the unit commander shall, unless directed otherwise by IAD, proceed with a complete investigation. The unit commander may at any time request, through channels, the assistance of IAD in conducting an internal investigation.

B. At the conclusion of the investigation or upon receiving an investigative report from IAD, pursuant to §5.07, the unit commander shall state that on the basis of the evidence a violation of a departmental rule has or has not occurred, and shall:

1. *Recommend charges and corrective or disciplinary action for the officer complained against in the format set out in §6.01*
2. *Recommend corrective action for the officer complained against, or*
3. *Recommend exoneration of the officer complained against.*

§4.03 If IAD informs the unit commander that IAD is assuming responsibility for an investigation pursuant to §5.02, the unit commander shall cease further investigation. If and when IAD provides the unit commander with an investigative report, and returns the case to the unit commander, pursuant to §5.07, the unit commander shall proceed pursuant to §4.02(B).

§4.04 The unit commander, through channels, shall immediately forward to IAD any recommendations made pursuant to §4.02(B), together with a report of the alleged violation and all additional documents relating to the investigation.

§4.05 Any commander superior to a unit commander who receives a report and recommendations made pursuant to §4.02(B), shall review the report and recommendations and either approve or disapprove them, stating reasons therefore. This commander may return the matter to the unit commander for further investigation, and may add comments and new material to the report and recommendations before forwarding them, through channels, along with all additional documents relating to the investigation to IAD.

§4.06 A unit commander who receives notification of a supervisor's action pursuant to §12.01, may order the immediate supervisor of the officer relieved from duty to proceed pursuant to Section Two.

Commentary. When a case reaches the unit commander, he or she can make recommendations, if satisfied that the investigation is complete. If not, the unit commander can complete the investigation. Unit commanders need not conduct the investigations themselves, but can delegate this responsibility to subordinates. If a complaint is relatively minor, it should be the responsibility of the officer's immediate supervisor to investigate it.

When the investigation is completed, the unit commander must indicate whether there has been a violation of departmental rules. In addition, he or she must make recommendations for the disposition of the case. The unit commander has three options in this regard. If the unit commander recommends that charges be brought against the officer complained against, he or she also must recommend what, if any, corrective or disciplinary action should be imposed. Alternatively, the unit commander may recommend corrective action without recommending that charges be brought against the officer. Written reprimand, suspension, demotion, or discharge can be recommended only along with charges. Finally, the unit commander may recommend that the officer be exonerated.

Commanders superior to a unit commander are required to review the reports and recommendations they receive from a unit commander and approve them or disapprove them, stating their reasons. While these commanders may order the unit commander to investigate further, they cannot change the recommendations. They can, however, add their comments before forwarding the case to IAD.

Section Five: Internal Investigations

§5.01 IAD shall act on behalf of the Chief in carrying out any internal departmental investigation. IAD shall receive complaints against officers or against the Department as provided in Section One. IAD shall have primary

responsibility for conducting such internal investigations, and for overseeing internal investigations by a unit commander.

§5.02 Upon receiving notice of a possible violation or at any time thereafter, IAD shall determine whether an investigation shall be conducted by IAD. IAD may assume control of or supplement any internal investigation at any time. IAD shall give priority to cases of serious offenses, cases involving multiple officers or officers from different units, and other cases which the unit commander would have difficulty investigating effectively.

§5.03 A. IAD shall notify a citizen complainant, if any, that the complaint is being investigated, unless to do so might jeopardize the investigation or unless the citizen's address cannot be ascertained.

B. IAD may recommend to the Chief that a case be referred to the prosecuting attorney for criminal charges.

§5.04 Any officer who is the subject of an internal investigation shall be afforded all rights and protections provided by law and by departmental rules and regulations.

§5.05 IAD or the person who conducts an internal investigation (hereafter referred to as investigator) may order any officer to cooperate in such an investigation. For the purposes of conducting such investigation and issuing appropriate orders, the investigator shall be the Chief's designee. In addition to any other authorized methods, the investigator may utilize the following investigative procedures when appropriate.

1. *An officer may be ordered to appear before the investigator at a reasonable time and place to submit to questioning or other investigation.*
2. *In an interrogation of an officer, the questions shall be narrowly and directly related to the matter under investigation. If a criminal prosecution is contemplated against an officer who is to be interrogated by an investigator, the officer shall be given the* Miranda *warnings and allowed to have counsel or other representative present. If no criminal prosecution is contemplated, the officer may be ordered to respond to questions. Counsel or other representative for the officer may be present at the discretion of the investigator.*
3. *An officer may at any time be ordered to submit to a lineup, breath test, voice print, handwriting exam, or other nontestimonial evidence test. If a criminal prosecution of the officer is contemplated, the officer shall be entitled to have counsel or other representative present where provided by law. If criminal prosecution is not contemplated, counsel or representative may be present at the discretion of the investigator.*

4. *An officer may at any time be ordered by the Chief to submit to a polygraph examination which is specifically directed and narrowly related to an internal investigation. However, when a complaint from a citizen is the basis for the investigation, the infraction is noncriminal, and no corroborating information has been discovered, the officer shall not be required to submit to a polygraph examination unless the citizen also submits to a polygraph examination which is specifically directed and narrowly related to the investigation.*
5. *An officer's personal property shall not be subjected to search or seizure without probable cause, and a warrant where required by law. Departmental property may be searched at any time, even if assigned to or used exclusively by a single officer.*
6. *Departmental communications facilities may be monitored at any time, under conditions permitted by law. Other communications or conversations may be monitored at any time, under conditions permitted by law.*
7. *An investigator investigating a suspected serious violation of departmental rules may, if necessary, engage in conduct which might constitute entrapment unless criminal prosecution against the officer complained against is contemplated.*

§5.06 Whenever an internal investigation yields evidence of possible criminal misconduct by persons other than officers of the Department, the investigator shall immediately notify the Chief, who shall take whatever action may be deemed appropriate.

§5.07 At the conclusion of an IAD investigation, the IAD investigator shall in writing document all evidence gathered, and may state that on the basis of the evidence, the IAD investigator believes that a violation of a departmental rule has or has not occurred. IAD shall forward its report to either the unit commander from whom it received the case, or to the Conduct and Procedures Review Board as determined by the following factors: if only one officer is involved, or a small number of officers under the command of the same unit commander, the case shall be referred to that commander for action pursuant to §4.02(B); if a large number of officers are involved, or officers under the command of different unit commanders, the case shall be referred to the Conduct and Procedures Review Board for action pursuant to §9.05.

§5.08 A. When IAD is notified, pursuant to §4.04 of recommendations made pursuant to §4.02(B), and believes that the recommendations are inappro-

priate, IAD shall forward the matter to the Conduct and Procedures Review Board and request that Board to review the case, pursuant to §9.05.

B. When IAD is notified, pursuant to §4.04 of the unit commander's recommendations, and believes that the recommendations are appropriate, IAD, through channels, shall so notify the unit commander who shall implement the recommendations by:

1. *issuing charges and recommendations for corrective or disciplinary action pursuant to §6.01*
2. *issuing an order for corrective action pursuant to §6.02, or*
3. *issuing an exoneration pursuant to §6.03.*

Commentary. IAD is responsible for controlling and maintaining records of all internal investigations.[3] While IAD at any time may assume control of or supplement any internal investigations, it must give priority to certain types of cases enumerated in §5.02. Consequently, many investigations will be conducted by the unit commander. IAD, however, must have knowledge of these investigations and keep records relating to them.

Since IAD performs a monitoring and control function, it never makes recommendations regarding the disposition of a case. At the conclusion of an IAD investigation, IAD sends its report either to the unit commander of the officer complained against or to the Conduct and Procedures Review Board, depending upon the number of officers involved. If the case involves only one officer or a small number of officers under the command of the same unit commander, that unit commander makes recommendations pursuant to §4.02(B). If the case involves a large number of officers or officers under the command of different unit commanders, the Conduct and Procedures Review Board will (1) draft charges and recommendations for corrective or disciplinary action, (2) recommend corrective action, or (3) exonerate the officers.

Although IAD does not make recommendations regarding the disposition of a case, it does review all recommendations made by a unit commander. If IAD believes that these recommendations are inappropriate, IAD forwards the case to the Conduct and Procedures Review Board which will (1) draft charges and recommendations for corrective or disciplinary action, (2) recommend corrective action, or (3) exonerate the officer.

If IAD approves the recommendations of the unit commander, it will notify the unit commander of this fact. The unit commander will then issue a

[3] See also Fig. 6.1.

charging form, an order for corrective action or an exoneration, pursuant to Section Six.

§5.05 specifies particular investigative procedures which may be utilized by any person conducting an internal investigation. These procedures are discussed in Chapter Three, pp. 64-68.

Section Six: Charges and Disposition without Charges

§6.01 A. When the unit commander is notified (1) that IAD has approved the recommended charges and corrective or disciplinary action pursuant to §5.08(B); (2) of the charges and recommended corrective or disciplinary action drafted by the Conduct and Procedures Review Board pursuant to §9.05; or (3) that the Chief has remanded the case pursuant to §10.02(B), the unit commander shall issue the charges and recommendations for corrective or disciplinary action to the officer complained against on a charging form.

The charging form shall include:

1. *The particular rule or rules alleged to have been violated*
2. *The date or dates upon which and the place or places at which the alleged acts or omissions occurred*
3. *A statement of the alleged acts or omissions*
4. *The recommended corrective or disciplinary action and*
5. *The charged officer's right to appeal to either the Trial Board or the Conduct and Procedures Review Board pursuant to §7.01.*

B. One copy of the charging form shall be given to the charged officer and one copy shall be forwarded through channels to IAD.

§6.02 When the unit commander is notified (1) that IAD has approved the recommended corrective action pursuant to §5.08(B); or (2) that the Conduct and Procedures Review Board has recommended corrective action, but no charges, pursuant to §9.05, the unit commander, in writing, shall issue an order for corrective action and forward, through channels, one copy to IAD and one copy to the Chief.

§6.03 When the unit commander is notified (1) that IAD has approved the recommended exoneration pursuant to §5.08(B); or (2) that the Conduct and Procedures Review Board has exonerated an officer complained against pursuant to §9.05, the unit commander, in writing, shall exonerate the officer and forward, through channels, one copy to IAD and one copy to the Chief.

Commentary. There is no question that the chief must be informed of the disposition of all disciplinary cases. However, requiring the chief to review and determine the disposition of every case, no matter how minor or frivolous, would be too burdensome.

To alleviate this problem, the prototype procedures establish a system of checks and balances, which insure that cases which terminate without reaching the chief are decided fairly. IAD's review of the unit commander's recommendations is one such check. The Conduct and Procedures Review Board is another.

A case will terminate without reaching the chief, if IAD has approved a unit commander's recommendations for exoneration or for corrective action but no charges. A case also will terminate prior to reaching the chief, if the Conduct and Procedures Review Board, pursuant to §9.05, exonerates or recommends corrective action but no charges. In such cases, the unit commander will issue the appropriate implementing order or exoneration to the officer. The unit commander will then notify the chief of the termination and disposition of the case.

If an officer has been charged, the officer's case cannot terminate without the approval of the chief. An officer is charged when he or she is given a charging form. For reasons discussed in Chapter Three, pp. 69-70, the charging form should include the five items listed in §6.01.

Section Seven: Officer's Appeal

§7.01 A. An officer who has been charged, within ten days of receiving the charging form pursuant to §6.01, may demand a hearing before the Trial Board or the Conduct and Procedures Review Board. The charged officer may not demand a hearing before both Boards. The charged officer who has elected a hearing before the Conduct and Procedures Review Board will be deemed to have waived the right to a due process hearing. The charged officer's decision shall be final, with the exception, as provided in §9.06, that the Conduct and Procedures Review Board, under certain conditions, may decline to hear a case and refer the matter back to the charged officer for a hearing before the Trial Board.

B. If the Conduct and Procedures Review Board declines to hear a case, pursuant to §9.06, the Board, in writing, shall so notify the charged officer. Within ten days of receiving such notice, the charged officer may demand a hearing before the Trial Board.

C. A charged officer who demands a hearing shall make such demand in writing to his or her unit commander. The unit commander, through channels, shall forward one copy of such demand to the Chief.

§7.02 If the charged officer fails to demand a hearing within ten days of receiving notice of charges and recommendations for corrective or disciplinary action pursuant to §6.01, or notice pursuant to §7.01(B), the unit commander shall forward, through channels, to the Chief, one copy of the charging form and all reports, documents and recommendations pertaining to the case.

§7.03 If an officer charged under §6.01 demands a hearing as provided in §7.01, the unit commander shall, through channels, forward parts 1, 2, and 3 of the charging form to either the Trial Board or the Conduct and Procedures Review Board, as determined by the officer's request for a hearing. Recommendations for corrective or disciplinary action (part 4 of the charging form) shall not be forwarded to either Board, but shall be forwarded to the Chief along with all reports, documents, and recommendations pertaining to the case to be held by the Chief until the Board that hears the case forwards additional materials to the Chief pursuant to §8.05 or §9.10.

Commentary. Once an officer has been charged, he or she may demand a hearing or accept the recommended corrective or disciplinary action. The officer must make this choice within ten days of receiving the charging form. Failure to demand a hearing within the ten days constitutes a waiver of the right to a hearing. An officer who has not been charged has no right to a hearing.

A charged officer has a right to a hearing before the Trial Board or the Conduct and Procedures Review Board. The officer may not demand a hearing before both Boards. A Trial Board hearing is a due process hearing; a Conduct and Procedures Review Board hearing is not. Only the Trial Board can hear complex or serious cases, such as those in which criminal charges have been filed against a charged officer. By demanding a hearing before the Conduct and Procedures Review Board, a charged officer waives his or her right to a due process hearing, unless that Board refuses to hear the case because it is so complex or serious that it should be heard by the Trial Board. In such cases, the charged officer has ten days in which to demand a hearing before the Trial Board.

When a charged officer demands a hearing, the Board that will hear the case must be given the following information about the case: the particular rule(s) alleged to have been violated, the date(s) on which and place(s) at which the alleged acts or omissions occurred, and a statement of the alleged acts or omissions. To help insure that the Board remains neutral and impartial, the Board is not given the recommendations for corrective or disciplinary action. These recommendations are forwarded to the chief, who will review them after the Board has heard the case and sent its report to the chief. If a charged officer does not demand a hearing, the case goes directly to the chief.

Section Eight: Trial Board

§8.01 The Trial Board shall hear cases of violations of rules appealed by a charged officer pursuant to §7.01. The Trial Board shall be a formal, administrative hearing; however, the rules of evidence shall not apply.

§8.02 The Trial Board shall be appointed by the Chief of Police. A new Board shall be appointed for each case, except that one Board may hear multiple charges against one or more officers if the charges arise out of the same transaction or occurrence. The Board shall consist of three officers, who shall be selected as follows: the Chief shall furnish the charged officer with the names of five officers, one of whom shall be of the same rank as the charged officer. The charged officer shall strike two of these names. One member of the Board shall be designated by the Chief as presiding officer.

§8.03 The Trial Board shall provide timely notice to the charged officer of the charges and of the time and place of the hearing, which shall be not more than thirty days from the date of the charged officer's demand for a hearing, unless criminal charges are pending against the charged officer, in which case the hearing may be postponed until the conclusion of the criminal trial. The charged officer, prior to the hearing date, may request and receive one continuance of not more than twenty additional days. The citizen complainant, if any, also shall be notified of the time and place of the hearing, and shall be permitted to attend, unless there is a compelling need for secrecy, as determined by the presiding officer of the Trial Board.

§8.04 Trial Board proceedings shall be conducted in accordance with due process. The charged officer is entitled to be represented by counsel at the hearing, but counsel shall not be provided by the department. All proceedings shall be recorded. The charged officer shall have the right to present evidence, to call witnesses on his or her behalf, and to cross-examine witnesses against him or her. The burden shall be on the department to prove the violation of the rule by substantial evidence. Witnesses shall testify under oath. The Board may appoint an attorney to rule upon motions and advise the Board. The department may have its case presented by an attorney. The hearing shall be open unless there is a compelling need for secrecy, as determined by the presiding officer of the Trial Board.

§8.05 At the conclusion of a hearing, the Trial Board by a majority vote, in writing, shall summarize the evidence, make findings of fact based on substantial evidence and forward such to the Chief, together with recommendations for action pursuant to §10.03.

Commentary. The Trial Board provides a charged officer with a formal due process hearing (see Chapter Three, pp. 69-74).

Board members are appointed by the chief for each case. The charged officer is given the names of five prospective members, one of whom must be of the same rank as the charged officer. The charged officer must strike any two of these names. Thus the charged officer is given the opportunity to have one of his or her peers sit on the Board.

The Trial Board hearing must be open and the citizen complainant permitted to attend, unless the presiding officer of the Board determines that there is a compelling need for secrecy. Such need would be present if confidential or particularly sensitive material is being presented. All action taken by an administrative hearing board should be well documented and clearly explained. Therefore, at the conclusion of the hearing, the Trial Board, in writing, summarizes the evidence and makes findings of fact and recommendations for the disposition of the case. This material is then sent to the chief.

Section Nine: Conduct and Procedures Review Board

§9.01 The Conduct and Procedures Review Board is hereby established under the direct authority of the Chief. It shall have broad power to (1) initiate review and evaluation of departmental policies and procedure, (2) advise or assist the Chief on any matter as the Chief may request, (3) recommend changes in policies and procedures, (4) review disciplinary cases pursuant to §9.05, and (5) hold hearings pursuant to §§9.09-9.10 on charges of violations of departmental rules when demanded by a charged officer.

§9.02 The Conduct and Procedures Review Board shall be appointed by the Chief, and members shall serve at the pleasure of the Chief. One member shall be designated by the Chief as presiding officer of the Board. The Board shall be a permanent unit of the department, and shall hold regular meetings, and hearings as necessary. Members of the Board shall be appointed as follows:

1. *Senior Staff Officer (Deputy Chief, Major, etc.)*
2. *Planning Officer (any rank)*
3. *Training Officer (any rank)*
4. *Patrol Sergeant*
5. *Detective (any rank)*

6. Patrol Officer (two, each with at least three years experience)

7. Legal Advisor

8. Community Representative

§9.03 A. The policy and procedures review functions (§9.01 1-3) of the Conduct and Procedures Review Board shall be carried out as specified in General Order Number _____.

B. The conduct review functions (§9.01 4-5) of the Conduct and Procedures Review Board shall be carried out as provided hereafter.

§9.04 Whenever the Conduct and Procedures Review Board is involved in conduct review functions (§§9.05-9.10), the community representative and the legal advisor shall not sit with the Board and shall not have a vote in the proceedings. Each of the remaining seven members of the Board shall have one vote.

§9.05 When acting pursuant to §5.07 or §5.08(A), the Conduct and Procedures Review Board may receive all investigatory reports and documents from IAD. The Board may call for additional investigation by IAD if the Board deems it necessary. The Board shall review the evidence and by majority vote shall (1) draft charges and recommend corrective or disciplinary action, (2) recommend corrective action, or (3) exonerate the officer complained against. The Board shall notify the unit commander of the officer complained against of any action taken pursuant to subsection (A), (B), or (C) of this action.

§9.06 The Conduct and Procedures Review Board may receive a written demand for a hearing from a charged officer as provided in §7.01. The Board shall immediately review the material received pursuant to §7.03, to determine whether the Board shall hear the case. The Board may decline to hear any case which appears to be so complex or serious that it should be heard by the Trial Board. Any case in which criminal charges have been filed against the charged officer shall be considered serious and shall be heard only by the Trial Board. If the Conduct and Procedures Review Board declines to hear a case under this Section, it shall, through channels, so notify the charged officer and advise the charged officer of the right to take the case to the Trial Board pursuant to §7.01(B).

§9.07 Upon determination that the Conduct and Procedures Review Board shall hear the case, the Board shall notify the officer of the time and place of the hearing, which shall be not more than thirty days after receiving the demand for a hearing. The citizen complainant, if any, shall also be notified.

§9.08 Prior to the hearing, the charged officer shall be furnished with the names of the members of the Conduct and Procedures Review Board who perform conduct review functions. The charged officer shall strike two of these names. The remaining five members of the Board shall constitute a hearing panel. The presiding officer of the Conduct and Procedures Review Board shall appoint one panel member as chairperson. A majority vote of the panel members shall be required for decisions pursuant to §9.10.

§9.09 The hearing panel hearing shall be informal. Neither the hearing panel, the department nor the charged officer shall be entitled to counsel. The hearing panel may proceed in any manner it deems appropriate. The hearing shall be closed to the public. The charged officer shall be permitted to attend. The citizen complainant, if any, shall be permitted to attend unless there is a compelling need for secrecy as determined by the chairperson of the hearing panel. The hearing panel may call any witnesses it deems appropriate, and in its discretion, may call witnesses at the request of the charged officer or citizen complainant, if any. Witnesses may be required to testify under oath. Rules of evidence shall not apply. The hearing panel may obtain any investigative reports, documents and evidence it deems appropriate. The hearing panel may accept the investigative reports as a full and fair statement of the facts, unless the charged officer presents contrary evidence. The proceedings shall not be recorded.

§9.10 At the conclusion of a hearing, the hearing panel, in writing, shall summarize the evidence, make findings of fact based on substantial evidence, and forward such to the Chief with recommendations for action pursuant to §10.03.

Commentary. The Conduct and Procedures Review Board is one of the most innovative parts of the prototype discipline procedures. The Board has two major functions: policy review and conduct review. The conduct review functions are described in §9.05-§9.10. The policy review functions would be described in a separate general order.

Members of the Board are chosen by the chief and serve at the chief's pleasure. Virtually all ranks and major functions within the department are represented. There is also additional input from a community representative when the Board considers policy matters.

When the Board sits for conduct review functions, neither the community representative nor the legal advisor participate. The community representative is excluded because civilians are often unaware of the complexities and ramifications of many police policies and actions, due to their lack of police experience. In addition, the prototype procedures establish a totally internal disciplinary system with no form of civilian review. The legal advisor is excluded from conduct review functions in order to maintain the trust and confidence officers must have in their legal advisor. Involving the legal advisor in disciplinary matters

could make field personnel reluctant to discuss enforcement problems with him or her, especially if their conduct is possibly improper.

The Conduct and Procedures Review Board has two conduct review functions. First, in either of two instances, the Board may (1) exonerate an officer, (2) recommend corrective action, or (3) draft charges and make recommendations for corrective or disciplinary action (§9.05). The Board can take such action when IAD believes that recommendations made by a unit commander pursuant to §4.02 are inappropriate (§5.08(A)) or when IAD has conducted an investigation involving a large number of officers or officers from different units (§5.07). IAD cannot review the Board's actions.

The Board's second conduct review function is to hold hearings on charges of violations of departmental rules. As was previously discussed, the Board may decline to hear any case which is so complex or serious that it should be heard by the Trial Board.

Once the Board (minus the legal advisor and community representative) decides that it should hear a case, the charged officer must strike two members. The remaining five constitute the hearing panel which will hear the case.

Unlike a hearing before a Trial Board, a hearing before a Conduct and Procedures Review Board hearing panel is informal. It is not a due process hearing. The following chart lists the major similarities and differences between the two types of hearings.

Trial Board	Conduct and Procedures Review Board Hearing Panel
1. Chief appoints five potential members; one must be the same rank as charged officer.	1. Seven potential members from Conduct and Procedures Review Board.
2. Officer strikes two names.	2. Officer strikes two names.
3. Three members.	3. Five members.
4. Due process hearing.	4. Informal hearing.
5. Open hearing unless compelling need for secrecy.	5. Closed hearing.
6. Citizen complainant permitted to attend unless compelling need for secrecy.	6. Citizen complainant permitted to attend unless compelling need for secrecy.
7. Officer may be represented by counsel; department may have attorney present its case; Board may appoint attorney to rule on motions and advise Board.	7. No attorneys.
8. Proceedings recorded.	8. Proceedings not recorded.
9. Rules of evidence do not apply.	9. Rules of evidence do not apply.
10. Witnesses must testify under oath.	10. Witnesses may be required to testify under oath.
11. Officer has right to present evidence, call witnesses, and cross-examine witnesses.	11. Panel may call witnesses at request of officer or citizen complainant.
12. Substantial evidence required.	12. Substantial evidence required.
13. Department must prove violation of rule.	13. Panel may accept investigative reports as full and fair statement of facts unless officer presents contrary evidence.
14. Summarizes evidence, finds facts, makes recommendations for the disposition of the case.	14. Summarizes evidence, finds facts, makes recommendations for the disposition of the case.

There are several advantages to a hearing before a Conduct and Procedures Review Board hearing panel. The fact that the hearing is informal and that due process does not apply, will tend to create a less adversary atmosphere than will be present at a Trial Board hearing. The five members of the panel are likely to represent a wider range of departmental experience than the three members of the Trial Board. Panel members are also likely to be more attuned to departmental policies and procedures, due to their policy review functions. In any case, an officer will know who the potential panel members are before he or she demands an appeal; he or she will have no way of knowing whom the chief might appoint as potential Trial Board members.

Although an officer is entitled to a due process hearing, he or she may not want to bother with the formality and expense of one. For example, if an officer wanted to contest only the recommended corrective or disciplinary action, and not whether he or she committed a violation of a departmental rule,

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2 OF 5

it would be advantageous to appeal to the Conduct and Procedures Review Board. A charged officer may demand a hearing before the Board even if the Board drafted the charges against the officer, pursuant to §9.05.

At the conclusion of the hearing, the hearing panel, like the Trial Board, summarizes the evidence, and makes findings of fact and recommendations for the disposition of the case. This material is then sent to the chief.

Section Ten: Chief's Action

§10.01 Upon receipt, the Chief shall review all summaries, findings, reports, and recommendations received pursuant to §7.02, §7.03, §8.05, and §9.10.

§10.02 A. The Chief may remand a case to IAD or to the charged officer's unit commander for additional investigation.

1. *When the Chief remands the case for additional investigation and new evidence is discovered, the case shall proceed pursuant to §5.07, if remanded to IAD, or pursuant to §4.02, if remanded to the unit commander, if:*
   - *(a) the evidence was discovered since the hearing or since the charged officer waived his or her right to a hearing;*
   - *(b) the evidence is material and not merely cumulative or impeaching;*
   - *(c) the evidence will probably change the disposition of the case; and*
   - *(d) failure to learn of the evidence was due to no lack of diligence on the part of the charged officer.*
2. *If the Chief remands the case for additional investigation, and no additional evidence meeting the criteria in §10.02(A)1. is discovered, the Chief shall proceed pursuant to §10.03.*

B. The Chief may remand a case to the charged officer's unit commander for recharging if the Chief decides that the charge is inappropriate. If the Chief remands the case for recharging, the charged officer's unit commander shall recharge the officer by issuing a charging form pursuant to §6.01. The case shall then proceed pursuant to §7.01.

§10.03 The Chief shall:

1. *sustain the charge(s) and impose corrective or disciplinary action,*
2. *exonerate the charged officer and order corrective action, or*
3. *exonerate the charged officer.*

In deciding upon a corrective or disciplinary action, the Chief may consider the nature and severity of the violation, the officer's personnel record, recommendations of the charged officer's supervisors and commanders, recommendations of the Trial Board or Conduct and Procedures Review Board, and corrective or disciplinary action imposed in prior cases of a similar nature.

§10.04 The Chief, through channels, in writing, shall notify the charged officer of any action taken pursuant to §10.03(A), (B), or (C) and of the officer's right, if any, to appeal to a court or other body.

§10.05 The Chief, in writing, shall notify the citizen complainant of the disposition of any case involving the citizen's complaint. Any unit commander involved in the termination of a citizen's complaint prior to the case reaching the Chief shall assure that the Chief is notified immediately of the termination so that the Chief may notify the citizen complainant of the disposition of the case.

§10.06 A. The Chief, in writing, shall notify IAD of the specific final action taken by the Department on each complaint.

B. If the charged officer appealed pursuant to §7.01, the Chief shall notify the presiding officer of the Board that heard the appeal of the specific final action taken by the Department on the complaint.

Commentary. The disposition of each case in which an officer has been charged is determined by the chief. By the time a case reaches the chief, the chief should have received all reports, recommendations, and other materials pertinent to the case. After a thorough review the chief decides whether to exonerate the officer or sustain the charges and impose corrective action. Corrective training may be ordered even when the officer is exonerated. As discussed in Chapter Three, there must be substantial evidence supporting the charge, and the "punishment" must fit the offense.

In deciding upon a corrective or disciplinary action, the chief may consider many factors, including the recommendations of the charged officer's supervisors and commanders and the recommendations of the Trial Board and Conduct and Procedures Review Board. The chief is not, however, bound by these recommendations.

Administrative consideration of evidence always creates a gap between the time the record is closed and the time the decision is made. During this time new evidence may be discovered, particularly if the chief has remanded the case for additional investigation. Occasionally, such newly discovered evidence will

be important enough to warrant giving the charged officer the opportunity for a new hearing. The four criteria listed in §10.02A.1. are similar to those used by courts in granting new trials because of newly discovered evidence. If newly discovered evidence meets these criteria, the case should be referred for action to the unit commander (pursuant to §4.02) or to the Conduct and Procedures Review Board (pursuant to §9.05), depending upon the number of officers involved. If, as a result, the officer is recharged, he or she has the right to appeal pursuant to §7.01. When the chief remands a case for further investigation and no new evidence meeting the criteria in §10.02A.1. is found, the chief may determine the disposition of the case pursuant to §10.03.

The chief may also remand a case to the charged officer's unit commander for recharging if the chief believes that the charge is inappropriate. An officer who is recharged has a right to appeal pursuant to §7.01.

Section Eleven: Probationary Officers

§11.01 Except as provided in §11.02, a probationary officer may be summarily discharged for just cause by the Chief after written notice of the reasons therefore, but without a hearing.

§11.02 After the probationary officer has been summarily discharged and if in the judgment of the Chief the conduct giving rise to the summary discharge falls within either of the following categories, a probationary officer shall have the right to a hearing before the Trial Board as provided in §7.01, but shall not have a right to a hearing before the Conduct and Procedures Review Board.

1. *If the conduct constitutes the exercise of a constitutional right and the Chief summarily discharges the probationer for this conduct, the Department must demonstrate at the hearing that the exercise of the constitutional right has resulted in an impairment of the operation or efficiency of the Department.*
2. *If the conduct charged will cause the good name, reputation, honor or integrity of the probationary officer to be brought into disrepute and the Chief summarily discharges the probationer for this conduct, a hearing will be held for the purpose of permitting the officer to record for future employment any facts in mitigation of the charged conduct. The Chief may proceed with the discharge regardless of the facts presented at the hearing.*

Commentary. Section Eleven covers the procedures that apply to the summary discharge of probationary officers. Since probationers have no expectation

of job security and in most cases no right to a due process hearing, they can be summarily discharged (see Chapter Three, p. 70). However, no other corrective or disciplinary actions may be summarily imposed. Although the law does not require it, the prototype procedures provide that a probationer must be given notice of the reason for his or her summary dismissal.

Section Twelve: Temporary Relief from Duty, Summary Suspension or Discharge

§12.01 A supervisor may temporarily relieve from duty an officer under his or her supervision for a period of not more than one work day on the grounds that the officer is unfit for duty. "Unfit for duty" may include any physical or mental condition which might, in the judgment of the supervisor, render the officer incapable of adequately performing duties, or performing them in such a way as to embarrass or discredit the Department, or jeopardize the safety of any person or property. The supervisor shall immediately notify the unit commander of the officer relieved from duty of any action under this section.

§12.02 A supervisor who relieves an officer from duty under §12.01 may direct that the officer be carried on sick leave, vacation time, or other appropriate leave with pay. A relief from duty under this Section shall not involve a loss of pay; however, loss of pay for the period of relief from duty for this occurrence may be imposed in addition to any subsequent disciplinary suspension, demotion or discharge based on this occurrence.

§12.03 A unit commander, through channels, may recommend to the Chief that an officer, against whom a complaint has been filed or about whom an investigation is pending, be relieved from duty for a period not to exceed 30 days. Power to issue such a relief from duty shall be vested solely in the Chief. If the case cannot be resolved within 30 days, the Chief may continue the relief for additional periods, not to exceed 10 days each. A relief from duty under this Section shall not involve a loss of pay; however, loss of pay for the period of relief from duty for this occurrence may be imposed in addition to any subsequent disciplinary suspension, demotion or discharge based on this occurrence.

§12.04 If any case in which:

1. *an officer engages in a strike as defined in §1.33(B) of the Rules of Conduct,*
2. *an officer has been indicted for a criminal violation, or*
3. *an information or a warrant for the officer's arrest has been issued*

the Chief, in writing, may summarily suspend or discharge the officer from the Department, thereby terminating the officer's salary. In case of such summary suspension or discharge, the officer shall have the right to demand a hearing before the Trial Board as provided in §7.01, but the officer shall not be paid for the period after the summary suspension or discharge, unless the Chief elects to reinstate the officer with back pay for part or all of the period of the suspension or discharge.

Commentary. Under some conditions it may be in the best interest of the department and an officer to relieve the officer from duty for a temporary period. Where the officer is not fit for duty (for example, if the officer is intoxicated, ill, physically tired, sleepy or injured), it would not be wise to allow the officer to perform his or her regular duties. Likewise, if the officer has been involved in an emergency situation and is emotionally upset, or if the officer is suspected of some serious misconduct which throws into question his or her character or fitness, the officer should be relieved from duty immediately. This section allows such a relief from duty to be imposed for not more than one day by an immediate supervisor, and for not more than 30 days, with extensions if necessary, by the chief. The longer period might be appropriate where an investigation is taking place, or where an officer has been charged with an offense and a hearing or trial is taking place.

The common provision of suspension "until further notice" is not provided here because it is unnecessarily vague. The provision for a thirty-day relief from duty, with ten day extensions assumes that the matter will be periodically brought to the attention of the chief, who may then take steps to eliminate unnecessary delays in the ongoing process. Also, it should be noted that the temporary relief from duty is with pay. Only if a charge of misconduct is upheld and a loss of pay imposed as part of a disciplinary action, may an officer lose pay for the period of the relief from duty.

In cases where a criminal charge has been brought against an officer, it is not necessary that the department wait until the criminal case is concluded before taking disciplinary action. The officer who has been criminally charged may be summarily suspended or discharged from the department, and thereby removed from the payroll. However, the officer may still demand a full hearing and the department must provide him or her a hearing if he or she so demands. The hearing may be postponed pending the conclusion of the criminal case (see Chapter Three, Suspensions). At the hearing, the department may decide to affirm or rescind the summary suspension or discharge. If the suspension or discharge is rescinded, the officer would be entitled to back pay.

What this procedure accomplishes is to remove the officer from the payroll immediately in cases of extreme misconduct, so that the department is not burdened with paying the salary of an officer who is criminally charged and is not fit for duty, while the criminal charge is being resolved in court. An officer may also be summarily suspended or discharged if he or she engages in a strike as defined in the Prototype Rules of Conduct.

APPENDIX A

Methodology and Statistical Findings

INTRODUCTION

This appendix presents a description of the methodology selected for analyzing the employee questionnaire together with other accumulated data. The principal thrust in the analysis is a comparison of data from this questionnaire with qualitative data collected from the administrative and legal analyses. The appendix includes descriptions of the methodology used for data collection and analysis, and the study domain. Relationships are also explored between key study variables, intuitive propositions, and research questions formulated during the project. Questionnaire data are then presented by type of analysis. All agencies studied via the questionnaire are analyzed as a group and individually.

METHODOLOGY

Existing conditions were studied in seventeen diverse police agencies through three forms of analysis: an administrative analysis; a two-part legal analysis which included (1) an assessment of internal rules and procedures and (2) interviews with selected government officials and citizen group representatives; and an employee questionnaire designed to ascertain officer perceptions of existing practices.[1] These data were analyzed for purposes of defining com-

[1] Sixteen departments participated in the questionnaire assessment of officer opinions. The remaining agency refrained from questionnaire administration. At the time of the IACP field visit, the agency was involved in contract negotiations with its employee organization and felt that a directive encouraging participation in the survey would possibly strain management-labor relations.

mon disciplinary problems of law enforcement and identifying new and innovative techniques for resolving these problems. All results were compared with current legal proscriptions on internal discipline (as well as successful management strategies used by the private sector) to prepare a prototype set of rules of conduct and disciplinary procedures capable of adaptation in any law enforcement agency.

An objective in the analysis was to compare similar information on like management practices collected through the three field instruments. Through such comparison, it was possible to contrast differing perceptions of several disciplinary practices. The quality of written directives, for example, was assessed from a management perspective through the administrative analysis and from the employees' viewpoint through the questionnaire. Although this technique proved successful in many instances, it was not possible to compare all procedures and practices from each of the three perspectives. Certain subjects, such as the legality of rules or procedures, were not susceptible to employee assessment or to administrative analysis and were analyzed only from the legal perspective. Such information is not included in this appendix, but is most valuable in that it provides a basis for structuring the prototype rules of conduct and disciplinary procedures.[2]

This appendix presents conclusions for comparable administrative analysis and attitudinal questionnaire data. These conclusions are preliminary in the sense that a wealth of information is provided on a subject which heretofore has not been researched extensively. And perhaps more importantly, the conclusions have policy implications in that several problems in internal discipline are identified requiring immediate attention.

A review of findings would not be complete without some description of the method of (1) questionnaire administration and coding, (2) the administrative analysis data collection plan, and (3) the analytical design. This information is detailed in the following sections.

Questionnaire Administration and Coding

The questionnaire was administered to a sample of officers in each agency, stratified by rank, seniority, assignment and race.[3] This stratification plan was

[2]Specific baseline data on the legality of rules of conduct and disciplinary procedures are included in Appendix B.

[3]The actual sampling breakdown for each criterion comprised the following: rank (commanders, supervisors, and patrol personnel); seniority (less than one year, more than one year but not greater than three years, more than three years but not greater than five years, more than five years but not greater than twelve years, more than twelve years); assignment (field operations, investigation, and administrative services); and race (Black, Oriental, Mexican-American, and White).

chosen to ensure that all samples approximated actual populations. Responses were expected to vary according to each of the sampling criteria. For example, it was felt that officers of different ranks would possess varying levels of understanding of departmental disciplinary procedures, and divergent attitudes regarding the quality of disciplinary practices. The same assumption was made concerning seniority. Younger officers with less experience in disciplinary matters were expected to perceive disciplinary actions as more fair than older officers, and would be more apt to understand disciplinary policies covered in recruit training programs. Similarly, officers assigned to administrative positions (e.g., planning and research, training, personnel) would more than likely have a greater knowledge of management policies than operational personnel assigned to patrol or investigations. And the investigator, because of his or her experience, was thought to have different perceptions of disciplinary practices than the average patrol officer. Race was also considered an important sampling criterion. Black officers and officers of Mexican-American descent were expected to have different perceptions of discipline than the average white officer.

Samples were selected through a quota sampling technique utilizing these four strata. In most agencies, administrations were conducted at roll call sessions with each respondent's years of service, rank, assignment and race tabulated by IACP personnel while questionnaires were being completed by the officers.[4] If it was found that after several administrations the sample did not approximate the population in one or more sampling criteria, additional questionnaires were administered to selected individuals, thus meeting desired sample criteria. The value of this approach is that it provided an estimate of the total population value (actual responses for all officers in each agency) without necessitating that stringent prearranged sampling requirements be placed on each agency. If, in contrast, a probability sampling design was used it would have been necessary to "pre-select" all participants and then administer the questionnaire. This would have been most difficult considering the practical considerations of the administration.[5]

In all cases, appropriate samples were obtained for each sampling criterion. Only in very few instances did sample proportions vary considerably from overall population proportions (the greatest variation for any one sampling criterion was 31 percent; the average variation for all agencies was 5.25 percent

[4]In some agencies, practical considerations mandated that officers be called from duty in small groups to participate in questionnaire administration. Most often, this tactic was used when insufficient time was available at roll call, or in those instances in which daily roll call did not occur (e.g., if the agency deployed personnel in some form of a team policing program not requiring daily instruction).

[5]The use of such techniques would have required more extensive travel time by the research staff, and would have placed unworkable demands on each participating agency.

for each sampling criterion). This finding indicates that for all four strata (rank, seniority, assignment, race) sample proportions were quite similar to the actual proportions. On the average, each element of the strata (e.g., commander, supervisor, officer for the rank strata) varied only 5.25 percent from actual proportions.

The number of officers sampled in each agency varied according to the quota sampling design and to the overall size of the department. A sampling plan was developed to account for the size of each agency. This plan specified the minimum number of officers required to ensure an adequate sample. This minimum number was frequently exceeded to fill quota requirements. If it were found, for example, that a particular strata did not approximate actual proportions, although a minimum number of questionnaires had been obtained, additional administrations were conducted.

The questionnaire was completed individually by officers who were given instructions by an IACP staff member. Officers were advised of the anonymity of their responses and told that if they did not wish to complete the questionnaire they did not have to do so. This approach proved successful in that many officer concerns about the use of the data were addressed and minimized. As a result, an overall response rate of .995 was obtained for the sixteen agencies surveyed. Officers who refused to complete the instrument did so because they felt they could not give objective responses. Major reasons for this feeling were that a pending appeal or major disciplinary case involving the officer would bias personal attitudes.

Questionnaire data were coded through use of a standard code book. All coders were trained and results were verified. In some instances, coders were retrained to rectify misunderstandings and confusion. All data were verified after final coding with an average error rate of two items per agency (an error rate of .014 for 2,165 cases).

Administrative Analysis Data Collection Plan

The administrative analysis instrument was designed to facilitate expediency in data collection. Instrument items were organized in such manner to permit complete analysis with a minimum number of interviews (up to seven administrative personnel were interviewed in each agency). The following staff members participated in the interviews: planning and research coordinator, training director, inspectional unit member, internal affairs staff member, first-line supervisor, individual unit commander, and chief of police. The instrument was arranged according to functions, and in those cases where one or more of the

above seven functions was not carried out, less than seven interviews were completed. Also, in some agencies more than one of these functions was performed by the same individual. In such a case, this person was interviewed for all applicable portions of the instrument. For example, in several agencies, responsibility for the internal affairs function and the inspections function was assigned to one organizational unit. In such case, one staff member would be interviewed for portions of the administrative analysis dealing with both functions.

Interviews were scheduled prior to visiting each agency and an itinerary developed for all appointments. Generally, interviews followed the instrument format, although in some cases staff members were forced to digress and discuss other problem areas of discipline. This outcome, however, was anticipated and did not in the opinion of staff directly bias results in that pertinent subjects were still researched.

Analytical Design

The basic intent in the design was to compare data from the questionnaire with selected data from the administrative analysis. The research staff conducted this analysis by structuring attitudinal scales and indices from the questionnaire to reflect officer opinions on specific management practices.[6] By comparing these data and other single questionnaire items with administrative analysis results, it was possible to develop a descriptive profile of those management techniques which produce the most positive responses by employees. Through such a technique, it was possible to contrast conditions in those agencies receiving high scores on particular scales to those which received low ratings. Key factors in the administrative process contributing to such scores were isolated for study through this process.

Prior to analyzing these scores, a set of preliminary propositions was developed to explain differences in departmental scores. These propositions focused on selected concepts in the administrative process that were thought to affect officer perceptions. For example, it was conceived that more positive scores on questions measuring understanding of disciplinary policies would be obtained in those agencies incorporating general orders on disciplinary matters in written directives, and presenting thorough explanations of disciplinary policies in training programs.

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[6] As used in this project, an attitudinal scale is a composite group of like instrument items with sufficient internal consistency to be used in tests of relationships, while an index is a set of items combined by the researchers to provide basic descriptive data on factors of interest.

Once sufficient data were obtained, these propositions were analyzed statistically through factor analysis and tests of relationships to determine (1) if questionnaire and administrative analysis data included ample material to test such suppositions, and (2) whether the effects of other factors, such as personal characteristics and experiences in discipline, precluded conclusive statements regarding these propositions. Through this process, the propositions were refined and a final set of measures selected.

The next step in the analysis was the determination of the impact of personal factors, such as individual demographic criteria and experiences in disciplinary matters, on results. All background factors included in the questionnaire were compared with scales, indices and other selected items to ascertain degrees of variation in attitude according to personal differences. Significant relationships were noted, and variations were noted to determine the impact of these data on overall results.

Agencies were then compared for scores on each scale and index, and conclusions were derived. All findings were tested for significance and analyzed by background factors and other data to identify possible spurious relationships. Those findings which could well have been produced by chance or which were obtained due to some extraneous reason were then defined as inconclusive.

STUDY DOMAIN

The theoretical framework underlying this research centers on officer perceptions of management actions in discipline. The rudiments of this design may be explained by indicating that in police agencies behavioral norms are delineated by management through formal directives and training programs, and further defined by the actions of commanders, supervisors and patrol officers. Each officer formulates his or her perception by assimilating formal instructions and then comparing this concept to what is observed in actual practice. Once actual experience occurs, perceptions of the quality of actions are possible. Each officer derives these perceptions from a variety of sources including feedback received from supervisors and peers, as well as personal experiences. These perceptions in part establish the level of individual confidence in internal discipline. Officer confidence in discipline is therefore dependent to a certain extent on the type of management practices used to carry out discipline. Such practices admittedly vary by type of agency; levels of confidence will necessarily vary across police agencies. This focus on agencies as one unit of analysis enabled the researchers to identify disciplinary practices which appeared to maximize

officer confidence, and conversely those practices which were not perceived as satisfactory.

This theoretical framework was selected to research several long established propositions in police administration. Management theorists and police practitioners alike stress that disciplinary processes should be based on several precepts crucial to sound management. First, all employees have a right to know exactly what is expected of them by management. Second, once employees are made aware of expectations, they should be held accountable for their conduct. And finally, disciplinary action, which is to be taken when violations occur, should be positive in nature and imposed uniformly with as little delay as possible. Proponents of sound management have advocated adoption of such principles, among others, for many years. These theorists and practitioners have in addition recommended definitive procedures to be adopted by management for achieving such goals.[7] Administrators who implement these recommendations expect to realize greater quality in discipline, as well as improvements in officer satisfaction.

An inherent difficulty in adopting such recommendations is that most of these strategies are little more than untested concepts. Internal disciplinary practices have been exposed to relatively little analysis, and until recent years were basically unquestioned. Today, however, police officers and community groups are demanding more responsiveness throughout the disciplinary process. Many questions have been raised about the efficacy of internal policy decisions.

This research proposed to describe internal disciplinary practices and, by comparing officer perceptions of results, to depict those procedures which appear most workable. Elements of the discipline process were analyzed through the administrative analysis. These elements, or correlates, were then analyzed from the officers' perspective to describe current conditions in sample agencies, and to compare actual practices with perceptions of quality.

For purposes of this theoretical framework, disciplinary elements have been grouped into three categories. Correlates are defined from this theoretical perspective to guide quantitative analyses of officer perceptions. The three cate-

[7] See for example George Strauss and Leonard R. Sayles, *Personnel: The Human Problems of Management* (Prentice-Hall, Inc.: Englewood Cliffs, N.J., 1967) for a general descriptive presentation on the management of internal discipline; Paul M. Whisenand and Fred R. Ferguson, *The Managing of Police Organizations* (Prentice-Hall, Inc.: Englewood Cliffs, N.J., 1973); N. F. Iannone, *Supervision of Police Personnel* (Prentice-Hall, Inc.: Englewood Cliffs, N.J., 1975); and O. W. Wilson and Roy McClaran, *Police Administration* (McGraw-Hill: New York, 1972), for practical instruction in police discipline.

Specific recommendations of management theorists and practitioners will not be recapitulated in this appendix, but are stated in various portions of the text of this manual.

gories are broken down by phases of the disciplinary process. Included are (1) methods of making known rules and procedures of conduct and performance, (2) techniques of receiving and investigating complaints of misconduct, and (3) approaches for resolving cases of misconduct and handling appeals.

Making Known Rules and Procedures

From the moment the recruit is sworn in as an officer, he or she is informed of certain agency expectations. This process begins with recruit training and is continued throughout the officer's career as management promulgates new directives defining prescribed conduct and holds roll call or in-service training for purposes of acquainting experienced officers with new or revised policies and procedures. A long-standing proposition among police administrators is that this process will be effective only when directives are clearly delineated in an easily identifiable format, made available to all affected personnel, and revised as necessary. All alterations to existing directives or newly prepared procedures or policies should be clearly explained to all officers to avoid confusion. The question which has not been asked, however, is, Do these procedures produce understanding of expectations, or is some other method of delineating expectations more effective?

Further, the foundation for understanding of norms and policies begins with the recruit training program. All recruits should be exposed to a substantial discussion of rules of conduct and disciplinary procedures to maximize compliance and ease in operations. The same principle may be applied to all in-service training programs. Without a definitive explanation of expectations, officers may not understand management intentions and hence prescribed conduct.

Each of these elements of the administrative process was analyzed in this research to determine if agencies do, in fact, adhere to such principles and if such application is effective in achieving officer understanding of written directives in general, and of disciplinary procedures in particular.

The officer's understanding of standards of conduct is also largely affected by management's conformance to prescribed norms of rules and procedures. Quite often this informal method of setting standards has the greatest impact on the officer's perception of what is and what is not expected behavior. To illustrate, officers, upon observing management violations of internal policies for handling misconduct, may feel that the applicable policy is unworkable and perhaps undesirable. If, for example, an agency institutes a procedure for reviewing allegations of internal violations and this policy is consistently violated by

members of the chain of command, line officers may feel that the procedure is ineffective.

To avoid misinterpretation, it has been advocated that standards of conduct be applied equally for all personnel, regardless of rank or assignment, and that managers adhere consistently to established disciplinary procedures. Research was undertaken to determine the degree of perceived uniformity in disciplinary practices and the perceived extent of consistent application of rules of conduct among all personnel. Perceptions of the level of consistency in discipline are most important for it is such interpretations which guide understanding and thus conformity.

Receiving and Investigating Complaints

Once misconduct is suspected, the focus of the disciplinary process shifts from setting expectations and ensuring accountability to determining the merit of the complaint. Divergent techniques are used for receiving externally as opposed to internally generated complaints. The specific method used for the investigation is chosen to ensure thoroughness and impartiality. Quite often, the agency's unit for internal investigations will handle all cases of a serious nature and monitor investigations conducted by supervisors. Key questions which remain unanswered center on this distinction. Do officers understand the responsibility of the internal investigations unit, and if so, do they perceive this unit as effective?

Moreover, incidents of misconduct are often resolved at the immediate level of supervision. These incidents, frequently not recorded or challenged, are perceived by officers as disciplinary events. If there are differences in officer perceptions of supervisory operations, what supervisory practices are related to this difference, and what outcomes occur? Certainly, supervisors are delegated and achieve varying levels of authority and possess different abilities. The manner in which these supervisory variances are applied will affect the perceptions of events by officers. Two questions researched in this project are: What levels of quality in supervisory performance are perceived? and What practices are related to these perceptions?

Other correlates are citizen complaint procedures, both for receiving complaints and conducting investigations. Officers have often criticized management practices for handling such complaints, but, the question of whether or not officers actually understand these procedures is unresearched. And, if officers do understand this process do they, in fact, agree with it or are they totally opposed

to the existing practice? Throughout this project, such questions were asked in identifying and explaining differences in agency practice. The intent in this analysis was to determine which practices elicit the most positive response by officers.

Resolving Cases of Misconduct and Handling Appeals

The completion of the investigation initiates review and resolution processes. Final internal decisions are then followed by the appeal procedure in which cases move from administrative control to external review. At this time, officers have a chance to question management decisions. This research has focused on the perceived quality of both internal review and decision-making practices and the appeals process. The question is asked, What review procedures, including channeling through the chain of command or use of an internal review board, or a combination thereof, produce the most positive response by officers? In this analysis, actions of supervisors, mid-management personnel and top level administrators are analyzed to determine perceptions of confidence. Certainly, the amount of involvement by each of these managers varies in each agency. This research has focused on perceptions of specific involvement.

A critical element in the perception of quality is the appeals procedure. Officer knowledge of this process is measured in this research in conjunction with perceived levels of confidence. The intent is to describe perceptions of current appeals procedures, and to determine those factors leading to a positive response. Through such an approach, it is possible to determine if officers perceive external appeal procedures to provide a fairer review than internal processes.

PROPOSITIONS AND RESEARCH QUESTIONS

To assist in understanding relationships between variables several propositions were developed. To ensure validity in measurement, composite scales were used in analyzing these propositions. Scales were devised by intuitively combining like questionnaire items, factor analyzing results, and testing internal consistency of scale items. The resulting five scales were then used in describing differences in agencies. All scales had a reliability of .65 (coefficient alpha) or above. Each of these five propositions is analyzed in depth. The five scales achieving the desired reliability were perceived understanding of disciplinary procedures, perceptions of supervisory behavior, perceptions of standards of conduct, perceptions of fairness of internal review procedures, and perceptions of

the quality of methods of making known rules and procedures. The five propositions that were tested are:

P_1: A greater degree of clarity and definition in written procedures for discipline will produce a greater degree of understanding of disciplinary procedures.

P_2: A greater degree of codified responsibility and training in supervisory disciplinary functions will produce a greater amount of positive response to supervisory behavior.

P_3: A greater degree of clarity and thoroughness of instructions in departmental standards will produce a greater amount of positive response to prescribed standards of conduct.

P_4: A greater degree of knowledge of and participation in decision-making procedures for internal discipline will produce a greater sense of officer confidence in agency review procedures.

P_5: A greater degree of clarity and thoroughness in methods of making known rules and procedures will produce a greater degree of positive perceptions of these methods.

In addition, several composite indices (aggregate groups of like variables) were analyzed across departments. This information was also extremely valuable in the process of describing differences in disciplinary practices. The indices used in this research were:

1. Perceived fairness of rules of conduct as written
2. Perceived fairness of rules of conduct as enforced
3. Perceived fairness of outside agency appeal procedures
4. Perceived knowledge of citizen complaint procedures
5. Perceived fairness of citizen complaint procedures

This analysis of management practices is essential in describing variances in sample agencies. However, many other factors, not necessarily related to the disciplinary process, could possibly have an effect on officer perceptions. One group of such determinants is the background criteria of participating officers. Several demographic variables were measured in the questionnaire and analyzed by scales and indices to define possible differences in attitude. Such analyses

were conducted to answer the following research question(s). Do officer perceptions vary by the seniority, sex, race, education, rank or assignment of participating officers?

In addition, officer experiences in discipline were considered critical determinants of perceptions. Officers were asked if complaints had ever been filed against them, and secondly if complaints had ever been sustained. Finally, those officers who had received disciplinary sanctions were asked to describe the type of sanction imposed. Each of these answers was analyzed by scales and indices to seek possible explanations for variance in responses. The following research question was answered in this process: Do officer perceptions vary by experiences in discipline?

Officer level of involvement in the administrative process was researched to further define differences in perceptions. Those officers who had suggested changes in written directives were analyzed as a separate group, as were those officers who had appealed disciplinary decisions. Two questions were answered through this process: (1) Do officer perceptions vary if they have suggested changes in written directives and (2) Do officer perceptions vary if they have appealed disciplinary decisions?

The amount of satisfaction in present assignment and in overall career were considered significant supplemental variables. These variables were analyzed by scales and indices to define differences among officers. The research questions posed to investigate such relationships were: (1) Do officer perceptions vary by level of satisfaction in present assignment and (2) Do officer perceptions vary by level of satisfaction in overall career?

QUESTIONNAIRE DATA

All survey findings are presented in eight topic areas to provide ease in reviewing results. The topic areas are: survey scores for all items; demographic and personal history data for sample officers; data scales and indices, including factor analyses results; correlations between personal data and experiences, and attitudes.

The data are presented in total and, in some cases, by agency and groups of agencies. The sixteen participating agencies are coded in alphabetical form (A through P) to ensure anonymity. Statistical findings are accompanied by a brief narrative explaining the practical meaning of results. Several statistical

formulas are used in reviewing these data. Each of these is described to assist the reader in interpreting results:

1. *Mean*—The average score of any set of data. The mean is computed by summing all possible scores and dividing by the number of scores.
2. *Median*—The middle score of any distribution. The median is that point in the distribution above which are located 50 percent of the scores and below which are located 50 percent of the scores. The median is computed by finding the 50th percentile in the distribution.
3. *Mode*—The score which occurs most frequently in any set of data.
4. *Correlation Coefficient*—Correlation is a technique used to measure the association or relationship between any two variables. The correlation coefficient is one number which indicates the strength of the relationship. Coefficient scores range from +1.00 to -1.00. A perfect positive relationship is noted by a score of +1.00. A -1.00 indicates perfect negative correlation. A correlation of zero indicates no relationship between the variables. The closer a score approximates +1.00, the stronger the positive relationship, and the closer the score approximates -1.00, the stronger the negative relationship. For these data, a Spearman rank difference correlation coefficient is used to measure difference in groups of data. The Spearman coefficient is symbolized by r_s.
5. *Chi-Square Test*—The chi-square test is used to measure the relationship in sets of variables. The chi-square score is symbolized as X^2 and is calculated by testing differences between all score categories for sets of variables. An obtained chi-square value is compared with a predetermined value of significance using the appropriate *degrees of freedom*. The degrees of freedom are directly related to the number of categories of data used, and must be considered in selecting the predetermined value. If the obtained chi-square value exceeds the predetermined value, it is concluded that there is a relationship between the two variables.
6. *Brandt Snedecor Test*—A variation of the chi-square test used to measure the independence of any two sets of variables arranged into a $2 \times k$ table (2 columns and k rows), where k may vary to accommodate two or more categories of data.
7. *Factor Analysis*—This statistical technique is used to test a set of data

to determine if any underlying pattern of relationships exists among items. Factor analysis rearranges variables into a smaller group of items that can be used to describe observations about the data. Factor analysis does not specify exactly what the common pattern is among items. The researcher must infer like patterns from observation. Each variable is correlated with common factors. Correlation scores are produced indicating the strength of relationship between each variable and the common factor (these scores are defined as factor loadings). As is the case with all correlations, scores range from -1.00 to +1.00.

8. *Coefficient Alpha*—This is a measure of the internal consistency of a grouped set of variables. Coefficient alpha is based on the average correlations among variables and the number of variables. Coefficient scores closest to +1.00 indicate greatest internal consistency, which is a measure of the reliability of the data.

9. *Statistical Significance*—Throughout this review, reference is made to statistical significance. This concept is used in research as a standard for determining confidence when drawing conclusions about relationships between variables. It is important to determine if a sample relationship is representative of the entire population; that is, if similar results could be obtained in repeated studies. The test of significance determines how many times the result would be obtained by pure chance and is therefore not representative. A .05 level of significance indicates that the result would occur by chance only five times in 100 similar studies. Considerable confidence can be placed in relationships showing such significance. The .05 level of significance is used as a standard in this study. However, levels of significance showing a stronger relationship (e.g., .01, .001) are also reported. The level of significance is indicated by the p value (e.g., p = .05) for all tests of relationships. At certain points in this analysis, a p value smaller than .0001 was obtained. In such case, values are truncated to four decimal points and reported as p = .0001.

FREQUENCY SCORES FOR ATTITUDINAL SURVEY ITEMS

Frequency scores were obtained for each survey item to determine the actual numbers of officers responding in the five categories (strongly agree, agree, uncertain, disagree, strongly disagree).[8] These results are presented below in percentages. Median scores are given for each question in which ranked data were obtained (strongly agree through strongly disagree), and the actual number of responses are cited for each question. A total of 2,165 officers representing sixteen agencies completed the survey. However, in some cases certain questions were omitted.

Question 1: Definitions of Discipline Based on Overall Experience in Sample Department

22 Behavior according to police standards of misconduct
30 An attitude which causes officers to obey police standards of conduct
20 Training or counseling to improve police officer performance
24 Punishment for officer misconduct
2 Other, please specify_____

N = 2128

No median is calculated for this item since it is a nonranked question.

Question 2: Perceived Fairness of Rules and Regulations, As Written

7 strongly agree; 61 agree; 13 uncertain; 15 disagree; 4 strongly disagree
N = 2099
Median = 2.21

Question 3: Perceived Fairness of Enforcement of Rules and Regulations

3 strongly agree; 32 agree; 18 uncertain; 32 disagree; 15 strongly disagree
N = 2096
Median = 3.34

Question 4: Perceived Fairness of Specific Rules, As Written

This question, consisting of fifteen items, was presented as a chart of rules and regulations. Officers were asked to give a reaction to each rule and regulation listed. If they disagreed or strongly disagreed, they were asked to select a reason for their score from an accompanying chart. Scores are presented below for each rule and reasons for disagreement are cited immediately

[8]The survey instrument used is presented in Appendix C.

following the listing of percentages. It should be remembered that the percentages cited for reasons apply only to responses of disagree or strongly disagree. Each of the following items (4.1-4.15) was prefaced by this statement: "I feel that the following rules, *as written* are fair and reasonable."

4.1 Off-Duty Employment

7 strongly agree; 46 agree; 8 uncertain; 25 disagree; 13 strongly disagree
N = 2144
Median = 2.42

I do not feel this rule, *as written*, is fair and reasonable because:

12 It is none of the department's business
20 It must be revised to be consistent with modern employment practices
2 It interferes with my ability to do good police work
55 It places undue restrictions on my personal rights
1 It is not stated so that I can understand it
3 It is too broad to be properly enforced
1 My department does not have this rule
6 Other
N = 773

4.2 Operation of Police Vehicle

12 strongly agree; 73 agree; 6 uncertain; 7 disagree; 1 strongly disagree
N = 2141
Median = 2.02

I do not feel this rule, *as written* is fair and reasonable because:

1 It is none of the department's business
20 It must be revised to be consistent with modern employment practices
38 It interferes with my ability to do good police work
2 It places undue restrictions on my personal rights
4 It is not stated so that I can understand it
21 It is too broad to be properly enforced
2 My department does not have this rule
12 Other
N = 160

4.3 Hairstyles, Mustaches and Beards

15 strongly agree; 42 agree; 8 uncertain; 23 disagree; 12 strongly disagree
N = 2122
Median = 2.34

I do not feel this rule, *as written* is fair and reasonable because:

3 It is none of the department's business
39 It must be revised to be consistent with modern employment practices
1 It interferes with my ability to do good police work
39 It places undue restrictions on my personal rights
1 It is not stated so that I can understand it
8 It is too broad to be properly enforced
5 My department does not have this rule
4 Other
N = 667

4.4 Courtesy to Public

24 strongly agree; 66 agree; 5 uncertain; 4 disagree; 1 strongly disagree
N = 2142
Median = 1.89

I do not feel this rule, *as written*, is fair and reasonable because:

4 It is none of the department's business
10 It must be revised to be consistent with modern employment practices
29 It interferes with my ability to do good police work
16 It places undue restrictions on my personal rights
3 It is not stated so that I can understand it
22 It is too broad to be properly enforced
4 My department does not have this rule
12 Other
N = 94

4.5 Physical Force

13 strongly agree; 67 agree; 10 uncertain; 8 disagree; 2 strongly disagree
N = 2140
Median = 2.05

I do not feel this rule, *as written*, is fair and reasonable because:

1 It is none of the department's business
7 It must be revised to be consistent with modern employment practices
35 It interferes with my ability to do good police work
12 It places undue restrictions on my personal rights
6 It is not stated so that I can understand it
28 It is too broad to be properly enforced
1 My department does not have this rule
10 Other
N = 189

4.6 Use of Firearms

17 strongly agree; 59 agree; 9 uncertain; 11 disagree; 3 strongly disagree
N = 2147
Median = 2.05

I do not feel this rule, *as written*, is fair and reasonable because:

1 It is none of the department's business
9 It must be revised to be consistent with modern employment practices
31 It interferes with my ability to do good police work
13 It places undue restrictions on my personal rights
7 It is not stated so that I can understand it
20 It is too broad to be properly enforced
1 My department does not have this rule
18 Other
N = 260

4.7 Late for Duty

14 strongly agree; 71 agree; 7 uncertain; 5 disagree; 2 strongly disagree
N = 2149
Median = 2.01

I do not feel this rule, *as written*, is fair and reasonable because:

3 It is none of the department's business
43 It must be revised to be consistent with modern employment practices
4 It interferes with my ability to do good police work
5 It places undue restrictions on my personal rights

2 It is not stated so that I can understand it
22 It is too broad to be properly enforced
1 My department does not have this rule
20 Other
N = 133

4.8 Moral Conduct

16 strongly agree; 62 agree; 10 uncertain; 9 disagree; 3 strongly disagree
N = 2140
Median = 2.06

I do not feel this rule, *as written*, is fair and reasonable because:

30 It is none of the department's business
11 It must be revised to be consistent with modern employment practices
1 It interferes with my ability to do good police work
25 It places undue restrictions on my personal rights
3 It is not stated so that I can understand it
22 It is too broad to be properly enforced
2 My department does not have this rule
6 Other
N = 239

4.9 Insubordination

15 strongly agree; 63 agree; 13 uncertain; 7 disagree; 2 strongly disagree
N = 2140
Median = 2.06

I do not feel this rule, *as written*, is fair and reasonable because:

3 It is none of the department's business
24 It must be revised to be consistent with modern employment practices
5 It interferes with my ability to do good police work
10 It places undue restrictions on my personal rights
6 It is not stated so that I can understand it
35 It is too broad to be properly enforced
1 My department does not have this rule
16 Other
N = 174

4.10 Personal Debts

13 strongly agree; 54 agree; 17 uncertain; 11 disagree; 5 strongly disagree
N = 2118
Median = 2.18

I do not feel this rule, *as written*, is fair and reasonable because:

65 It is none of the department's business
7 It must be revised to be consistent with modern employment practices
0 It interferes with my ability to do good police work
14 It places undue restrictions on my personal rights
1 It is not stated so that I can understand it
5 It is too broad to be properly enforced
5 My department does not have this rule
3 Other
N = 338

4.11 Criticism of Department

9 strongly agree; 50 agree; 23 uncertain; 13 disagree; 5 strongly disagree
N = 2083
Median = 2.32

I do not feel this rule, *as written*, is fair and reasonable because:

6 It is none of the department's business
14 It must be revised to be consistent with modern employment practices
5 It interferes with my ability to do good police work
40 It places undue restrictions on my personal rights
6 It is not stated so that I can understand it
10 It is too broad to be properly enforced
11 My department does not have this rule
8 Other
N = 317

4.12 Use of Alcohol Off Duty

12 strongly agree; 60 agree; 13 uncertain; 11 disagree; 4 strongly disagree
N = 2120
Median = 2.13

I do not feel this rule, *as written*, is fair and reasonable because:

41 It is none of the department's business
5 It must be revised to be consistent with modern employment practices
1 It interferes with my ability to do good police work
35 It places undue restrictions on my personal rights
2 It is not stated so that I can understand it
7 It is too broad to be properly enforced
5 My department does not have this rule
4 Other
N = 283

4.13 Gratuities

28 strongly agree; 59 agree; 8 uncertain; 4 disagree; 1 strongly disagree
N = 2135
Median = 1.88

I do not feel this rule, *as written*, is fair and reasonable because:

15 It is none of the department's business
12 It must be revised to be consistent with modern employment practices
5 It interferes with my ability to do good police work
19 It places undue restrictions on my personal rights
4 It is not stated so that I can understand it
33 It is too broad to be properly enforced
4 My department does not have this rule
8 Other
N = 103

4.14 Residency

12 strongly agree; 54 agree; 8 uncertain; 14 disagree; 12 strongly disagree
N = 2028
Median = 2.20

I do not feel this rule, *as written*, is fair and reasonable because:

24 It is none of the department's business
14 It must be revised to be consistent with modern employment practices
2 It interferes with my ability to do good police work
47 It places undue restrictions on my personal rights

1 It is not stated so that I can understand it
2 It is too broad to be properly enforced
5 My department does not have this rule
5 Other
N = 468

4.15 Other Rules

2 strongly agree; 17 agree; 4 uncertain; 6 disagree; 70 strongly disagree
N = 47
Median = 4.79

I do not feel this rule, *as written*, is fair and reasonable because:

8 It is none of the department's business
14 It must be revised to be consistent with modern employment practices
19 It interferes with my ability to do good police work
13 It places undue restrictions on my personal rights
3 It is not stated so that I can understand it
11 It is too broad to be properly enforced
0 My department does not have this rule
32 Other
N = 37

Question 5: Perceived Fairness of Specific Rules, As Enforced

This question was also presented in chart form and consisted of fifteen items. As was the case with question four, officers were asked to elicit their reaction to each item and select a reason only if they disagreed or strongly disagreed with the item. Each of the following items (5.1-5.15) was prefaced by this statement: "I feel that the following rules are *enforced* fairly and reasonably."

5.1 Off-Duty Employment

5 strongly agree; 48 agree; 17 uncertain; 20 disagree; 10 strongly disagree
N = 2126
Median = 2.45

I do not feel this rule is *enforced* fairly and reasonably because:

26 This rule is not accepted by patrol officers
36 Supervisors are not consistent in enforcing this rule

15 Superior officers do not follow this rule
2 This rule was never explained to me by my supervisor
8 Punishment for violating this rule is too severe
1 My department does not have this rule
12 Other
N = 585

5.2 Operation of Police Vehicle

6 strongly agree; 62 agree; 10 uncertain; 17 disagree; 5 strongly disagree
N = 2124
Median = 2.20

I do not feel this rule is *enforced* fairly and reasonably because:

7 This rule is not accepted by patrol officers
54 Supervisors are not consistent in enforcing this rule
17 Superior officers do not follow this rule
0 This rule was never explained to me by my supervisor
12 Punishment for violating this rule is too severe
0 My department does not have this rule
10 Other
N = 414

5.3 Hairstyles, Mustaches and Beards

8 strongly agree; 38 agree; 10 uncertain; 29 disagree; 15 strongly disagree
N = 2095
Median = 2.93

I do not feel this rule is *enforced* fairly and reasonably because:

21 This rule is not accepted by patrol officers
56 Supervisors are not consistent in enforcing this rule
4 Superior officers do not follow this rule
1 This rule was never explained to me by my supervisor
6 Punishment for violating this rule is too severe
4 My department does not have this rule
8 Other
N = 810

5.4 Courtesy to Public

10 strongly agree; 69 agree; 9 uncertain; 9 disagree; 3 strongly disagree
N = 2115
Median = 2.07

I do not feel this rule is *enforced* fairly and reasonably because:

10 This rule is not accepted by patrol officers
59 Supervisors are not consistent in enforcing this rule
4 Superior officers do not follow this rule
1 This rule was never explained to me by my supervisor
11 Punishment for violating this rule is too severe
1 My department does not have this rule
14 Other
N = 222

5.5 Physical Force

8 strongly agree; 65 agree; 11 uncertain; 13 disagree; 3 strongly disagree
N = 2119
Median = 2.15

I do not feel this rule is *enforced* fairly and reasonably because:

10 This rule is not accepted by patrol officers
52 Supervisors are not consistent in enforcing this rule
4 Superior officers do not follow this rule
2 This rule was never explained to me by my supervisor
19 Punishment for violating this rule is too severe
1 My department does not have this rule
12 Other
N = 292

5.6 Use of Firearms

11 strongly agree; 66 agree; 10 uncertain; 10 disagree; 3 strongly disagree
N = 2121
Median = 2.09

I do not feel this rule is *enforced* fairly and reasonably because:

17 This rule is not accepted by patrol officers

44 Supervisors are not consistent in enforcing this rule
3 Superior officers do not follow this rule
1 This rule was never explained to me by my supervisor
14 Punishment for violating this rule is too severe
1 My department does not have this rule
20 Other
N = 218

5.7 Late for Duty

7 strongly agree; 62 agree; 11 uncertain; 16 disagree; 4 strongly disagree
N = 2117
Median = 2.19

I do not feel this rule is *enforced* fairly and reasonably because:

2 This rule is not accepted by patrol officers
77 Supervisors are not consistent in enforcing this rule
9 Superior officers do not follow this rule
1 This rule was never explained to me by my supervisor
6 Punishment for violating this rule is too severe
0 My department does not have this rule
5 Other
N = 385

5.8 Moral Conduct

8 strongly agree; 55 agree; 15 uncertain; 16 disagree; 6 strongly disagree
N = 2104
Median = 2.27

I do not feel this rule is *enforced* fairly and reasonably because:

6 This rule is not accepted by patrol officers
55 Supervisors are not consistent in enforcing this rule
21 Superior officers do not follow this rule
2 This rule was never explained to me by my supervisor
6 Punishment for violating this rule is too severe
2 My department does not have this rule
8 Other
N = 433

5.9 Insubordination

7 strongly agree; 59 agree; 16 uncertain; 14 disagree; 4 strongly disagree
N = 2117
Median = 2.23

I do not feel this rule is *enforced* fairly and reasonably because:

3 This rule is not accepted by patrol officers
69 Supervisors are not consistent in enforcing this rule
9 Superior officers do not follow this rule
3 This rule was never explained to me by my supervisor
6 Punishment for violating this rule is too severe
1 My department does not have this rule
9 Other
N = 337

5.10 Personal Debts

7 strongly agree; 57 agree; 22 uncertain; 10 disagree; 4 strongly disagree
N = 2098
Median = 2.24

I do not feel this rule is *enforced* fairly and reasonably because:

15 This rule is not accepted by patrol officers
36 Supervisors are not consistent in enforcing this rule
6 Superior officers do not follow this rule
5 This rule was never explained to me by my supervisor
14 Punishment for violating this rule is too severe
6 My department does not have this rule
18 Other
N = 245

5.11 Criticism of Department

6 strongly agree; 51 agree; 25 uncertain; 13 disagree; 5 strongly disagree
N = 2085
Median = 2.36

I do not feel this rule is *enforced* fairly and reasonably because:

14 This rule is not accepted by patrol officers

37 Supervisors are not consistent in enforcing this rule
13 Superior officers do not follow this rule
4 This rule was never explained to me by my supervisor
10 Punishment for violating this rule is too severe
7 My department does not have this rule
15 Other
N = 318

5.12 Use of Alcohol Off Duty

6 strongly agree; 55 agree; 18 uncertain; 16 disagree; 5 strongly disagree
N = 2104
Median = 2.30

I do not feel this rule is *enforced* fairly and reasonably because:

13 This rule is not accepted by patrol officers
37 Supervisors are not consistent in enforcing this rule
28 Superior officers do not follow this rule
3 This rule was never explained to me by my supervisor
5 Punishment for violating this rule is too severe
5 My department does not have this rule
9 Other
N = 390

5.13 Gratuities

14 strongly agree; 60 agree; 14 uncertain; 9 disagree; 3 strongly disagree
N = 2119
Median = 2.10

I do not feel this rule is *enforced* fairly and reasonably because:

10 This rule is not accepted by patrol officers
45 Supervisors are not consistent in enforcing this rule
34 Superior officers do not follow this rule
0 This rule was never explained to me by my supervisor
3 Punishment for violating this rule is too severe
1 My department does not have this rule
7 Other
N = 226

5.14 Residency

9 strongly agree; 61 agree; 12 uncertain; 10 disagree; 8 strongly disagree
N = 1995

I do not feel this rule is *enforced* fairly and reasonably because:

28 This rule is not accepted by patrol officers
23 Supervisors are not consistent in enforcing this rule
8 Superior officers do not follow this rule
2 This rule was never explained to me by my supervisor
13 Punishment for violating this rule is too severe
8 My department does not have this rule
18 Other
N = 310

5.15 Other Rules

0 strongly agree; 6 agree; 6 uncertain; 19 disagree; 69 strongly disagree
N = 16

I do not feel this rule is *enforced* fairly and reasonably because:

4 This rule is not accepted by patrol officers
28 Supervisors are not consistent in enforcing this rule
4 Superior officers do not follow this rule
0 This rule was never explained to me by my supervisor
28 Punishment for violating this rule is too severe
4 My department does not have this rule
28 Other
N = 14

The remaining survey questions (6 through 44) sought officer attitudes about several aspects of discipline. Percentages of responses are cited below together with the actual number of officers (N), and the median. Each question is stated verbatim in Appendix C.

Questions 6-17 sought officer attitudes about written directives.

Question 6:

9 strongly agree; 74 agree; 7 uncertain; 8 disagree; 2 strongly disagree
N = 2161
Median = 2.05

Question 7:

12 strongly agree; 60 agree; 13 uncertain; 12 disagree; 3 strongly disagree
N = 2156
Median = 2.13

Question 8:

15 strongly agree; 57 agree; 12 uncertain; 13 disagree; 3 strongly disagree
N = 2153
Median = 2.12

Question 9:

9 strongly agree; 40 agree; 17 uncertain; 24 disagree; 10 strongly disagree
N = 2158
Median = 2.57

Question 10:

22 strongly agree; 43 agree; 6 uncertain; 21 disagree; 8 strongly disagree
N = 2160
Median = 2.16

Question 11:

26 strongly agree; 55 agree; 6 uncertain; 9 disagree; 4 strongly disagree
N = 2160
Median = 1.94

Question 12:

31 strongly agree; 58 agree; 7 uncertain; 3 disagree; 1 strongly disagree
N = 2150
Median = 1.82

Question 13:

7 strongly agree; 23 agree; 12 uncertain; 36 disagree; 22 strongly disagree
N = 2145
Median = 3.74

Question 14:

6 strongly agree; 45 agree; 11 uncertain; 27 disagree; 11 strongly disagree
N = 2145
Median = 2.48

Question 15:

22 strongly agree; 48 agree; 12 uncertain; 10 disagree; 8 strongly disagree
N = 2148
Median = 2.07

Question 16:

8 strongly agree; 62 agree; 14 uncertain; 13 disagree; 3 strongly disagree
N = 2150
Median = 2.17

Question 17:

8 strongly agree; 51 agree; 12 uncertain; 24 disagree; 5 strongly disagree
N = 2148
Median = 2.33

Questions 18-44 sought officer attitudes of the disciplinary system in each department.

Question 18:

13 definitely yes; 41 yes; 15 uncertain; 23 no; 8 definitely no
N = 2154
Median = 2.41

Question 19:

13 definitely yes; 44 yes; 12 uncertain; 22 no; 9 definitely no
N = 2155
Median = 2.35

Question 20:

21 definitely yes; 35 yes; 25 uncertain; 16 no; 3 definitely no
N = 2154
Median = 2.34

Question 21:

7 strongly agree; 24 agree; 8 uncertain; 33 disagree; 28 strongly disagree
N = 2153
Median = 3.84

Question 22:

11 definitely yes; 42 yes; 14 uncertain; 23 no; 10 definitely no
N = 2155
Median = 2.42

Question 23:

16 definitely yes; 37 yes; 28 uncertain; 16 no; 3 definitely no
N = 2152
Median = 2.42

Question 24:

8 strongly agree; 31 agree; 9 uncertain; 31 disagree; 20 strongly disagree
N = 2155
Median = 3.55

Question 25:

21 strongly agree; 57 agree; 6 uncertain; 13 disagree; 3 strongly disagree
N = 2148
Median = 2.01

Question 26:

21 strongly agree; 56 agree; 16 uncertain; 5 disagree; 2 strongly disagree
N = 2139
Median = 2.02

Question 27:

17 strongly agree; 52 agree; 19 uncertain; 8 disagree; 4 strongly disagree
N = 2141
Median = 2.14

Question 28:

9 definitely yes; 41 yes; 28 uncertain; 17 no; 5 definitely no
N = 2141
Median = 2.51

Question 29:

5 strongly agree; 32 agree; 45 uncertain; 10 disagree; 8 strongly disagree
N = 2136
Median = 2.79

Question 30:

10 strongly agree; 40 agree; 25 uncertain; 20 disagree; 5 strongly disagree
N = 2141
Median = 2.51

Question 31:

8 definitely yes; 38 yes; 20 uncertain; 24 no; 10 definitely no
N = 2144
Median = 2.68

Question 32:

6 strongly agree; 21 agree; 11 uncertain; 41 disagree; 21 strongly disagree
N = 2143
Median = 3.78

Question 33:

5 definitely yes; 32 yes; 23 uncertain; 31 no; 9 definitely no
N = 2151
Median = 3.04

Question 34:

5 strongly agree; 35 agree; 34 uncertain; 16 disagree; 10 strongly disagree
N = 2151
Median = 2.81

Question 35:

4 strongly agree; 20 agree; 29 uncertain; 27 disagree; 20 strongly disagree
N = 2150
Median = 3.42

Question 36:

38 strongly agree; 47 agree; 7 uncertain; 6 disagree; 2 strongly disagree
N = 2152
Median = 1.75

Question 37:

25 strongly agree; 50 agree; 9 uncertain; 12 disagree; 4 strongly disagree
N = 2149
Median = 2.01

Question 38:

6 definitely yes; 35 yes; 23 uncertain; 28 no; 8 definitely no
N = 2152
Median = 2.89

Question 39:

5 strongly agree; 30 agree; 49 uncertain; 11 disagree; 5 strongly disagree
N = 2151
Median = 2.80

Question 40:

5 strongly agree; 20 agree; 49 uncertain; 20 disagree; 6 strongly disagree
N = 2150
Median = 3.00

Question 41:

3 strongly agree; 32 agree; 33 uncertain; 23 disagree; 8 strongly disagree
N = 2137
Median = 2.93

Question 42:

1 strongly agree; 15 agree; 44 uncertain; 27 disagree; 13 strongly disagree
N = 2135
Median = 3.27

Question 43:

1 strongly agree; 16 agree; 41 uncertain; 27 disagree; 15 strongly disagree
N = 2137
Median = 3.30

Question 44:

3 strongly agree; 49 agree; 25 uncertain; 16 disagree; 7 strongly disagree
N = 2138
Median = 2.46

OFFICER DEMOGRAPHIC AND PERSONAL HISTORY CHARACTERISTICS

The survey instrument solicited specific information concerning officer personal characteristics, degree of involvement in discipline and other administrative processes, and satisfaction with present assignment and overall career. Presented below are actual data and percentages for each background item (tables 1 through 13), as well as selected correlations between demographic data and (1) personal history data, and (2) degrees of satisfaction. This information is presented to aid the reader in interpreting results. Additionally, the relationships between demographic data and other variables may be considered noteworthy in themselves.

TABLE 1

LENGTH OF EMPLOYMENT WITH SAMPLE DEPARTMENT

Years	Number of Officers	Percentage of Total
Less than one year	129	6
More than one, but less than three years	356	16
More than three, but less than five years	328	15
More than five, but less than twelve years	778	36
More than twelve years	574	27
Total	2,165	100

TABLE 2

OFFICERS' SEX

	Number of Officers	Percentage of Total
Male	2,107	97
Female	58	3
Total	2,165	100

TABLE 3

OFFICERS' RACE

	Number of Officers	Percentage of Total
Black	140	6
Oriental	0	0
Latin American	32	1
White	1,976	91
Other (American Indian)	17	2
Total	2,165	100

TABLE 4
OFFICERS' EDUCATION

	Number of Officers	Percentage of Total
High school diploma or GED	552	25
At least 45 hours of college credits	424	20
Associates degree	257	12
At least 90 hours of college credits	321	15
Bachelor's degree	255	12
Some college	332	15
Other (M.A. or J.D.)	24	1
Total	2,165	100

TABLE 5
OFFICERS' RANK

	Number of Officers	Percentage of Total
Command level (lieutenant and above)	142	7
Supervisor (uniformed and nonuniformed)	370	17
Officer	1,653	76
Total	2,165	100

TABLE 6
OFFICERS' ASSIGNMENT

	Number of Officers	Percentage of Total
Field Operations	1,473	68
Investigation	468	22
Administration	224	10
Total	2,165	100

TABLE 7
COMPLAINTS AGAINST OFFICERS

	Number of Officers	Percentage of Total
Yes	1,251	58
No	815	38
Don't know	99	4
Total	2,165	100

TABLE 8
COMPLAINTS SUSTAINED AGAINST OFFICERS

	Number of Officers	Percentage of Total
Yes	704	33
No	1,346	62
Don't know	115	5
Total	2,165	100

TABLE 9
DISCIPLINE TAKEN AGAINST OFFICERS

Type of Discipline	Number of Officers	Percentage of Total
Formal oral reprimand	570	26
Written reprimand	534	25
Working days off in lieu of suspension	281	13
Suspension	226	10
Demotion	11	.5
Dismissal and reinstatement	15	.7
None	1,114	51

NOTE: Totals were not calculated for this table since officers could respond to one or more types of discipline.

TABLE 10

OFFICERS SUGGESTING CHANGES IN WRITTEN DIRECTIVES

	Number of Officers	Percentage of Total
Yes	550	25
No	1,615	75
Total	2,165	100

TABLE 11

OFFICERS APPEALING DISCIPLINARY ACTION THROUGH APPEAL PROCEDURES OUTSIDE THE DEPARTMENT

	Number of Officers	Percentage of Total
Yes	82	4
No	2,083	96
Total	2,165	100

TABLE 12

OFFICER SATISFACTION WITH PRESENT ASSIGNMENT

	Number of Officers	Percentage of Total
Very dissatisfied	245	11
Somewhat dissatisfied	262	12
Neither satisfied nor dissatisfied	149	7
Somewhat satisfied	670	31
Very satisfied	839	39
Total	2,165	100

TABLE 13

OFFICER SATISFACTION WITH OVERALL CAREER

	Number of Officers	Percentage of Total
Very dissatisfied	241	11
Somewhat dissatisfied	324	15
Neither satisfied nor dissatisfied	137	6
Somewhat satisfied	677	31
Very satisfied	786	37
Total	2,165	100

As an additional form of analysis, all personal background data were intercorrelated with experience data to provide more detailed descriptions of the sample. Specifically, these analyses were undertaken to determine if any type of officer was more likely to be involved in disciplinary situations, was more likely to suggest changes in written directives, or was more satisfied in his or her present career or overall assignment. All data were intercorrelated through cross-tabulations. Findings are presented below in three categories:

1. Personal background data (seniority, sex, race, education, rank, assignment) correlated with disciplinary experiences (filing of complaint, sustaining of complaint, types of complaints taken, and filing of appeal);
2. Personal background data (same as above) correlated with suggestions of changes in written directives;
3. Personal background data correlated with satisfaction in present assignment and overall career.

Tables 14-16 depict chi-square scores (X^2) for relationships significant at the $p = .05$ or greater. Degrees of freedom are also specified and denoted as (DF = ___). Significance levels are included and presented as ($p =$ ___). An asterisk (*) indicates that a significant value was obtained but findings were considered inconclusive due to small numbers of cases (N of less than 30). For this reason, caution must be used in generalizing results.

The principal finding in this analysis is that seniority, more than any other personal background variable, is related to receiving complaints and receiving some form of sanction for misconduct. As seniority increases, the numbers of

complaints received and sustained increases for sample officers. Also, older officers are more likely to receive formal oral reprimands, written reprimands, work days off in lieu of suspension and be suspended than are younger officers. These results are understandable since increases in seniority may be accompanied by increases in opportunities to engage in any form of misconduct or to be charged with an allegation.

An interesting finding is that for several of the correlations in disciplinary experiences (filing of complaint, sustaining of complaint, receiving written reprimand and working days off in lieu of suspension), reported incidents of discipline increase with experience until officers reach the over twelve-year category. This result implies that officers reach a specific plateau where incidence of discipline no longer increases with seniority. One reason for this finding may be that a large percentage of officers in the over twelve-year category are mid-level commanders, who are less likely to be charged with misconduct (an additional analysis not reported herein showed that commanders were more likely to have greater than twelve years of service than any other seniority category).

Other findings worthy of consideration are correlations between the following:

1. *Race and Disciplinary Experiences*—Generally, white officers received fewer allegations and disciplinary sanctions than either blacks or Mexican-Americans. Only for the category of working days off in lieu of suspension did white officers report a greater number of sanctions, and this difference may be explained by the relative difference in seniority between whites and blacks (black officers have less experience overall). This type of punishment is being phased out in many agencies; thus, those officers with greater experience may have had more occasion to receive such sanction. Another interesting finding concerns reported filing of appeals. While only a small percentage of both black and white officers reported an appeal, it was found that all Mexican-American officers in the sample had appealed a disciplinary action.

2. *Sex and Disciplinary Experiences*—Findings in this category are not fully conclusive due to the relatively small numbers of females in the sample (42). Female officers reported slightly fewer incidents of complaints and disciplinary sanctions. This result may be explained, however, by differences in seniority between males and females (greater numbers of female officers have been hired recently in most agencies studied).

TABLE 14

CORRELATIONS OF PERSONAL BACKGROUND CHARACTERISTICS AND DISCIPLINARY EXPERIENCES

	Seniority	Sex	Race	Education	Rank	Assignment
Filing of complaint	$X^2 = 146.87$ DF = 8 p = .0001	$X^2 = 18.22$ DF = 2 p = .0001	$X^2 = 31.90$ DF = 4 p = .0001	$X^2 = 31.82$ DF = 10 p = .0001	.....	.....
Sustaining of complaint	$X^2 = 109.89$ DF = 8 p = .0001	.....	.....	.....	.....	.....
Receiving formal oral reprimand	$X^2 = 30.09$ DF = 4 p = .0001	$X^2 = 308.21$ DF = 2 p = .0001*	$X^2 = 54.99$ DF = 2 p = .0001	.....	$X^2 = 14.10$ DF = 2 p = .001	.....
Receiving written reprimand	$X^2 = 43.61$ DF = 4 p = .0001	.....	.....	.....	.....	.....
Working days off in lieu of suspension	$X^2 = 82.99$ DF = 4 p = .0001	.....	$X^2 = 18.96$ DF = 2 p = .0001	.....	.....	.....
Receiving suspension	$X^2 = 78.96$ DF = 4 p = .0001	.....	$X^2 = 13.01$ DF = 2 p = .001	.....	.....	.....
Receiving demotion	$X^2 = 16.47$ DF = 4 p = .0001*	.....	$X^2 = 14.80$ DF = 2 p = .0001*	.....	.....	.....
Dismissed and reinstated	$X^2 = 9.46$ DF = 4 p = .0001*	.....	.....	$X^2 = 13.07$ DF = 5 p = .0001*	.....	.....
No sanctions	.....	$X^2 = 703.63$ DF = 2 p = .0001	$X^2 = 400.54$ DF = 2 p = .0001	.....	.....	.....
Filing appeals outside department	$X^2 = 47.12$ DF = 4 p = .0001	.....	$X^2 = 1066.50$ DF = 2 p = .0001	.....	$X^2 = 13.62$ DF = 2 p = .009	.....

TABLE 15

CORRELATIONS OF PERSONAL BACKGROUND CHARACTERISTICS WITH SUGGESTIONS OF CHANGES IN WRITTEN DIRECTIVES

Seniority	Sex	Race	Education	Rank	Assignment
$X^2 = 111.88$ DF = 4 P = .0001	$X^2 = 3.97$ DF = 1 P = .05	$X^2 = 14.79$ DF = 2 P = .001	$X^2 = 27.19$ DF = 5 P = .0001	$X^2 = 252.91$ DF = 2 P = .0001	$X^2 = 125.81$ DF = 2 P = .0001

TABLE 16

CORRELATIONS OF PERSONAL BACKGROUND DATA WITH REPORTED SATISFACTION

	Seniority	Sex	Race	Education	Rank	Assignment
SP*	$X^2 = 67.92$ DF = 16 P = .0003	....	$X^2 = 31.53$ DF = 8 P = .0001	....	$X^2 = 27.58$ DF = 8 P = .0009	$X^2 = 35.00$ DF = 8 P = .0001
SC**	$X^2 = 45.87$ DF = 16 P = .002	....	....	....	$X^2 = 45.25$ DF = 8 P = .0001	$X^2 = 20.23$ DF = 8 P = .009

*Satisfaction in present assignment.
**Satisfaction in overall career.

3. *Education and Disciplinary Experiences*—Overall, an increase in educational attainment is accompanied by increases in the likelihood of receiving formal complaints, although one interesting exception to this pattern was noted. The corresponding increases in complaints occurred in all categories except that which included college graduates (B.A. degree). This finding implies that such officers are less likely to receive complaints.
4. *Rank and Disciplinary Experiences*—Very little relationship is noted between rank and disciplinary experience. One of only two significant findings (a relationship of rank to receipt of formal oral reprimand) indicates that higher ranking officers may be less inclined to receive such a sanction. The other finding (filing of appeals) shows that the higher the rank, the less likelihood of filing such an appeal.

All personal background characteristics are related to suggesting changes in written directives as follows:

1. *Seniority and Suggesting Changes*—There is a definite relationship between these factors showing that more senior officers are more inclined to suggest changes.
2. *Sex and Suggesting Changes*—Correlations show that male officers are more likely to suggest changes than female officers (most likely due to greater experience).
3. *Race and Suggesting Changes*—White officers in this sample are more apt to suggest changes in written directives than either black or Mexican-American officers. Differences in seniority and rank between these races may influence this result.
4. *Education and Suggesting Changes*—This correlation shows that the tendency to suggest change increases with greater levels of education. More officers who had received a B.A. degree reported that they had made suggestions than any other educational category.
5. *Rank and Suggesting Changes*—There is a marked increase in the amount of suggested changes with increases in rank.
6. *Assignment and Suggesting Changes*—The only difference in this category is with officers assigned to administrative positions. A much higher percentage of these officers reported making suggestions than either field operations personnel or investigative personnel. Similar percentages were reported by officers assigned to these two positions.

Significant findings are examined below for relationships between reported satisfaction and each personal background characteristic:

1. *Seniority and Satisfaction*—These correlations demonstrate that officer satisfaction, in assignment and overall career, increases with seniority. One exception was found in these results. Satisfaction increases for officers with less than one year of experience, over one year but less than three years of experience, 5-12 years of experience, and for officers with over 12 years of service. However, this pattern of increasing satisfaction does not occur with officers of over three years but not greater than five years of service. This finding is consistent with inter-

view findings indicating that officers in this category often become most disgruntled with management practices.

2. *Race and Satisfaction*—Data analysis showed that white officers are slightly more satisfied in their assignments than black officers, and appreciably more satisfied than Mexican-American officers.
3. *Rank and Satisfaction*—Data correlations indicate that commanding officers are more satisfied than either supervisors or patrol officers, in both their present assignments and overall careers. There is a slight tendency for satisfaction to increase with promotions in rank.
4. *Assignment and Satisfaction*—Investigative personnel are somewhat more satisfied in present assignment than both patrol officers and administrative officers. Personnel in these two assignments expressed similar degrees of satisfaction with their assignments. Concerning satisfaction with career, administrative personnel and investigative officers responded similarly showing greater satisfaction than patrol officers.

ATTITUDINAL SCALES AND INDICES

Attitudinal scales and indices were constructed to reduce the number of study variables to manageable size. This process of combining common items made possible measurements of officer perceptions of several aspects of the discipline process. The scales to be discussed in this analysis are: perceived understanding of disciplinary procedures, perceptions of supervisory behavior, perceptions of agency standards of conduct, perceptions of fairness of internal review procedures, and perceptions of management techniques of making known expectations of conduct and procedures. Scales are used in this analysis to measure a concept (perceptions of management practices) and draw inferences concerning the ordering of sample departments with respect to these perceptions. Through use of scales, it is also possible to test the relationship between a set of perceptions and specific demographic criteria (e.g., perceptions of internal review procedures as related to officer rank). Such relationships are tested in this analysis.

The index is a less precise form of measurement which is used in this analysis to obtain a more comprehensive understanding of additional officer perceptions. Selected groups of questions, which intuitively were thought to

measure like factors, were treated as indices rather than scales due to either the lack of internal consistency in questions or the small number of questions actually measuring the specific perception. Although definitive mathematical conclusions cannot be drawn by analyzing these indices, it is possible to derive more meaning from the data using this form of analysis. Three indices will be discussed in this section: perceived officer awareness of citizen complaint procedures, perceptions of the fairness of citizen complaint procedures, and perceptions of the fairness of nondepartmental appeal procedures. In addition, officer perceptions of rules of conduct, as written and as enforced, are reported in this analysis. These data are not treated as scales or indices, but are analyzed in ranked categories of most fair and reasonable rules to least fair and reasonable rules.

Coded alphabetical references for participating agencies will be used throughout this analysis for purposes of anonymity. The codes A through P represent sixteen departments participating in questionnaire administration.

Scales

Each of the five scales and accompanying analyses are presented below in the following order. The scales are described with questionnaire items presented, factor loadings are depicted demonstrating the relationship of questions to the scale, and the median, mode and number of actual responses (N) to the scale are provided. The reliability of the scale is then discussed to indicate internal consistency. Median scores for sample departments are then presented in graph form. These data are then analyzed by groups of agencies—the top four departments (receiving highest scores on the scale) and the lowest four departments (receiving lowest scores) are then compared by use of the chi-square test to examine differences in the two groups. A description of these differences then follows to identify management practices eliciting more favorable employee perceptions.

Scale 1: Perceived Understanding of Disciplinary Procedures. This scale consists of seven items derived from the questionnaire. The items measure perceived understanding of several aspects of the discipline process, including the citizen complaint procedure, the internal review procedure, and the procedure for appeals outside the department (see table 17). The items were selected as a result of heavy loadings on the first factor obtained from the factor analysis of thirty-eight questions. An item measuring perceptions of fairness in internal review was included due to a high factor loading.

TABLE 17

SCALE 1 – ITEM ANALYSIS

Item No.	Item	Factor Loading	Median	Mode	N
33	I have a good understanding of the process used for internal review of disciplinary actions	.805	3.04	2.00	2,151
22	I have a good understanding of the procedures used to investigate citizen complaints	.785	2.42	2.00	2,155
31	I have a good understanding of the responsibilities of the unit for internal investigations	.769	2.68	2.00	2,144
19	I have a good understanding of the procedures used to record citizen complaints	.769	2.35	2.00	2,155
38	I have a good understanding of appeal procedures outside this department	.754	2.89	2.00	2,152
18	I have a good understanding of my right to appeal disciplinary actions outside of this department	.714	2.72	2.00	2,154
34	I feel an officer can get a fair shake through internal review procedures	.448	2.81	2.00	2,151
	Total scale	....	2.38	2.00	2,127

Reliability. The coefficient alpha for this scale is .883 indicating strong internal consistency among items.

Chi-square test. The four agencies in which highest median scores were obtained (Depts. L, J, P and A) are defined as group 1 and compared with the four agencies in which lowest median scores resulted (Depts. F, K, B and I), which are defined as group 2. Through use of the chi-square test of independent

samples, it was possible to test if there was a significant difference between these two groups. A variation of the chi-square test, the Brandt-Snedecor test, was used for this analysis since the data were arranged into a 2 x 5 table (two samples and five categories of agreement). The number of officers in each group and their responses are reflected in table 18 below.

TABLE 18

TEST OF INDEPENDENCE OF GROUPS 1 AND 2 FOR SCALE 1

Attitude	Group 1	Group 2	a + b	$\bar{p} = \frac{a}{a+b}$	$ap = \frac{a^2}{a+b}$
Strongly agree	90	56	146	.6164383	55.47945
Agree	322	210	532	.6018691	194.89474
Uncertain	140	263	403	.3473945	48.63524
Disagree	26	99	125	.2086000	5.40800
Strongly disagree	3	8	11	.2727272	.81816
Total	581	636	1217	.4774034	305.23559

$$X^2 = \frac{\Sigma (a\bar{p}) = Na\,\bar{p}}{\bar{p}\,\bar{q}}$$

$$X^2 = \frac{305.23559 - 277.37114}{.249489}$$

$$X^2 = \frac{27.864450}{.249489}$$

$X^2 = 111.69$

DF = 4

p = .001

Group 1 ≠ Group 2

Interpretation of results. The analysis for this scale indicates that approximately 50 percent of sample officers report a basic understanding of disciplinary procedures, but do not express full comprehension of these regulations. This conclusion is supported by the median scores for scale items, which range from 2.50 to 3.00 (figure 1). Since the median is equivalent to the 50th percentile, it can be inferred that close to 50 percent of the sample indicated either uncertainty or lack of understanding of these procedures. This conclusion is also supported by field interviews in which many officers stated that they did not learn how the disciplinary process works unless they were charged with misconduct.

The analysis also shows that there is a significant difference in perceived officer understanding of disciplinary procedures between the top four agencies and the lowest four agencies. To understand why this difference exists, it is necessary to review management practices in these departments to identify procedures or actions which may lead to better understanding in group 1, and practices which are not conducive to good understanding in group 2. This was accomplished by reviewing administrative analysis material. The following results were obtained.

The primary difference between these groups appears to be accurate delineation of and instruction in disciplinary procedures in group 1, and outdated and in some cases missing directives in group 2. The responsibilities of the internal affairs unit and the workings of the citizen complaint procedure are specifically documented in a much clearer and comprehensive manner in those departments in group 1, as opposed to those in group 2. The written directive systems of agencies in group 1 are by far superior to those in group 2; two agencies in group 2 (Depts. F and L) still operate from general order manuals which were published in 1965 and 1961 respectively and have not been updated since. Those agencies receiving the highest scores all make use of recent manuals of directives and have updated directives as needed. Department A, in particular, employs a system of reviewing every directive at least once each year to ensure that it is current.

Training also seemed to differ significantly between these two groups, specifically training in rules of conduct and disciplinary procedures. Whereas every agency in group 1 includes at least ten hours of training on rules and procedures in their recruit program, those agencies in group 2 did not cover these procedures in such depth. And, the internal affairs function and the citizen complaint process in these four agencies is not covered at all. This lack of training appears significant in two of the lower four agencies (B and I), since in 1974 new directives were promulgated explaining the citizen complaint process, but these procedures were never explained (in either recruit or in-service training) to officers.

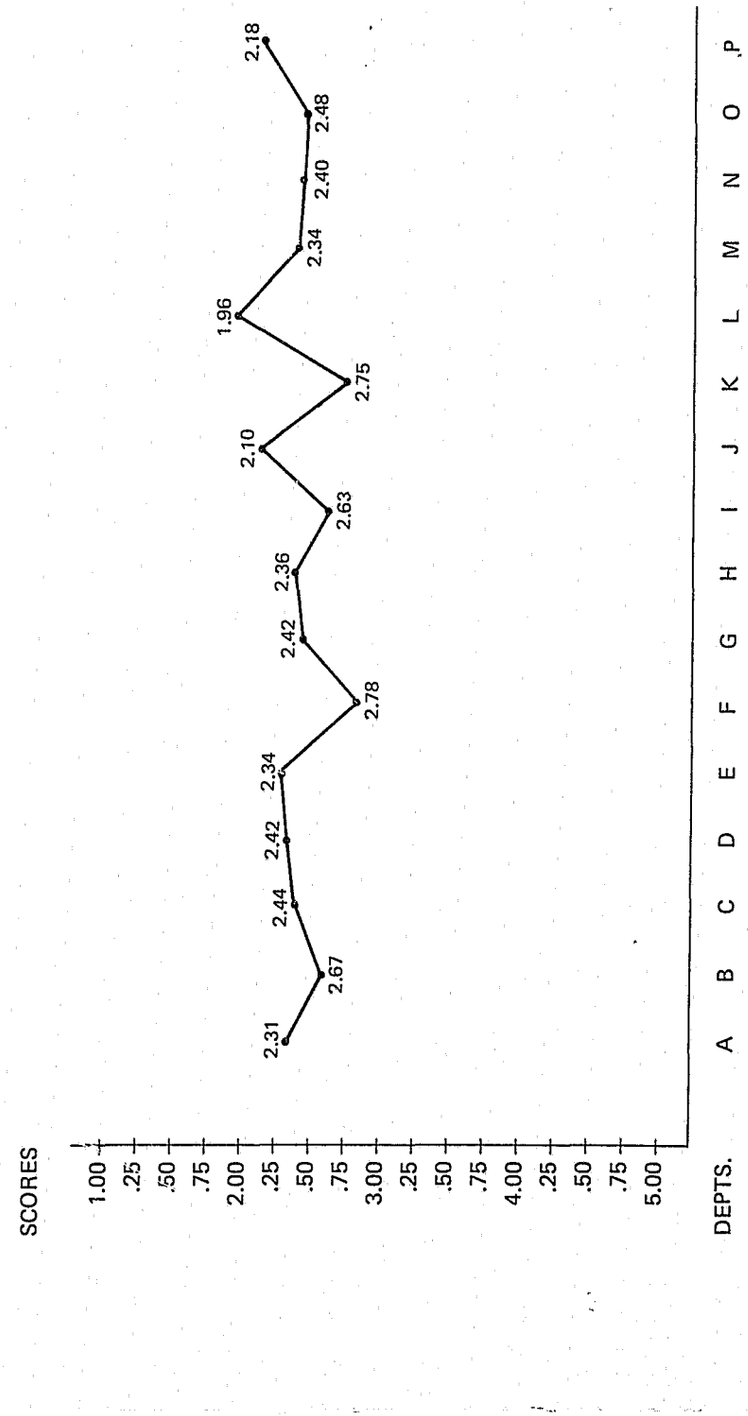

Fig. 1. Median scores for Scale 1 for sixteen departments

These impressions, while based on data collected by IACP consultants during relatively brief field visits, do provide clear indications that officer understanding of the disciplinary process may be improved through clearly and concisely stated directives, and that understanding will also be maximized by sufficient coverage of these procedures in training programs. These conclusions, together with the test score results discussed above, serve to support the proposition that "a greater degree of clarity and definition in written procedures for discipline will produce a greater degree of understanding of disciplinary procedures."

TABLE 19

SCALE 2 – ITEM ANALYSIS

Item No.	Item	Factor Loading	Median	Mode	N
26	Present supervisor is fair in determining facts in regard to misconduct.	.754	2.02	2.00	2,139
27	Present supervisor does not show favoritism in determining facts regarding misconduct	.749	2.14	2.00	2,141
8	Present supervisor does a good job when explaining new directives	.733	2.57	2.00	2,158
7	Present supervisor is consistent in enforcing written directives.	.708	2.13	2.00	2,156
28	Present supervisor uses counseling and retraining to deal with misconduct	.643	2.79	2.00	2,141
17	When new or revised directives are issued, present supervisor explains them satisfactorily.	.639	2.33	2.00	2,148
9	Officers feel free to suggest changes in written directives.	.310	2.57	2.00	2,158
	Total scale	....	2.09	2.00	2,118

Scale 2: Perceptions of Supervisory Behavior. This scale, constructed from the second factor derived from the factor analysis procedure, consists of seven items addressing a variety of supervisory actions (see table 19). These items

ascertain officer perceptions of actions in discipline, such as determining facts in investigations and tendency to use counseling rather than punishment, as well as overall management functions (e.g., explaining changes in directives). One item, included after factor analysis, measures officer perceptions of the climate to suggest changes in written directives. Answers to this question may possibly pertain to mid-management personnel, as well as supervisors.

Reliability. A coefficient alpha of .810 was calculated for this scale indicating strong internal consistency among all items.

Chi-square test. The Brandt-Snedecor test of independent samples was used to test for significant differences between group 1 consisting of the four departments receiving highest median scores on this scale (Depts. P, D, L and N) and group 2 made up of the four agencies in which lowest scores were obtained (Depts. C, F, K and G). The actual numbers of scores for each group are presented in table 20 below:

TABLE 20

TEST OF INDEPENDENCE OF GROUPS 1 AND 2 FOR SCALE 2

Attitude	Group 1	Group 2	a + b	$\bar{p} = \frac{a}{a+b}$	$\bar{ap} = \frac{a^2}{a+b}$
Strongly agree. . . .	174	62	236	.7372881	128.28813
Agree	393	281	674	.5830860	229.15281
Uncertain.	78	148	226	.3451327	26.92035
Disagree.	10	20	30	.3333333	3.33333
Strongly disagree. .	1	3	4	.2500008	.25000
Total.	656	514	1170	.5602049	387.94462

$$X^2 = \frac{\Sigma(a\bar{p}) = Na\,\bar{p}}{\bar{p}\,\bar{q}}$$

$$X^2 = \frac{387.94462 - 367.49441}{.2463753}$$

$$X^2 = \frac{20.45021}{.2463753}$$

$$X^2 = 83.90$$

$$p = .001$$

Group 1 ≠ Group 2

Interpretation of results. Through scale analysis of officer perceptions of supervisory behavior, it is possible to draw conclusions concerning perceived quality in discipline related supervisory functions. As can be seen from the profile of department medians in figure 2, most all officers sampled elicited favorable opinions of their supervisors. Obtained medians of 1.86 to 2.37 indicate that an overwhelming majority of officers agree with measured supervisory practices. This result was not anticipated by IACP field researchers in light of many disparaging comments received about supervisors through field interviews. In several departments, line personnel stated that supervisors were inconsistent in administering discipline, did not fully comprehend their supervisory responsibilities in discipline in many cases, and did not do an adequate job when explaining new or revised policies or procedures. The fact that these opinions were not reflected in the data analysis is, therefore, somewhat startling. Two reasons for this difference were identified by IACP staff:

1. Officers do not view the first-line supervisor as an integral part of the management team, but instead perceive the supervisor as a member of the work force, similar to a foreman in private industry, and therefore may be reluctant to critically analyze his or her performance;
2. Officers were hesitant to reveal negative sentiments about their "present supervisor" for fear of reprisals (this feeling may have prevailed despite continuing IACP assurances that the questionnaire was completely anonymous and would not be viewed by anyone in the organization. The best possible interpretation is that a combination of these factors, as well as other differences, influenced these scores. The impact of these influences is reviewed further in analyzing differences between group 1 and group 2.

The chi-square test shows a significant difference between group 1 and group 2. The administrative analysis instrument was reviewed to identify possible reasons for this result. It is difficult to arrive at striking differences between these two groups. However, some noteworthy observations should be mentioned.

The major reason for divergent scores is varying levels of codified authority for discipline between groups 1 and 2. Whereas three of the four agencies in group 1 (Depts. D, L, and P) confer disciplinary authority on the supervisor for imposing at the minimum formal oral reprimands (and in two agencies written reprimands), there is little authority for discipline by supervisors in group 2 agencies. In two of these departments (Depts. F and K), collective

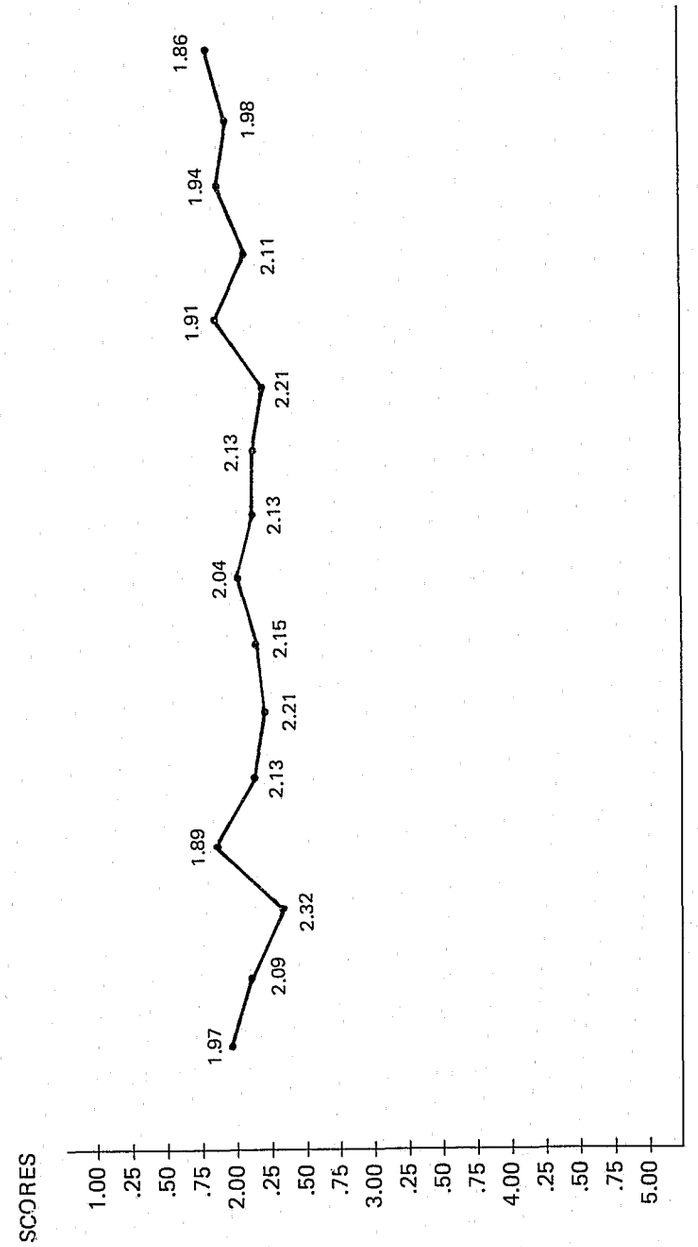

Fig. 2. Median scores for Scale 2 for sixteen departments

bargaining contracts restrain supervisors from taking immediate disciplinary action. The supervisor must document all incidents in these agencies, and receive permission from mid-management before imposing any type of sanction. Also, in Department C, the agency receiving lowest scores on this measure, patrol officers complained vociferously about inconsistency in supervisory disciplinary actions. (When answering question 7, 62 percent of sampled officers expressed agreement with the statement that supervisors were consistent in enforcing written directives. This result is 11 percent lower than the average for 16 departments surveyed.) In researching reasons for this finding, it was found that disciplinary authority is poorly documented in this agency and also that there is a conflict in authority for investigations. (Whereas the investigative function is omitted in one rule delineating supervisor responsibilities, it is stated in another rule covering citizens complaints that "supervisors shall receive and investigate complaints of misconduct." This conflict certainly may lead to officer confusion.)

Another possible difference explaining scores is amounts of supervisory training. While such training was generally unsatisfactory in most agencies, it was observed that in two of the top four departments (Depts. L and P) first-line supervisors receive greater amounts of required training in management techniques than do supervisors in other agencies. Further, these two agencies had recently instituted in-service training for supervisors to clarify the supervisory role.

Finally, it was noted that in the top four agencies, supervisors tended to do a better job in roll call instruction, and were thought to be closer to subordinates, thus maximizing opportunities to explain policies and procedures.

This analysis demonstrates that greater clarity in explaining the supervisory role through written directives is related to higher perceptions of supervisors by employees. Also, greater supervisory competence in explaining rules and procedures is significant in obtaining such results. These findings support the proposition (P_2) that a "greater degree of codified responsibility and training in supervisory disciplinary functions will produce a greater amount of positive response to supervisory behavior."

Scale 3: Perceptions of Standards of Conduct. The third scale obtained from the factor analysis contained high loadings on items measuring perceptions of agency standards of conduct. Four items were included in this scale (see table 21), measuring desired standards of conduct for officers as opposed to civilian employees and the public at large, and also ascertaining officer opinions of the rule on conduct unbecoming as a standard to be used for proper behavior.

TABLE 21

SCALE 3 – ITEM ANALYSIS

Item No.	Item	Factor Loading	Median	Mode	N
10	Officers should be held to a higher standard of conduct than civilian employees.	.859	2.16	2.00	2,160
11	Officers should be held to a higher standard of conduct than the public at large.	.834	1.94	2.00	2,160
15	The rule on conduct unbecoming should be included in written directives.	.318	2.07	2.00	2,148
12	Citizens expect officers to be held to a higher standard of conduct than the public at large	.180	1.82	2.00	2,150
	Total score.	. . . .	1.86	2.00	2,144

Reliability. A coefficient alpha of .682 was obtained for this scale indicating moderately strong internal consistency among the four items.

Chi-square test. The Brandt-Snedecor test (see table 22 below) was used for this scale to test for independence in scores between group 1 (Depts. P, M, D, and B) and group 2 (Depts. A, C, G and K).

TABLE 22

TEST OF INDEPENDENCE OF GROUPS 1 AND 2 FOR SCALE 3

Attitude	Group 1	Group 2	a + b	$\bar{p} = \frac{a}{a+b}$	$ap = \frac{a^2}{a+b}$
Strongly agree. . . .	253	104	357	.7086834	179.29691
Agree	291	224	515	.5650485	164.42912
Uncertain.	53	96	149	.3557046	18.85234
Disagree.	5	17	22	.2272727	1.13636
Strongly disagree. .	0	2	2	.0000000	.00000
Total.	602	443	1,045	.5760765	363.71473

$$X^2 = \frac{\Sigma (a\overline{p}) = N a\overline{p}}{\overline{p}\,\overline{q}}$$

$$X^2 = \frac{363.71473 - 346.79805}{.2442123}$$

$$X^2 = \frac{16.91668}{.2442123}$$

$$X^2 = 69.87$$

$$DF = 4$$

$$p = .001$$

Group 1 ≠ Group 2

Interpretation of results. Overall conclusions, derived from this scale analysis, indicate that officers are in favor of higher standards of conduct for police officers as opposed to civilian employees in their department, and to the public at large. Not one item in the scale received a median lower than 2.13 (figure 3), indicating many officers strongly agree with existing standards of conduct. Also significant is that sample officers strongly feel the need for a rule on conduct unbecoming.

The chi-square results show a significant difference between group 1 and group 2. The proposition tested in this research was that "a greater degree of clarity and thoroughness of instructions in departmental standards will produce a greater amount of positive response to prescribed standards of conduct." Data from the administrative analysis was researched to find possible reasons for the significant difference in groups. It was not found that agencies in group 1 defined standards on the whole any better than agencies in group 2. In fact, one department in group 1 (Dept. D) was still operating under an obsolete manual of conduct and procedures, and two agencies in group 2 (Depts. A and G) adequately defined standards of conduct in rules and regulations.

The difference in these two groups seems to be caused more by internal conflict and employer-employee relationships rather than any definitive management practice in defining expectations. In all four of the agencies in group 2, this conflict was noticeable; in one department (Dept. K) the employee organization had considerably strained the labor-management relationship. In contrast, there seemed to be less tension of this type in the top four agencies. As a result of this finding, proposition P_3 as stated above can only be labelled inconclusive in that no significant reason for differences was obtained in this research.

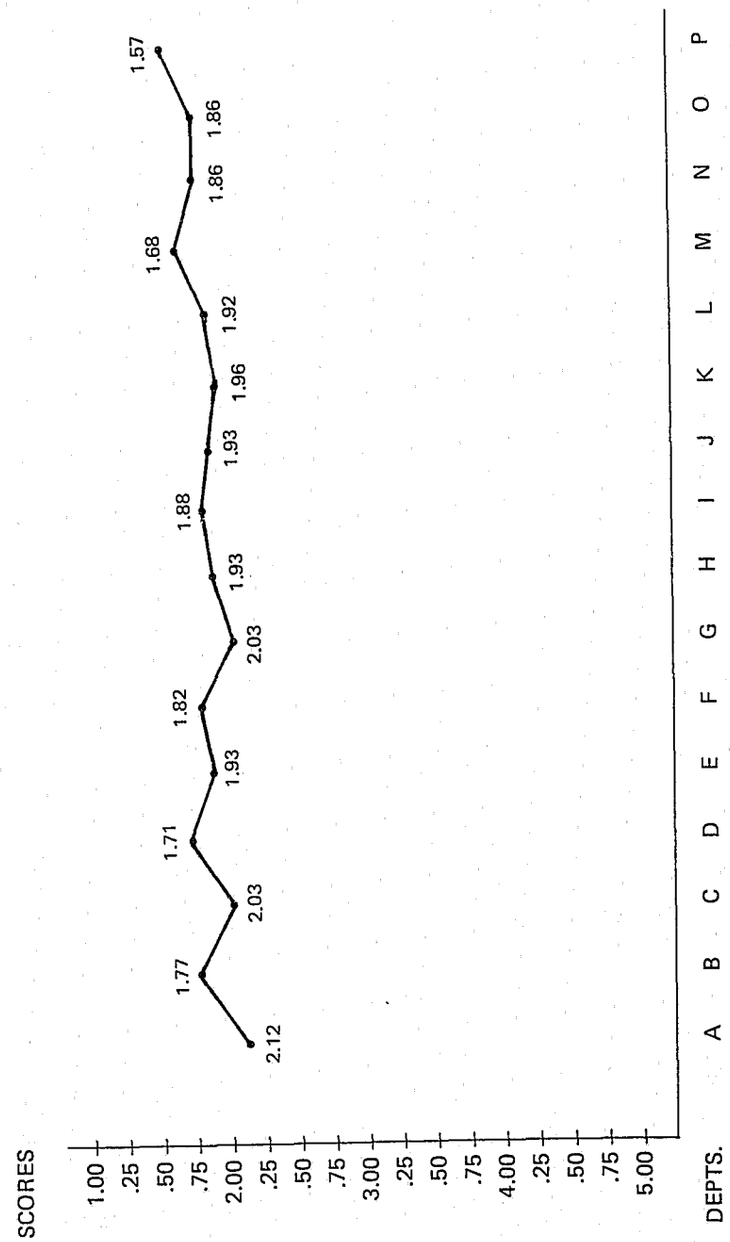

Fig. 3. Median scores for Scale 3 for sixteen departments

Scale 4: Perceived Fairness of Disciplinary Review Procedures. The fourth scale presented in table 23 measures officer perceptions of review procedures, both internal and external to the department, to determine a perceived level of consistency and to assess officer confidence in these procedures. This scale contains seven items and was constructed from the fifth factor obtained from the factor analysis. A question is also included measuring officer opinions of the length of time it takes to complete the review process and initiate some form of action.

TABLE 23

SCALE 4 – ITEM ANALYSIS

Item No.	Item	Factor Loading	Median	Mode	N
43	I feel government officials do not show favoritism in reviewing disciplinary actions	.788	3.30	3.00	2,137
42	I feel that government officials review disciplinary actions fairly	.756	3.27	3.00	2,135
41	I feel that disciplinary actions are reviewed fairly through department disciplinary procedures	.566	2.93	3.00	2,137
35	I feel that the review process works consistently for officers of any rank	.530	3.42	3.00	2,150
34	I feel that an officer can get a "fair shake" through departmental disciplinary procedures	.494	2.81	3.00	2,151
44	I feel disciplinary actions are taken within a reasonable amount of time	.426	2.46	2.00	2,138
29	The chief of police usually follows staff recommendations before taking disciplinary action	.387	2.79	3.00	2,136
	Total scores	....	2.96	3.00	2,106

Reliability. This scale contains items showing strong internal consistency, as indicated by the coefficient alpha of .788.

Chi-square test. A chi-square test (the Brandt-Snedecor test of independent samples) was used to measure the difference between group 1 (consisting of Depts. P, L, E and D) and group 2 (consisting of Depts. K, I, B and F). The results of this test are reflected in table 24 below.

TABLE 24

TEST OF INDEPENDENCE OF GROUPS 1 AND 2 FOR SCALE 4

Attitude	Group 1	Group 2	a + b	$\bar{p} = \frac{a}{a+b}$	$\bar{ap} = \frac{a^2}{a+b}$
Strongly agree	26	8	34	.7647058	19.882352
Agree	370	162	532	.6954887	257.33082
Uncertain	275	341	616	.4464285	122.76786
Disagree	30	110	140	.2142857	6.42857
Strongly disagree	0	8	8	.0000000	.00000
Total	701	629	1,330	.5270676	406.40960

$$X^2 = \frac{\Sigma (a\bar{p}) - N a\bar{p}}{\bar{p}\,\bar{q}}$$

$$X^2 = \frac{406.40960 - 369.47439}{.2492670}$$

$$X^2 = \frac{36.935210}{.2492670}$$

$$X^2 = 146.18$$

$$DF = 4$$

$$p = .001$$

$$\text{Group 1} \neq \text{Group 2}$$

Interpretation of results. This set of measures demonstrates that officers in sixteen agencies do not place much confidence in existing review procedures. The median scores ranging from 2.46 to 3.42 (figure 4) indicate that a majority of officers are uncertain about the fairness of these procedures. This finding

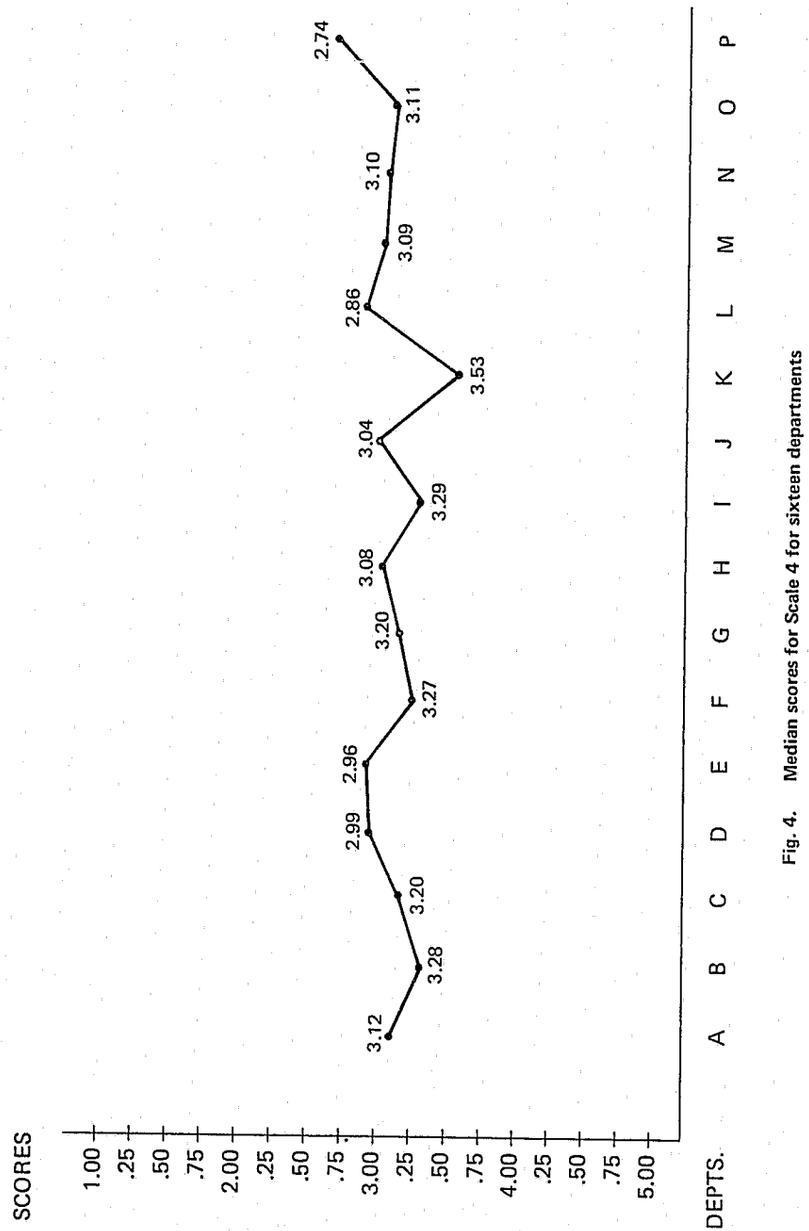

Fig. 4. Median scores for Scale 4 for sixteen departments

applies to both internal and external review procedures and occurs, most likely, because many officers have not been involved in the discipline process. From interviews it was ascertained that officers who had not been involved in discipline formed their perceptions largely on heresay, and that such reports generally publicize incidents in which the accused officer has allegedly received "a bad deal." The implications from this finding and additional analyses are significant. Officers who do receive disciplinary sanctions have a tendency to view this process negatively (as reported on page 259). Many other officers are uncertain about procedures because they have not been exposed to them, and yet may conclude that review mechanisms are unfair due to rumors, one-sided reports, or exaggerated analyses of incidents. Certainly, it is only natural that an officer who has been exposed to disciplinary sanctions may perceive the process negatively. However, internal procedures should be designed as fair and consistent to achieve perceptions of confidence from those officers who have committed an offense and may not deserve a punishment, as well as officers who are exonerated for allegedly violating an internal rule or regulation.

The chi-square analysis gives ample evidence that there is a significant difference between agencies in groups 1 and 2. A primary reason for this difference is officer participation in the internal review process. Each of the four agencies in group 1 includes peer representation in its internal review board, while only one of the departments in group 2 has such provision (in this agency, Dept. I, many officers did not have confidence in the review board; interviews indicated that patrol representatives on the hearing board often are intimidated by higher ranking officers thus negating any positive results of peer input). The peer review process appeared to function quite effectively in group 1 agencies indicating that by instituting such policy management may realize increased employee confidence in discipline.

Another reason for more positive perceptions is more clearly codified disciplinary authority. In the top four agencies, commanders and supervisors generally are given greater authority for taking action, and in three of the four agencies (Depts. E, L and P) this authority is stated clearly and concisely in department directives. Authority for discipline is less clear in the four agencies in group 2; in only one agency (Dept. B) was the authority of commanders and supervisors articulated in directives. Union involvement in discipline, in the form of challenging management decisions, seems to be a factor affecting employee confidence in Departments F and K.

Finally, officers in group 1 agencies responded much more favorably to question 44 ("I feel disciplinary actions are taken within a reasonable amount of time") than did officers in group 2 departments. Research shows that in the top four departments time limits are imposed on internal investigations, and

enforced by the unit for internal affairs in Depts. E, L, and P. Agencies in group 2 seemed to include less formal requirements in the disciplinary process. This procedure, like those above, is conducive to realizing more positive perceptions of officers.

These findings support the proposition (P_4) that "a greater degree of knowledge of and participation in decision-making procedures for internal discipline will produce a greater sense of officer confidence in agency review procedures."

TABLE 25

SCALE 5 – ITEM ANALYSIS

Item No.	Item	Factor Loading	Median	Mode	N
6	Written directives generally are stated so that I can understand them	.783	2.05	2.00	2,161
16	Written directives are stated so that I have a good understanding of what is expected of me at all times	.718	2.17	2.00	2,150
14	My recruit training gave me a working knowledge of written directives	.459	2.48	2.00	2,145
12	Citizens in this community expect officers to be held to a higher standard of conduct than the public at large	.380	1.82	2.00	2,150
44	Disciplinary actions are taken within a reasonable amount of time	.262	2.46	2.00	2,138
29	The chief of police usually follows staff recommendations before taking disciplinary action	.200	2.79	3.00	2,136
9	Officers feel free to suggest changes in written directives	.174	2.57	2.00	2,158
	Total score	....	2.09	2.00	2,099

Scale 5: Perceptions of Management Methods of Making Known Rules and Procedures. The fifth scale, constructed from the sixth factor in the factor analysis output, measures officer perceptions of the methods of making known rules of conduct and disciplinary procedures. Seven items are contained in this scale. In addition to measuring perceptions of quality of written directives and training programs, the scale assesses management practices in making known policies on time limits for disciplinary decisions and involvement of the chief executive in review procedures (see table 25).

Reliability. A coefficient alpha of .662 was calculated for this scale indicating moderately strong consistency among items.

Chi-square test. The Brandt-Snedecor test was used, as with previous scales, to test for independence between agencies in group 1 (Depts. L, P, B and E) and those in group 2 (Depts. I, D, K and F). This analysis, and accompanying results, are presented in table 26.

TABLE 26

TEST OF INDEPENDENCE OF GROUPS 1 AND 2 FOR SCALE 5

Attitude	Group 1	Group 2	a + b	$\frac{a}{\bar{p} = a + b}$	$\frac{a^2}{\bar{ap} = a + b}$
Strongly agree	112	37	149	.7516778	84.18741
Agree	546	334	880	.6204545	338.76818
Uncertain	73	204	277	.2635379	19.23827
Disagree	1	16	17	.0588235	.05882
Strongly disagree	0	0	0	.0000000	.00000
Total	732	591	1,323	.5532879	442.25317

$$X^2 = \frac{\Sigma (a\bar{p}) - N a\bar{p}}{\bar{p}\,\bar{q}}$$

$$X^2 = \frac{442.25317 - 405.00674}{.2471603}$$

$$X^2 = \frac{37.24643}{.2471603}$$

$X^2 = 150.70$

DF = 4

p = .001

Group 1 ≠ Group 2

Interpretation of results. The analysis of scale results indicates that most officers perceive management methods of making known rules and procedures as satisfactory. The median scores for all items (ranging from 1.82 to 2.79) confirm this result (see figure 5). Written directives, in particular, are thought to provide an understanding of what is expected. Training programs are perceived as adequate. However, in checking administrative analysis data, it is obvious that more attention should be given in training to discussions of rules of conduct and disciplinary procedures. Also noteworthy is the finding that many officers are uncertain about the amount of time taken for disciplinary decisions (median = 2.46) and the action of the chief of police in internal review (median = 2.79).

The significant difference between group 1 and group 2 can perhaps best be explained by reviewing departmental directive systems. Agencies in group 1 utilize comprehensive directive systems including sections on rules of conduct. In three of the four departments included in group 2 (Depts. F, K and D), directive systems had not been revised for 9, 14 and 13 years respectively. Directives in many instances were not well indexed in these agencies and generally were not used as authoritative documents to publicize expectations.

Training also appears to be a reason for this difference. All departments in group 1 have longer training programs than those in group 2, and in all cases rules and regulations were discussed in greater detail in the first, as opposed to the second group.

Finally, three of the four agencies in group 1 (Depts. L, P and E) implemented workable programs for seeking employee input in the directive system. Only one of the agencies in group 2 used such a system (Dept. D).

These findings support proposition (P_5) that "a greater degree of clarity and thoroughness in methods of making known rules and procedures will produce a greater degree of positive perceptions of these methods."

Indices

The three indices were constructed from the attitudinal questionnaire to facilitate further analyses of officer perceptions of specific management practices. These measures, when compared with administrative analysis data, provide

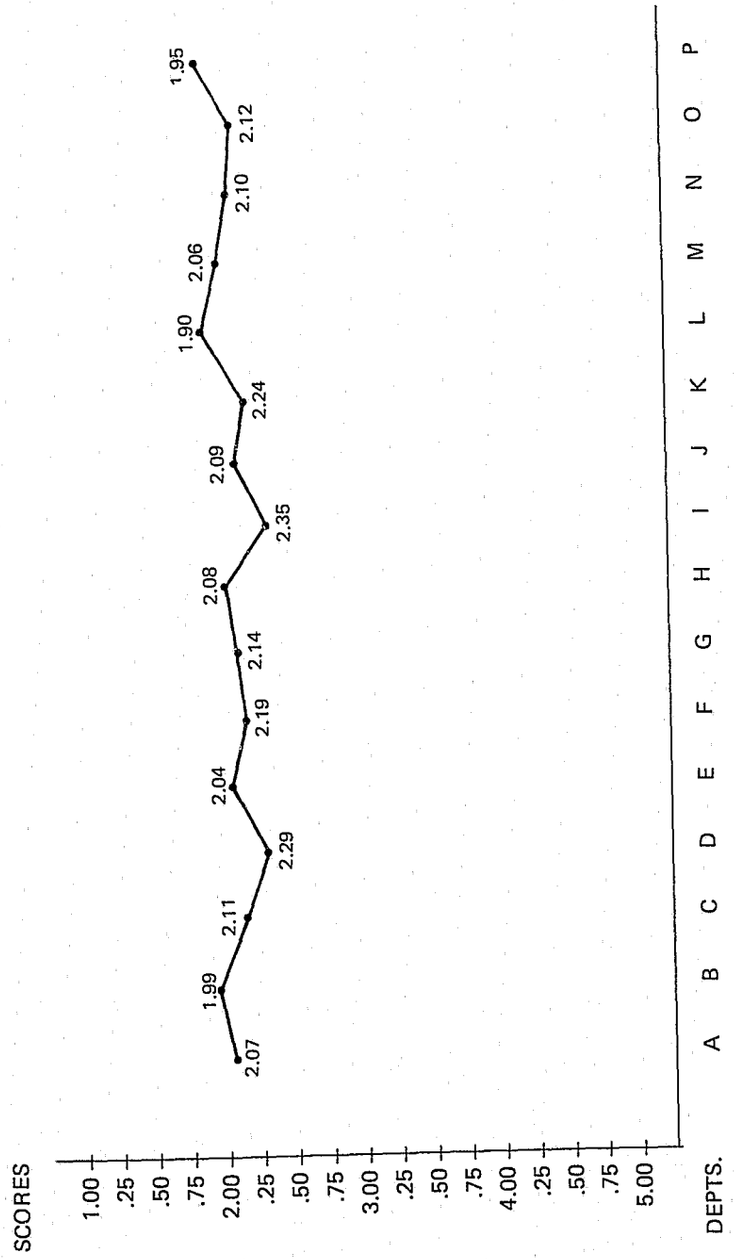

Fig. 5. Median scores for Scale 5 for sixteen departments

invaluable insight into the quality of disciplinary practices in sixteen agencies. Because these measures have been combined intuitively and do meet the criteria of scales, only preliminary data are presented in the following. Median scores, as well as the mode for sample agencies are included. No test of independence between agencies is used with this form of measurement. The three indices are:

1. perceived knowledge of citizen complaint procedures
2. perceived fairness of citizen complaint procedures
3. perceived fairness of nondepartmental appeal procedures

Agency scores for these indices are presented below in table 27. Following the table, index scores are reviewed to identify possible reasons for scores.

TABLE 27

AGENCY SCORES FOR INDICES 1-3

AGENCY	INDEX 1		INDEX 2		INDEX 3	
	Median	Mode	Median	Mode	Median	Mode
A	3.02	3.00	3.75	4.00	3.12	3.00
B	1.57	1.00	3.94	5.00	2.92	3.00
C	1.88	2.00	3.21	3.00	3.01	3.00
D	2.58	3.00	3.49	4.00	2.85	3.00
E	2.08	2.00	3.30	4.00	2.73	3.00
F	2.82	3.00	2.28	2.00	2.37	2.00
G	2.13	2.00	3.55	4.00	2.70	3.00
H	2.24	2.00	3.48	4.00	3.00	3.00
I.	2.81	3.00	3.83	4.00	2.56	3.00
J	2.60	2.00	3.35	4.00	2.75	3.00
K	2.72	3.00	3.10	3.00	2.80	3.00
L	1.90	2.00	2.62	2.00	2.72	3.00
M	2.28	2.00	3.86	4.00	3.07	3.00
N	2.62	3.00	3.25	3.00	2.98	3.00
O	2.32	2.00	3.18	3.00	2.70	3.00
P	2.26	2.00	3.16	4.00	2.83	3.00
Total	2.30	2.00	3.38	4.00	2.80	3.00

Index 1. This index presents analysis of officer awareness of departmental practices for recording and investigating citizen complaints. Two questions were

combined to form this index (question 20: All citizen complaints, regardless of how minor, are recorded in this department and question 23: All citizen complaints, regardless of how minor, are investigated in this department). A correlation coefficient of .610 was calculated for these two items. A total of 2,150 officers was included in this measure.

The major finding derived from this measure is that officers in many departments have misconceptions about the citizen complaint process. The answers to this measure are quite positive indicating that officers feel that complaints, regardless of how frivolous they may be, are recorded and investigated in their respective agencies. Administrative analysis findings in these agencies indicate that complaints may be handled informally and not documented. Officers seem to disregard this practice. This may occur due to the perceived minor nature of these complaints. While these officers most likely would become aware of publicized complaints to which the agency responds with a full-scale report and investigation, they would not be aware of minor complaints handled at the immediate level of supervision.

It is also interesting to note that in several of the agencies in which highest scores occurred, management had recently publicized the importance of receiving and recording all complaints of misconduct. Departments B and E, for example, promulgated general orders in 1974 explaining the citizen complaint process. On the other hand, many of the agencies in which lowest scores resulted either did not have a written directive on citizen complaint procedures or utilized outdated directive systems.

Index 2. This index, which seeks officer assessment of how citizen complaint procedures should function, is constructed from two items (question 21: All citizen complaints, regardless of how minor, should be recorded and question 24: All citizen complaints, regardless of how minor, should be investigated) with a correlation coefficient of .649. A total of 2,152 officers was included in the analysis.

Police officers are not avidly inclined to accept arguments that all citizen complaints should be recorded and investigated, as indicated in this analysis. In nine of sixteen agencies, the most common score was 4.00, and in one department the mode was equal to 5.00. This result is not surprising since the acceptance and investigation of citizen complaints questions the credibility of an officer trying to perform his or her job.

It is quite interesting to analyze results for this index, especially since in two agencies scores are quite atypical (Depts. F and L). High positive scores for these agencies seem to indicate that management has taken steps to educate employees of the values of a receptive citizen complaint process. Research results do not, however, confirm this assumption. It appears that other factors,

such as the small number of citizen complaints and general harmony between citizens and police in Dept. L, and the lack of an efficient management process for both detecting and investigating complaints in Dept. F (officers in this agency are apparently unhappy with the inept approach of management for resolving complaints) produce such scores.

Index 3. Officer perceptions of extra-departmental appeal procedures are analyzed through the use of this index. Two items make up the index. These items (question 40: I feel that appeal procedures outside this department give an officer a fairer review than do internal procedures, and question 39: I feel that an officer can get a "fair shake" through the appeal procedures outside this department) have a correlation coefficient of .210. A total of 2,149 cases was included in the calculation of this index.

While most officers appear to be uncertain about these appeal procedures, the analysis does point out that perceptions vary with frequency of contact with appeal bodies. In Depts. A and C, for example, all suspensions of thirty and five days respectively must be reviewed through extra-departmental channels. Officers in these agencies are more negative about such procedures. On the other hand, officers in Depts. F, G, K and O are favorably disposed toward outside appeal procedures. Administrative analyses findings indicate that through such appeals in Depts. G and O, officers will most likely receive lighter sanctions, while in Depts. F and K disciplinary decisions are frequently taken to arbitration with the officer receiving a less severe punishment. This finding demonstrates that officer confidence in appeals processes is not generated through formal policies, explained in training programs but instead is enhanced by favorable results of appeal decision-making bodies.

Perceptions of Rules of Conduct

Two charts (questions 4 and 5) were included in the attitudinal questionnaire to measure officer perceptions of fourteen rules of conduct, as written and as enforced. A fifteenth rule could be added by the respondent, if so desired. Attitudes toward this added rule were mostly negative; as a result these are not included in the tables below. For each chart, rules were ranked from most agreement (ranked as 1) to least agreement (ranked as 14) to provide a concise measure of officer attitudes and to easily identify rules which seemingly create the most difficulty. Table 28 below presents the rank ordered results of officer perceptions of rules as written, while table 30 depicts results for analysis of perceptions of rules as enforced. A description of key findings follows each table.

Officers were also requested to indicate reasons for disagreement. Responses to this inquiry were tabulated and presented for rules as written in

TABLE 28
RANKED OFFICER RESPONSES TO PERCEIVED FAIRNESS OF RULES OF CONDUCT AS WRITTEN

Rules	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Total for 16 Depts.
1. Off-duty employment	13	8	14	14	11	13	14	14	12	8	11	12	10	10	10	14	13
2. Operation of police vehicle	2	3	3	3	5	5	9	1	3	5	3	5	3	7	7	9	4
3. Hairstyles, mustaches and beards	11	14	13	13	13	14	13	13	14	14	13	13	14	4	11	12	14
4. Courtesy to public	4	5	6	5	1	1	2	2	1	1	2	2	2	1	1	1	1
5. Physical force	7	12	4	6	6	7	3	6	2	4	7	3	5	9	9	3	5
6. Use of firearms	6	13	1	2	3	2	12	8	5	11	6	6	6	13	7	6	7*
7. Late for duty	5	2	7	4	2	6	4	3	6	2	4	4	4	2	5	4	3
8. Moral conduct	14	6	11	9	8	4	6	7	8	10	5	14	9	5	4	2	8
9. Insubordination	3	4	5	8	7	8	5	5	7	7	10	9	7	6	6	10	6
10. Personal debts	9	10	9	11	9	12	8	9	10	12	9	10	13	11	13	7	10
11. Criticism of department	12	11	10	12	12	11	11	12	9	13	12	11	11	12	14	11	12
12. Use of alcohol off duty	8	7	12	7	10	10	7	11	11	6	8	8	8	8	12	5	9
13. Gratuities	1	1	2	1	4	3	1	4	4	3	1	1	1	3	3	8	2
14. Residency	10	9	8	10	14	9	10	10	13	9	14	7	12	14	8	13	11

*Although this was the average score for sixteen agencies on this item, there was little consensus in scores among agencies.

table 29, and for rules as enforced in table 31. The responses for these tables are ranked from the most frequently cited reason (ranked as 1) to least frequently cited reason (ranked as 8 in table 29 and as 7 in table 31). A discussion of findings is also included following these tables.

TABLE 29

RANK ORDER OF STATED REASONS FOR PERCEIVED UNFAIRNESS OF RULES OF CONDUCT AS WRITTEN

RULES OF CONDUCT	REASONS							
	It is none of the department's business	It must be revised to be consistent with modern employment practices	It interferes with my ability to do good police work	It places undue restrictions on my personal rights	It is not stated so that I can understand it	It is too broad to be properly enforced	My department does not have this rule	Other
1. Off-duty employment	3	2	6	1	7	5	8	4
2. Operation of police vehicle	8	3	1	6	5	2	7	4
3. Hairstyles, mustaches and beards	6	1	7	2	8	3	4	5
4. Courtesy to public	6	5	1	3	8	2	7	4
5. Physical force	6	4	1	3	5	2	7	4
6. Use of firearms	7	5	1	4	6	2	8	3
7. Late for duty	6	1	5	4	7	2	8	3
8. Moral conduct	1	4	8	2	6	3	7	5
9. Insubordination	7	2	6	4	5	1	8	3
10. Personal debts	1	3	8	2	7	4	5	6
11. Criticism of department	7	2	8	1	6	4	3	5
12. Use of alcohol off duty	1	4	8	2	7	3	5	6
13. Gratuities	3	4	6	2	7	1	8	5
14. Residency	2	3	7	1	8	6	4	5
15. Other	6	3	2	4	7	5	—	1
Total	5	3	6	1	7	2	8	4

TABLE 30

RANKED OFFICER RESPONSES TO PERCEIVED FAIRNESS OF RULES OF CONDUCT, AS ENFORCED

Rules of Conduct	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Total
1. Off-duty employment	3	10	13	14	12	13	13	14	11	7	7	11	6	5	12	14	13
2. Operation of police vehicle	12	1	5	12	8	5	12	1	10	14	1	10	5	7	9	13	4*
3. Hairstyles, mustaches and beards	14	14	14	13	13	14	14	13	14	12	14	13	14	14	14	11	14
4. Courtesy to public	4	9	4	4	2	3	8	3	2	1	2	3	3	2	1	2	1*
5. Physical force	6	13	2	2	4	6	10	5	3	4	8	5	10	11	10	1	5*
6. Use of firearms	2	12	3	1	1	1	9	2	1	2	6	2	1	13	3	3	3*
7. Late for duty	9	8	12	6	5	8	5	10	6	6	9	6	12	8	4	12	9
8. Moral conduct	13	6	9	10	6	4	6	11	9	13	13	14	8	9	6	10	10
9. Insubordination	8	5	7	8	9	10	3	7	7	9	12	8	7	1	8	6	7
10. Personal debts	7	7	11	3	7	11	7	6	8	5	4	7	9	4	7	4	6
11. Criticism of department	11	11	8	11	10	12	11	4	12	11	5	9	4	10	13	7	11
12. Use of alcohol off duty	10	4	10	5	11	9	4	12	13	10	10	12	13	6	11	9	12
13. Gratuities	1	2	1	9	3	2	1	9	4	8	3	4	2	3	2	5	2
14. Residency	5	3	6	7	14	7	2	8	5	3	11	1	11	12	5	8	8

NOTE: Although these ranked scores represent averages for the entire sample of sixteen agencies, there were some rules for which there was little consensus among agencies. These rules are noted above by an asterisk (*).

TABLE 31

RANK ORDER OF STATED REASONS FOR PERCEIVED UNFAIRNESS OF RULES OF CONDUCT, AS ENFORCED

RULES OF CONDUCT	REASONS						
	This rule is not accepted by patrol officers	Supervisors are not consistent in enforcing this rule	Superior officers do not follow this rule	This rule was never explained to me by my supervisor	Punishment for violating this rule is too severe	My department does not have this rule	Other
1. Off-duty employment . . .	2	1	3	6	5	7	4
2. Operation of police vehicles	5	1	2	—	3	6	4
3. Hairstyles, mustaches and beards	2	1	6	7	4	5	3
4. Courtesy to public.	4	1	5	6	3	7	2
5. Physical force	4	1	5	6	2	7	3
6. Use of firearms	3	1	5	6	4	7	2
7. Late for duty	5	1	2	6	3	—	4
8. Moral conduct	5	1	2	6	4	7	3
9. Insubordination	5	1	2	6	4	7	3
10. Personal debts.	3	1	6	7	4	5	2
11. Criticism of department	3	1	4	7	5	6	2
12. Use of alcohol off duty.	3	1	2	7	6	5	4
13. Gratuities.	3	1	2	7	5	6	4
14. Residency	1	2	5	7	4	6	3
15. Other	6	1	5	—	2	4	3
Total.	3	1	4	7	5	6	2

The major conclusion to be drawn from this analysis is that officers disagree most with rules of conduct affecting their personal, off-duty behavior. Traditionally, police agencies have attempted to control officer conduct by promulgating rules prohibiting off-duty employment, monitoring personal finances, dictating residency requirements, and prescribing moral standards. While it cannot be said that most officers disagree with such rules (see pages 199-266 for a breakdown of actual scores) it may be concluded that the amount of disagreement is significant to warrant examination and possible revision of agency rules of conduct.

The rule to which most disagreement is evident is that governing grooming standards. The debate over appearance requirements has become quite vocal in recent years and in some agencies, including two of those visited by the IACP, management has relaxed its standards. This is another example of officers' resentment of traditional management attempts to control personal behavior. Many officers are quite vocal in their sentiments that police officers should not be required to look and act differently than much of society.

Another interesting observation may be derived from analyzing officer perceptions of operational rules. Officers do not disagree with performance standards, such as courtesy to the public, use of physical force and late for duty. Even the rule on use of firearms, a regulation often criticized by police associations, is perceived as quite fair and reasonable.

These data indicate that officers disagree most heavily with rules that either affect their personal habits or lifestyles, or are stated in broad, ambiguous directives. These results plus those reflected in table 30 provide evidence that management should carefully reexamine rules which govern off-duty performance and those which are by nature not stated clearly or concisely (e.g., insubordination, gratuities).

Ranked responses to the rules of conduct, as enforced, are similar to answers obtained to the ranking of perceived fairness of the rules, as written. It is evident that off-duty employment and grooming regulations are not agreed with in written form, or as applied. Rules prohibiting use of alcohol off duty and criticism of the department also appear too difficult to enforce.

As was the case with perceptions of written rules, officers do not disagree with the enforcement of operational rules governing, for example, courtesy to public, gratuities and use of firearms. From this analysis, it appears that officers of all ranks and in different departments are in agreement with these standards and assure that they are enforced fairly and reasonably.

It should be remembered, in reviewing these results, that officers are less satisfied with the enforcement of rules of conduct than with the rules themselves (see pp. 206-212).

The overwhelming reason for disagreement to enforcement for all rules of conduct studied and for all departments is supervisory inconsistency. This

appears to be a major problem in police disciplinary systems. Inconsistency is also manifested through double standards of compliance for several rules of conduct. Superior officers are perceived as not complying with these rules (e.g., use of alcohol off duty, moral conduct) while informing patrol officers that they should conform.

Many respondents checked the other category to indicate disagreement. In many cases, these answers were variations of the first seven reasons, and at other times were reflections of personal experiences. It is difficult to determine a common trend among these responses, and for this reason these data will not be reflected in this analysis.

CORRELATIONS BETWEEN PERSONAL BACKGROUND DATA AND DISCIPLINARY EXPERIENCES, AND ATTITUDES

Another type of analysis was conducted to examine further the relationship between officer background factors and experiences, and their attitudes. Eighteen background factors (appearing in tables 1-13) were compared with eight attitude measures in cross tabulations tested with the chi-square statistic. The scales and indices discussed previously were used as measures:

Scale 1: Perceived understanding of Disciplinary Procedures
Scale 2: Perceptions of Supervisory Behavior
Scale 3: Perceptions of Standards of Conduct
Scale 4: Perceived Fairness of Review Procedures
Scale 5: Methods of Making Known Rules and Procedures
Index 1: Knowledge of Citizen Complaint Procedures
Index 2: Perceived Fairness of Citizen Complaint Procedures
Index 3: Perceived Fairness of Outside Appeals Procedures

Whereas previous analyses revealed relationships among background factors, and variation among departments on these factors, this analysis addresses background/attitude relationships. The results identify trends which may be useful in considering personnel decisions to which attitudes are sensitive.

The results of these comparisons are given in Table 32. The entries in this table are levels of significance of the possible relationships denoted by the matrix. No entry appears when the test yielded a significance value numerically

greater than .05 (suggesting a lack of real relationship). All values shown indicate a probable relationship, and smaller numbers suggest that the observed relationships are more likely to be real, and have not arisen simply by chance.

The background factors having the most consistent relationship with all other measures are seniority, rank, and assignment. When the underlying data are examined, it is found that more positive attitudes on all but one or two of the eight measures are held by those officers with longer service and higher rank, and those in administrative assignments rather than patrol and investigation. This pattern suggests that those officers who stay in the department and progress through the ranks tend to take an accepting or positive view of most aspects of the way discipline is handled.

In many cases, of course, these higher-ranking administrators are personally involved and responsible for making the system work, and would thus reflect this "ownership" in their responses. Additional evidence of a generalized positive attitude or "halo," operating in these data is seen in the satisfaction factors in Table 32. Individuals who expressed higher levels of satisfaction with their assignments and careers also showed a more positive attitude on seven of the eight measures concerning discipline.

Another area of interest in these data concerns officer involvement with complaints. Those officers against whom complaints had been filed or sustained, or who had appealed complaints, had a less positive attitude on six of the eight measures. This kind of result may be inevitable, but it draws attention to the possibility of debriefing such individuals routinely, to learn what parts of their experience they perceived as unjust, and their reasons. It may be possible in this way to discover features of the system which can be changed to improve both technical effectiveness and officer acceptance.

It is interesting also to note the attitudes of officers who suggested changes in written directives. On four of the five measures for which there was a significant relationship, these officers had a generally positive attitude. Only on Index 3, concerning outside appeals, was their attitude more negative than those who did not suggest changes. Of particular interest is the relationship between this measure and Scale 1. Those officers who reported suggesting changes stated that they understood disciplinary procedures better than those who did not. This finding gives additional support to the general principle that police management can benefit from encouraging officer involvement in policymaking, under proper conditions.

A great deal of further analysis of the relationships in table 32 is possible. Only limited exploratory work could be done within the resources of this study. One analysis, undertaken to further test relationships, involved holding constant

TABLE 32

CORRELATIONS OF OFFICER BACKGROUND DATA WITH SCALES/INDICES

	Scale					Index		
	1	2	3	4	5	1	2	3
Seniority	.0001	.0005	.0046	.0001	.0001	.....	.0001	.0009
Sex	.....	.....	.....	.....	.....	.....	.....	.....
Race	.....	.....	.....	.....	.....	.....	.0001	.....
Education	.....	.....	.....	.....	.0285	.0013	.....	.....
Rank	.0001	.0050	.0001	.0001	.0005	.0001	.0001	.....
Assignment	.0001	.0051	.....	.0001	.0284	.0009	.0001	.....
Filing of complaint	.0001	.....	.0277	.0001	.....	.0001	.0001	.0330
Sustained complaint	.0059	.....	.0078	.0001	.....	.....	.0233	.0002
Formal oral reprimand	.....	.0382	.....	.....	.0454	.....	.....	.....
Written reprimand	.....	.....	.....	.....	.....	.....	.....	.0395
Working days off	.....	.0270	.....	.....	.0062	.....	.....	.0023
Suspension	.....	.0354	.....	.0272	.0318	.....	.....	.0079
Demotion	.....	.0059*	.....	.....	.....	.....	.....	.0002*
Dismissal & reinstatement	.....	.0008*	.....	.....	.....	.....	.....	.0177*
No sanctions	.....	.....	.....	.....	.....	.....	.....	.....
Suggested changes in directives	.0001	.....	.....	.0001	.....	.0001	.0002	.0094
Filed appeal outside department	.....	.0046	.0002	.0007	.0034	.0100	.....	.0001
Satisfaction in assignment	.0001	.0001	.0001	.0001	.0001	.0323	.0002	.....
Satisfaction in career	.0001	.0001	.0001	.0001	.0001	.0059	.0154	.....

*These four results are based on a restricted sample (less than thirty officers) because of the relatively small incidence of reports by officers that they had been demoted or dismissed.

either satisfaction or disciplinary experience measures and testing the strength of relationship between personal background factors and attitudes. Through this test, it was determined that previously identified personal differences do affect

attitudes. For example, to separate the effects of prior complaints against officers on their attitudes of scales and indices, the complaint variable was held constant. When this is done, a highly significant relationship is still found showing that more senior officers, as well as those of higher rank and those assigned to administrative positions report a better understanding of disciplinary procedures. Similarly, reported officer satisfaction was held constant when assessing the relationship between attitudes and personal criteria. This test demonstrated that strong relationships noted above do exist and are not contaminated by effects of differences in satisfaction. Using this kind of analysis, many controlled combinations of the three kinds of background data (experiential, attitudinal, and personal background) could be studied in subsequent projects.

APPENDIX B

Annotated Bibliography of Selected Cases on Police Discipline

INDEX

ALCOHOL AND DRUGS

1. **Bowie v. Department of Police**, 339 So.2d 528 (La. Ct. App. 1976)—Holds that evidence may be sufficient to support policeman's dismissal for use and possession of marijuana, even if it might be insufficient to support criminal conviction on drug charge.
2. **MacCracken v. Department of Police**, 337 So.2d 595 (La. Ct. App. 1976)—Holds that police department regulation warranting suspension if an officer consumes alcoholic beverages to the extent that his behavior becomes obnoxious, disruptive, or disorderly, is not unconstitutionally vague or overbroad. Consumption of alcoholic beverages need not lead to a state of intoxication, for if consumption produces the above behavior, suspension may still be warranted due to violation of departmental regulation.
3. **Van Gerreway v. Chicago Police Board**, 340 N.E. 2d 28 (Ill. App. Ct. 1975)—Patrolman who knew of impending sales of marijuana, but failed to report information to supervisor, could be removed from office as unfit to retain it, whether or not the substance involved in this particular instance was marijuana.
4. **Pope v. Marion County Sheriff's Merit Board**, 301 N.E.2d 386 (Ind. Ct. App. 1973)—Holds that Major [apparently intoxicated and off duty], who refused to go home after being stopped by a lieutenant colonel for erratic driving of a department vehicle, could be suspended for seven weeks and demoted to deputy sheriff.
5. **Reich v. Board of Fire and Police Commissioners**, 301 N.E.2d 501 (Ill. App. 1973)—Holds that police officer could be discharged for purchasing marijuana without the knowledge or permission of the department, on the grounds that he had been guilty of a violation of state law.
6. **Madigan v. Police Board**, 290 N.E.2d 665 (Ill. App. 1972)—Holds that police officer who made an arrest in a tavern could be discharged for refusing to fill out an arrest form or take an alcohol influence test.
7. **Staton v. Civil Service Commission**, 275 A.2d 716 (Pa. Cmwlth. 1971)—Uniformed officer got into a fight with a 60-year-old man in a bar while off duty. Discharge was upheld.
8. **Bokowski v. Civil Service Commission**, 273 N.E.2d 625 (Ill. App. 1971)—Fireman on duty outside of a place where liquor was sold entered the place several times during the evening in violation of department rules and the orders of a superior. His discharge was upheld.

9. **Rokjer v. Prezio**, 308 N.Y.S.2d 469 (App. Div. 1970)—Police officer could be dismissed for possession of nine bottles of liquor without proof that they were actually the stolen liquor sought. The trier of fact could infer from the officer's conduct that the liquor in question was the stolen liquor.
10. **Krolick v. Lawrey**, 308 N.Y.S.2d 879 (1970), *aff'g*, 302 N.Y.S.2d 109 (1969)—Holds that fire department regulation that medical officer of department may order member to submit to blood sample for laboratory analysis when reasonable ground exists for believing member to be intoxicated and that failure to obey such order will call for preferring of charges for disobedience was reasonable exercise of fire commissioner's power to discipline and manage department. Firemen who were suspected of being intoxicated and who, on advice of union representative, refused to take the test ordered, were not subject to unreasonable search and seizure, nor deprived of life, liberty, or property without due process, nor was their privilege of self-incrimination violated; and they were properly disciplined for failure to submit to the blood test.
11. **Hess v. Town of Vestal**, 290 N.Y.S.2d 295 (App. Div. 1968)—Holds that while evidence was not conclusive, there was evidence to sustain town board's finding that policeman was guilty of reporting for duty in intoxicated condition, and that dismissal was not an abuse of discretion.
12. **Lindeen v. Illinois State Merit Board**, 185 N.E.2d 206 (Ill. 1962)—Holds that in light of police captain's record, his public intoxication on one occasion did not call for his discharge.
13. **Carlisle Borough v. Adams**, 12 Cumb. 53 (Pa. Ct. C.P. 1961)—Holds that action of public officer in becoming involved in two automobile accidents while off duty and after having done some drinking under circumstances which raised suspicion as to his sobriety constituted conduct unbecoming an officer.
14. **Smith v. Cavanagh**, 197 N.Y.S.2d 837 (App. Div. 1960)—Holds that fireman found guilty at departmental hearing of three charges of selling narcotics could be dismissed.
15. **Appeal of Emmons**, 164 A.2d 184 (N.J. Super. 1960)—Holds that police officer's failure to cooperate in examination to determine his sobriety following an off-duty automobile accident in which he was personally involved, and failure to submit to a sobriety test, constituted conduct unbecoming an officer justifying suspension.
16. **Yannantuono v. Silverstein**, 187 N.Y.S.2d 49 (App. Div. 1959)—Holds that policeman arrested for driving while intoxicated while on vacation in another state could be discharged after pleading guilty to a reduced charge of reckless driving.
17. **Hansen v. Civil Service Board**, 305 P.2d 1012 (Cal. App. 1957)—Holds that fireman who was intoxicated on several occasions while on duty, and who was arrested for intoxication while off duty, could be dismissed notwithstanding his superior performance ratings.
18. **In re Brady**, 114 N.E.2d 538 (Ohio Ct. C.P. 1953)—Holds that although municipal corporation's general rule authorized suspension of police officer for intoxication while on duty, order of director of public safety discharging police officer for intoxication while on duty was not illegal.
19. SEE ALSO:
    Barr v. San Diego (Conduct Unbecoming)
    Bock v. Long (Moonlighting)
    Brown v. Murphy (Procedure—E)
    Carney v. Kirwan (Associations)
    Casey v. Roudebush (Probationary Employees)
    City of Evansville v. Nelson (Dereliction)
    Davenport v. Bd. of Fire and Police Comm'n (Conduct Unbecoming)
    Edge v. Leary (Associations)
    Hayes v. Civil Service Comm'n (Moonlighting)
    Jenkins v. Curry (Procedure—B)
    Johnson v. Trader (Moonlighting)
    Kavanaugh v. Paull (Procedure—A)
    Kilburn v. Colwell (Bribery & Gratuities)
    King v. City of Gary (Conduct Unbecoming)
    Krause v. Valentine (Dereliction)
    Kryvicky v. Hamtramck Civil Service Comm'n (Conduct Unbecoming)
    Reeves v. Golar (Probationary Employees)
    Schwartz v. Civil Service Comm'n (Procedure—E)
    State ex rel. Livingston v. Maxwell (Back Pay)
    State ex rel. Perry v. City of Seattle (Standard of Judicial Review)

ASSOCIATING WITH PERSONS OF BAD CHARACTER

1. **Commissioner of Baltimore City Police Department v. Cason**, 368 A.2d 1067 (Md. Ct. Spec. App. 1977)—Upheld the dismissal of a policeman who had made personal contacts, not necessary for the performance of his duties, with a known numbers operator.

2. **Anonymous v. Codd**, 387 N.Y.S.2d 1004 (1976) (mem.)—Upheld dismissal of probationary police officer for his contacts with members of organized crime even though his liaisons might have been innocently undertaken and the result of previous undercover work.
3. **Civil Service Commission v. Livingston**, 525 P.2d 949 (Ariz. 1974), *cert. denied*, 421 U.S. 951 (1975)—Upheld an officer's discharge under civil service "just cause" requirement, for his association and sexual activity with a woman employed as a nude model at a pornography store, while attending a party during his off-duty hours. The court ruled that the officer had fair notice that his conduct would be grounds for dismissal, because a reasonable police officer under the circumstances would know that his conduct was prohibited.
4. **Carney v. Kirwan**, 353 N.Y.S.2d 64 (1974)—Sustained the dismissal of a police officer for knowingly associating with a person who had a prior criminal record and who was the object of a narcotics investigation.
5. **Edge v. Leary**, 339 N.Y.S.2d 732 (1973)—Upheld the dismissal of a probationary police officer who went to a bar patronized by narcotics addicts and who lived with his half-brother who had a criminal record.
6. **Sponick v. Detroit Police Department**, 211 N.W.2d 674 (Mich. Ct. App. 1973)—Struck down a police department regulation which forbade conduct "unbecoming an officer" as being too vague. The court decided that other regulations which prohibited an officer from associating with persons convicted of crimes, and which required officers to report any deliberate contact with such persons were not vague, but were overbroad and unduly restrictive of officers' constitutional right of freedom of association. (Validity of this ruling may be questioned in light of the holding in *Parker v. Levy, infra*.)
7. **Donnelly v. Police Department**, 336 N.Y.S.2d 508 (1972)—Holds that a police inspector could be dismissed for giving evasive answers to a grand jury investigating a known gambler.
8. **Arciniega v. Freeman**, 404 U.S. 4 (1971)—Holds that former prisoner's occupational association with other ex-convicts was not a violation of the parole restriction, and was not, standing alone, satisfactory evidence of a nonbusiness association violative of the parole restriction.
9. **Murray v. Jamison**, 333 F. Supp. 1379 (W.D.N.C. 1971)—Holds that evidence at hearing on municipal employee's complaint regarding unlawful discharge established that employee's title as Grand Dragon of the Ku Klux Klan was publicly known when he was employed by city, that he did not dishonestly conceal this fact and that neither his personal work as switchboard operator in building inspection department nor work of department as a whole was shown to have been adversely affected by his Klan involvement and his discharge was unlawful.
10. **Holborrow v. New York City Transit Authority**, 323 N.Y.S.2d 628 (App. Div. 1971)—Holds that the fact that patrolman had been associating with a person whose criminal background was known to patrolman before patrolman was assaulted by such person, did not warrant dismissal of officer, but rather suspension without pay for approximately six and one-half months where such association was solely a barroom acquaintance.
11. **Bruns v. Pomerleau**, 319 F. Supp. 58 (D. Md. 1970)—Holds that refusal to accept application for position of probationary patrolman solely because applicant was a nudist unconstitutionally infringed upon applicant's right of association, in absence of evidence showing some nexus between applicant's activity and a paramount governmental interest.
12. SEE ALSO:
    Borders v. Anderson (Untruthfulness)
    DeGrazio v. Civil Service Comm'n (Conduct Unbecoming)
    Norton v. Macy (Illicit Relations)

BRIBERY AND GRATUITIES

1. **Gallagher v. Cawley**, 353 N.Y.S.2d 3 (1973)—Holds that dismissal was too harsh a penalty for an officer who took a $10.00 bribe from a person who was in possession of a stolen license plate. The court in reducing the punishment to a thirty-day suspension noted that Gallagher cooperated in a corruption investigation of the New York City Police Department.
2. **Smith v. Board of Commissioners**, 274 So.2d 394 (La. 1973)—Sustained the removal of a patrolman for taking a bribe from an individual who violated a no smoking ordinance.
3. **Polcover v. Secretary of Treasury**, 477 F.2d 1223 (D.C. Cir. 1973)—Upheld the removal of an Internal Revenue Agent for accepting a $1,000 bribe from an accountant to influence the audit of a client's tax return. The delay of the administrative decision for thirty-seven months pending the resolution of criminal charges was not deemed prejudicial.
4. **Ceja v. State Police Merit Board**, 298 N.E.2d 378 (Ill. 1973)—Held that a trooper could be dismissed for accepting a $100 bribe for release of an arrestee, failure to file reports, withholding information about an incident, conduct unbecoming an officer, neglect of duty and inattention to duty.

5. **Kilburn v. Colwell**, 396 S.W.2d 803 (Ky. Ct. App. 1965)–Holds that the conduct of police lieutenant in soliciting contribution for political campaign of candidate for mayor and in accepting gifts of whiskey from operator of liquor store justified his dismissal from police force.
6. **Nuss v. New Orleans Police Department**, 149 So.2d 656 (La. App. 1963)–Holds that the dismissal of city policeman for failing to report a bribe given in his presence was neither improper, unauthorized, arbitrary, capricious, illegal or unwarranted.
7. **Harrison v. Civil Service Commission**, 155 N.E.2d 521 (Ill. 1953)–Holds that evidence was not sufficient to establish that captain had, in protecting person who had given him $30,000, violated police regulation forbidding receipt of reward or gift, for service rendered, or pretended to be rendered, as police department member, without consent of police commissioner. Harrison's association was unscheduled, and sporadic, took place while he was off duty and there was no evidence that he ever wore his uniform, or used his police equipment or other privileges of his office for another's benefit.
8. SEE ALSO:
   Adamek v. Civil Service Comm'n (Standards of Judicial Review)
   Ecker v. City of Cincinnati (Back Pay)
   Gould v. Looney (Procedure–K)
   Simpson v. City of Houston (Procedure-A)
   Skaggs v. Los Angeles (Pension Rights–A)
   Smith v. Murphy (Pension Rights–A)

CONDUCT UNBECOMING AN OFFICER

1. **Millsap v. Cedar Rapids Civil Service Commission**, 249 N.W.2d 679 (Iowa 1977)–Upheld demotion and suspension of a police lieutenant for misconduct occurring while in an off-duty status. The police lieutenant was found to have conducted himself in a manner unbecoming a police officer when, in an intoxicated state, he had resisted, assaulted, and threatened fellow officers who were attempting to arrest and remove him from his car.
2. **Commissioner of Civil Service v. Municipal Court of Brighton District**, 338 N.E.2d 829 (Mass. 1975)–Patrolman's acquittal under indictments charging him with conspiracy to forge and utter U.S. postal money orders, and of forging and uttering same, did not make it legally impossible for the civil service commission, under standard of preponderance of evidence, to find the patrolman guilty of departmental charge of conduct unbecoming a police officer.
3. **Perea v. Fales**, 114 Cal. Rptr. 808 (Ct. App. 1974)–A police officer who drove at high speed through a residential neighborhood while off duty was given a five-day suspension for conduct unbecoming. The court held that in order to sustain the punishment, two conditions had to be met. First, there must be a nexus between the conduct and the officer's fitness to perform his duties. And second, the conduct must be of the type which common knowledge or department practice indicate is unbecoming, so that the officer has adequate notice that a violation may occur.
4. **Phillips v. Adult Probation Department**, 491 F.2d 951 (9th Cir. 1974)–Sustained the suspension of a probation officer who displayed posters of wanted fugitives (e.g., H. R. Brown, A. Davis, E. Cleaver) despite the fact that there was not any specific probation department regulation which precluded the placing of posters on walls of offices. In rejecting Phillips' First Amendment arguments, the court stated that "it is not essential that a public employer spell out in detail all conduct which is deemed improper and may result in disciplinary action."
5. **Foran v. Murphy**, 342 N.Y.S.2d 4 (1973)–Upheld the forfeiture of thirty days' pay of an officer for lying during an official police department investigation despite the fact that the grand jury failed to indict Foran for perjury. The failure to indict does not preclude subsequent departmental punishment for "conduct prejudicial to good order, efficiency, or discipline."
6. **State ex rel. Momon v. Milwaukee Civil Service Commission**, 212 N.W.2d 158 (Wis. 1973)–Holds that where hospital attendant was disciplined for absenteeism and tardiness, to use the same acts for a charge of conduct unbecoming an employee is to torture the rule beyond its plain meaning. Remand for redetermination of penalty based solely on charges sustained.
7. **Brawka v. Board of Fire and Police Commissioners**, 293 N.E.2d 349 (Ill. App. 1973)–Holds that police department rule pertaining to conduct unbecoming an officer and use of profane language did not apply to police lieutenant's conversation with private citizen outside squad car when lieutenant was not aware of fact that his radio was set in a position of permitting transmission of messages.
8. **Township of Upper Moreland v. Mallon**, 309 A.2d 273 (Pa.Cmwlth. 1973), *aff'd*, 336 A.2d 266 (Pa. 1975)–Holds that although the two specific allegations of conduct deemed unbecoming an officer are not proved, when notice of the action against the police sergeant stems from events occurring

on a specific date, and testimony discloses other related acts of misconduct, these findings will support a reduction in rank and thirty days suspension on the charge that he conducted himself in a manner unbecoming an officer.

9. **King v. City of Gary**, 296 N.E.2d 429 (Ind. 1973)—Held that Civil Service Commission's findings that police officer, engaged in gambling and drinking of intoxicating liquor while at gambling house where officer displayed cocked gun and demanded that his losses be repaid to him, supported consecutive 90-day suspensions for engaging in conduct unbecoming a police officer and for engaging in immoral conduct.
10. **Paris v. Civil Service Commission**, 510 P.2d 910 (Colo. Ct. App. 1973)—Holds that the filing of a libel suit against an employer is not in and of itself a sufficient predicate for removal under a statute which proscribes conduct unbecoming to a state employee and which requires state employees to maintain "satisfactory and harmonious working relationships with other employees." The initiation of the suit, however, can be considered along with other actions as conduct unbecoming a state employee and insubordination and disloyalty.
11. **Stolte v. Laird**, 353 F. Supp. 1392 (D.D.C. 1972)—Overturned the court martial of soldiers who were distributing antiwar leaflets while off duty and while in civilian clothes. The court, in ruling that the First Amendment sanctioned the plaintiff's conduct, stated that "to proscribe speech by servicemen there must be truly direct and palpable prejudice to good military order and discipline." (Reasoning may not survive in light of holding in *Parker v. Levy, infra*.)
12. **Rogenski v. Board of Fire and Police Commission**, 285 N.E.2d 230 (Ill. 1972)—Reversed the dismissal of a policeman for conduct unbecoming an officer who, while giving an elderly woman a ride in his cruiser and while inadvertently leaving his radio on, discussed politics and used profanities. The court held that the rules relating to conduct unbecoming an officer do not pertain to private conversations which are not intended to be overheard.
13. **Kramer v. City of Bethlehem**, 289 A.2d 767 (Pa. 1972)--Affirmed the dismissal of a police officer for engaging in intimate activities with a woman who was not his wife. "Unbecoming conduct on the part of a municipal employee, especially a policeman or fireman, is any conduct which adversely affects the morale or efficiency of the bureau to which he is assigned."
14. **Davenport v. Board of Fire and Police Commission**, 278 N.E.2d 212 (Ill. 1972)—Upheld the discharge of a police officer for being involved in a barroom fight. The court noted that "no distinction can be made between 'off duty' or 'on duty' misconduct by a police officer."
15. **Shannon v. Civil Service Commission**, 287 A.2d 858 (Pa. 1972)—Holds that Borough policeman's statement, which was made at time he was in an emotional state arising from concern for his infant child who had just fallen and had been taken to a hospital, and which was made in loud but not shouting tone and delivered in absence of any civilian, to the police chief, who was not intimidated by it, did not amount to conduct unbecoming a police officer so as to warrant a two-day suspension.
16. **Gerace v. Los Angeles**, 100 Cal. Rptr. 917 (Ct. App. 1972)--Holds that the fact that deputies, who confessed during departmental investigation to violating abortion laws, would have been discharged if they failed to answer questions, or had given untruthful answers, did not preclude use of the confessions as a basis for discharge where they were granted immunity from use of the confessions in any criminal prosecutions.
17. **Commissioners of Civil Service v. Municipal Court**, 268 N.E.2d 346 (Mass. 1971)—Holds that the record sustained findings of the hearing officer that the discharged employee had been guilty of conduct unbecoming a police officer in two assaults on a fellow officer, and the record failed to disclose any basis for the municipal court judge's conclusion that the decision of the hearing officer was not justified; absence of such a basis was an error of law.
18. **Olivo v. Kirwan**, 322 N.Y.S.2d 844 (App. Div. 1971)—Holds that efforts to "fix" two traffic ticke. one for individual with a record and bad reputation, combined with attempt to persuade a justice of the peace to refuse to cooperate with a state police investigation, were serious in nature and grossly inconsistent with the integrity expected from one in a trooper's position of great sensitivity and trust, and dismissal was not disproportionate to the offense.
19. **Wright v. Looney**, 323 N.Y.S.2d 702 (1971)—Holds that suspension was sufficient for a charge that the petitioner has misappropriated departmental property by converting two gallons of gasoline to his personal use, and that the penalty of dismissal was excessive and abuse of discretion.
20. **Kammerer v. Board of Fire and Police Commissioners**, 256 N.E.2d 12 (Ill. 1970)—Holds that evidence in disciplinary proceeding against police officer, who allegedly kicked squad car and made unauthorized radio transmission impugning the character of chief of police, was sufficient to justify dismissal, and dismissal was not arbitrary or contrary to great weight of evidence.
21. **City of Little Rock v. Hall**, 459 S.W.2d 119 (Ark. 1970)—Holds that even though circuit court confirmed city Civil Service Commission's finding that

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3 OF 5

police officer had violated regulations by slapping a suspected felon, circuit court could reduce punishment to a 30-day suspension notwithstanding the Commission's decision that the officer should be discharged.

22. **Kryvicky v. Hamtramck Civil Service Commission**, 170 N.W.2d 195 (Mich. Ct. App. 1969)—Holds that testimony of bar owner, customer of bar, and several police officers present at station where dismissed officer was booked and charged indicating that officer, while off duty, had been annoying and molesting other patrons of bar and that commotion had developed when dismissed officer was taken to police station was sufficient to warrant dismissal, though officer had been found not guilty on charge of disorderly conduct.
23. **DeGrazio v. Civil Service Commission**, 202 N.E.2d 522 (Ill. 1969)—Holds that findings of Civil Service Commission that police lieutenant was guilty of conduct unbecoming a police officer by reason of a trip to Europe with certain individual whose reputation was bad, and that by reason thereof cause existed for lieutenant's discharge, was not contrary to manifest weight of the evidence, and hence the order of the Commission discharging the lieutenant was proper.
24. **Etscheid v. Police Board**, 197 N.E.2d 484 (Ill. App. 1969)—Holds that Police Board's discharge of policeman for appearing in public attired in women's undergarments was not unreasonable or arbitrary.
25. **Orlandi v. State Personnel Board**, 69 Cal. Rptr. 177 (Ct. App. 1968)—Holds that state traffic officer's fixing of a ticket was the sort of behavior which would cause discredit to the Highway Patrol and to the state traffic officer so as to come within statute authorizing punitive action.
26. **Belshaw v. City of Berkeley**, 54 Cal. Rptr. 727 (Ct. App. 1966)—Holds that the letter written by a fireman and published in a newspaper was nothing more than an exercise of his constitutionally protected right of free speech, for which, in the absence of a showing that his conduct impaired the public service, he could not properly be punished under the personnel rules of the city or the rules of the fire department.
27. **Smith v. Landsden**, 370 S.W.2d 557 (Tenn. 1963)—Held that evidence supported charge of neglect of duty and charges that officer violated departmental rules in revealing proposed movements or actions of the police department to unauthorized persons. Therefore Commission's acts as to dismissed employee was valid and could not be controverted in a collateral issue.
28. **Campbell v. Hot Springs**, 341 S.W.2d 225 (Ark. 1960)—Holds that the city attorney had authority to prosecute an appeal from the Civil Service Commission ordering reinstatement of the petitioner and that the evidence sustained the judgment of dismissal of the petitioner for working in a gambling house in the city on his off hours.

29. **Barr v. San Diego**, Cal. Rptr. 510 (Ct. App. 1969)—Holds that the record indicated that findings and decisions by Civil Service Commission which ordered officer's discharge for conduct unbecoming an officer after marijuana was found in his possession were supported by substantial evidence, that officer was not denied a full and fair hearing before Commission and that statutory rules of procedure were substantially followed by the Commission, which did not exceed its jurisdiction.
30. **State v. Miami Beach**, 97 So.2d 349 (Fla. Ct. App. 1957)—Holds that where a police officer, in following the dictates of an order of his superior, placed the operator of a city automobile under arrest upon his failure to produce a current driver's license, even though city might have been embarrassed by the actions of such police officer; nevertheless, under the circumstances, charges made against the police officer that he falsely and maliciously arrested the operator of a municipal automobile, knowing that such arrest would hinder and delay performance of the operator's official mission to the detriment of the city, did not constitute just cause for his dismissal.
31. **Yielding v. Stevens**, 92 So.2d 895 (Ala. 1957)—Holds that in proceeding on charge that detective was guilty of conduct unbecoming a public employee because he had been party to a plan to embarrass the police chief by mentioning alleged payments to him and to coerce police chief into changing his testimony regarding detective's grades and of raising detective's grades, where evidence was undisputed that detective remained silent at one end of the room and took no part in conversation or negotiation with chief of police, finding of Personnel Board against defendant was not supported by any legal evidence.
32. **Gaudette v. Board of Public Safety**, 127 A.2d 836 (Conn. Super. 1956)—Holds that where police officer failed to cooperate in investigation of a theft and withheld information concerning it and was guilty of insubordination, Board's action in dismissing him was not illegal. The acquittal of plaintiff police officer at trial for theft in which the other officers were found guilty was not decisive of any issue in dismissal proceedings.
33. SEE ALSO:
    Appeal of Emmens (Alcohol)
    Carlisle Borough v. Adams (Alcohol)
    Carter v. Forrestal (Failure to Pay Debts)
    Ceja v. State Police Merit Board (Alcohol)

Donovan v. Board of Police Comm'n (Misuse of Firearms)
Faust v. Police Civil Service Comm'n (Illicit Relations)
Gasperas v. Board of Fire and Police Comm'n (Standards of Judicial Review)
Howle v. Personnel Board (Procedure–A)
Jackson Police Dep't v. Ruddick (Conduct Unbecoming)
Jenkins v. Curry (Procedure–B)
Kolanda v. Pembridge (Procedure–E)
MacIntyre v. Retirement Board (Pension Rights–A)
Mayor of Beverly v. First District Court (Illicit Relations)
McNeal v. Civil Service Comm'n (Gambling)
Miglieu v. Lee (Illicit Relations)
Norek v. Herold (Stolen Property)
Owens v. Ackerman (Procedure–J)
Taylor v. Civil Service Comm'n (Standards of Judicial Review)

CONDUCT UNBECOMING – VAGUENESS

1. **Rinaldi v. Civil Service Commission**, 244 N.W.2d 609 (Mich. Ct. App. 1976)–Police officer was discharged for knowingly leaving scene of an accident in which he was involved. Basis for discharge was violation of rule which held conduct unbecoming an officer to include any act or conduct not specifically mentioned in the rules which tends to bring the department into disrepute, or reflects discredit upon the individual as an officer. This provision was held not to be unconstitutionally vague in light of *Parker v. Levy, infra.*
2. **Bence v. Breier**, 501 F.2d 1185 (7th Cir. 1974), *cert. denied*, 419 U.S. 1121 (1975)–Statute allowing disciplinary action for "conduct unbecoming a member and detrimental to the service" held unconstitutionally vague. Vagueness permits arbitrary enforcement and chills First Amendment rights. "Conduct unbecoming" standards have fixed meaning in the military which is not transferable to civilian police context.
3. **Secretary of the Navy v. Avrech**, 477 F.2d 1237 (D.C. Cir. 1973), *rev'd*, 418 U.S. 676 (1974)–The Court of Appeals ruled that the General Articles of the Uniform Code of Military Justice were unconstitutional. The Supreme Court reversed on the authority of **Parker**, *infra.*
4. **Parker v. Levy**, 417 U.S. 733 (1974)–Sustained the conviction of an officer who disobeyed his commander's order to conduct training of enlisted men bound for Vietnam and who told the soldiers that "If I were a colored soldier, I would refuse to go to Vietnam and if I were sent, I would refuse to fight." The Court disagreed with the appellee's contention that the relevant sections of the Uniform Code of Military Justice were unconstitutionally vague: "Decisions of this court during the last century have recognized that the long-standing customs and usages of the services impart accepted meaning to the seemingly imprecise standards of Art. 133 and 134."
5. **Allen v. City of Greensboro**, 322 F. Supp. 873 (M.D.N.C. 1971)–Holds that administrative proceedings resulting in the demotion of policeman did not deny him substantive due process of law on grounds that charge against policeman of conducting himself in a manner unbecoming an officer and a gentleman was vague and overly broad, where policeman knew that conduct for which he was charged was within proscription of regulation and he suffered no uncertainty regarding propriety of his behavior.
6. **Gee v. California State Personnel Board**, 85 Cal. Rptr. 762 (Ct. App. 1970) –Holds that, in regard to civil service auditor, rule proscribing conduct that causes discredit to the agency applies to conduct whether publicized or not. Court rejects void for vagueness argument stating that there are many acts so inherently wrong and reprehensible that they need not be listed by the agency.
7. SEE ALSO:
   Arnett v. Kennedy (Procedure–K)
   Sponick v. Detroit Police Department (Associations)

CRITICISM OF SUPERIOR OFFICERS AND DEPARTMENT OPERATIONS

1. **Kannisto v. City and County of San Francisco**, 541 F.2d 841 (9th Cir. 1976)–Police department regulation proscribing unofficer-like conduct as tending to subvert good order, efficiency, or discipline of department, was not unconstitutionally vague as applied to police lieutenant who was suspended for making disrespectful and disparaging remarks about a superior officer while addressing his subordinates during morning inspections.
2. **Hanneman v. Breier**, 528 F.2d 750 (7th Cir. 1976)–Police Department confidentiality rule was unconstitutionally applied to officers who had distributed a letter confirming the existence of an internal police investigation, when the existence of the investigation had already been publicized and the letter contained no statements which were known to be false or which were made with reckless disregard for the truth.

3. **United States v. City of Milwaukee**, 390 F. Supp. 1126 (E.D. Wis. 1975)–Holds that police officers may not be disciplined under a rule requiring confidentiality of police business for discussing race and sex discrimination within the department with federal investigators. Title VII of the Civil Rights Act of 1964 prohibits employer retaliation against employees who cooperate in federal investigations. The employees were also permitted to give interviews to federal agents without prior approval from the chief, and need not file post-interview reports.
4. **Aycock v. Police Committee**, 212 S.E.2d 456 (Ga. Ct. App. 1975)–Held that an officer could be summarily discharged for publicly criticizing the official actions of his superior officers, since department's rules prohibiting such conduct are reasonable and necessary to maintain good order, discipline and efficiency within the department. The court also ruled that due process did not require a hearing before rather than after the officer's discharge.
5. **Magri v. Giarrusso**, 379 F. Supp. 353 (E.D. La. 1974)–Sustained the dismissal of a police sergeant who made derogatory statements concerning the police superintendent and other public officials. The court ruled that the vitriolic nature of the sergeant's remarks transcended the realm of responsible public criticism in that they served to impair the operation of the police department.
6. **Janetta v. Cole**, 493 F.2d 1334 (4th Cir. 1974)–Discharge of fireman for circulating a petition critical of department policy violated his constitutional rights, in absence of showing that his actions interfered with the efficiency of the public services performed by the department.
7. **Amburgey v. Cassady**, 370 F. Supp. 571 (E.D. Ky. 1974)–Discharge of teacher for excessive and abusive criticism of superior did not violate First Amendment rights. Right to comment must be balanced against interest of school in regulating speech which interferes with its operation. First Amendment does not protect insulting and profane personal statements about individuals not touching upon factual issues of public or private concern.
8. **Nebraska Department of Roads Employees' Association v. Nebraska Department of Roads**, 364 F. Supp. 251 (D. Neb. 1973)–Discharge of employee for statement that his director was not qualified for the position violated First Amendment rights. Discharge improper in absence of showing that statements diminished employee's faithfulness, trustworthiness, conscientiousness or competence, or tended in fact to produce disharmony among other employees.

9. **Lusk v. Estes**, 361 F. Supp. 653 (N.D. Tex. 1973)–Discharge of teacher for public criticism of school administration without making use of official grievance process violated First Amendment rights. Such rights may be restricted only if their exercise materially and substantially impedes employee's proper performance or disrupts the regular operation of the school. Even though there are other valid grounds for dismissal, it will not be permitted if it is even partially in retaliation for legitimate exercise of First Amendment rights.
10. **Pennsylvania ex rel. Rafferty v. Philadelphia Psychiatric Center**, 356 F. Supp. 500 (E.D. Pa. 1973)–Holds that discharge of nurse following publication of news article in which she was critical of patient care in state hospital at which she was formerly employed violated First Amendment rights. In absence of showing that speech creates adverse effect on operation of hospital, criticism may not be suppressed. Mere staff anxiety is not sufficient reason for discharge.
11. **Dendor v. Board of Fire and Police Commissioners**, 297 N.E.2d 316 (Ill. App. 1973)–Discharge of fireman for public criticism of his superior not proper in the absence of a finding of adverse effect on department. Department has burden of showing that speech rendered employee unfit for public service or adversely affected public service, or that statements were false and knowingly and recklessly made.
12. **Johnson v. Santa Clara**, 106 Cal. Rptr. 862 (Ct. App. 1973)–Holds that suspension of probation officer for posting a poem protesting his transfer did not violate First Amendment rights. State must show the practical necessity of limiting First Amendment exercise, although in this case there was no showing of interference with the efficiency or delivery of the department's services. Disciplinary action was based on what poem revealed of employee's attitude toward superior authority.
13. **Meehan v. Macy**, 392 F.2d 822 (D.C. Cir. 1968)–Discharge of Canal Zone police officer for publishing defamatory attack on Governor of Canal Zone did not violate First Amendment rights. When speech by employee produces intolerable disharmony, inefficiency, dissension and even chaos, it may be subject to reasonable limitations.
14. **Jackson Police Department v. Ruddick**, 243 So.2d 566 (Miss. 1971)–Evidence was sufficient to support police chief's order discharging, under Municipal Civil Service Act, a police department clerk-typist who allegedly stated that "Captain _____'s wife was a whore prior to the time she married Captain_____," on grounds of wantonly offensive conduct or language toward public, superior or fellow employees and conduct unbecoming to

employee of city either while on or off duty, as having been made in good faith for cause.

15. **Flynn v. Giarrusso**, 321 F. Supp. 1295 (E.D. La. 1971)—Suspension of police officer for writing an article critical of police administration could not be sustained where it was based on regulations which were, on their face, unconstitutional, and police officer was entitled to reinstatement and back pay and other benefits he would have received had he not been suspended.

16. **Muller v. Conlisk**, 429 F.2d 901 (7th Cir. 1970)—Police department's rule prohibiting policeman from engaging in any activity, conversation, deliberation or discussion which is derogatory to the department or to any member or policy of the department was overbroad and invalid. Reprimand given on alleged violations of invalid rule must be expunged from police officer's record and held to be of no effect.

17. **Brukiewa v. Police Commissioner**, 263 A.2d 210 (Md. 1970)—Police officer's alleged public criticism of police department wherein he stated that the reporting system and patrol procedure were problems, that the department's morale had "hit its lowest ebb," and that, in relation to what would happen within the next six months if the situation continued, "I feel the bottom is going to fall out of this city," where the statements were not directed toward a superior with whom officer would come in daily or frequent contact and were not shown to have affected discipline or harmony or general efficiency or effectiveness of police department, did not go beyond bounds of permissible free speech for which police officer could be disciplined.

18. **In re Gioglio**, 248 A.2d 570 (N.J. Super. 1968)—Evidence, including attitude expressed by police officer that he intended to fight order issued him by police chief to report for duty with uniformed patrol, together with impression he left with director of department that he did not intend to obey the order and the fact that he appeared at a meeting of the Board of Commissioners to castigate the police chief and further his claim for paid time off in lieu of compensation for overtime worked, indicated that his failure to report for duty was willful, and was sufficient to support his conviction in departmental proceedings for insubordination and absence without leave.

19. **Pickering v. Board of Education**, 391 U.S. 563 (1968)—Absent proof of false statements knowingly and recklessly made by him, or statements

which disrupt harmony among co-workers or the maintenance of discipline by superiors, a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment.

21. SEE ALSO:
Abbott v. Thetford (Filing Suit)
Belshaw v. City of Berkeley (Conduct Unbecoming)
Phillips v. Adult Probation Dep't (Conduct Unbecoming)

DERELICTION OF DUTY

1. **Stanton v. Board of Fire and Police Commissioners of Village of Bridgeview**, 345 N.E.2d 822 (Ill. App. Ct. 1976)—Police officer's discharge for alleged neglect of duty based on his reporting 8-10 minutes late was overturned for the board had presented no evidence refuting the truth of the officer's explanation, which on its face appeared to be a valid and excusable reason for being late (mechanical difficulties with car). The court also held that 32 prior charges for which the officer had been reprimanded, though indicative of prior poor performance, could not be used to establish that he was guilty of the charge for which he had been dismissed.
2. **Petraitis v. Board of Fire and Police Commissioners of City of Palos Hills**, 335 N.E.2d 126 (Ill. App. Ct. 1975)—Police chief's testimony that he had observed the officer asleep on duty for approximately 3-5 minutes, though contradicted by the officer, represented the sole evidence in his discharge for neglect of duty. The board's acceptance of the credibility of the chief's testimony was sustained by the court as not being against the manifest weight of the evidence.
3. **Martin v. City of St. Martinville**, 321 So.2d 532 (La. Ct. App. 1975)—The chief of police's dismissal for failure to report to work on any particular schedule, or to maintain office hours in accordance with a schedule that showed he was to "work" from 8:00 a.m. to 4:00 p.m. each day was overturned, for it was held that no police department could operate effectively if all policemen, including the chief of police, were to remain in the station during all hours of their scheduled duty.
4. **DeSalvatore v. City of Oneonta**, 369 N.Y.S.2d 820 (App. Div. 1975)—Upheld one-month suspension of chief of police for neglect of duty. The court ruled that there was sufficient evidence that the chief should have known

about planned demonstrations and prepared for them. Board of Public Safety was justified in concluding that chief should be blamed for department's inability to cope with the demonstrations.

5. **Arnold v. City of Aurora**, 498 P.2d 970 (Colo. Ct. App. 1973)—Held that failure of a police officer to attend a training session in riot and mob control techniques because of marital problems which were subsequently resolved did not warrant dismissal from the police department for neglect of duty.
6. **Kerr v. Police Board**, 299 N.E.2d 160 (Ill. App. 1973)—Held that finding of Police Board that police sergeant had failed to take proper action to have motorist charged with traffic violations and to exercise supervisory authority over patrolmen to see that proper reports and citations were made and issued and suspension order based thereon was unsupported absent substantial evidence that the police officer had known that motorist had been intoxicated or had violated traffic regulations when he struck service station or when he ran off roadway and struck a house.
7. **Marino v. Los Angeles**, 110 Cal. Rptr. 45 (Ct. App. 1973)—Held that where a police officer admitted to four counts involving falsification of police records in an effort to conceal that he had failed to report a felony, police officer was found guilty of wearing another officer's uniform with knowledge that it was not his and failing to attempt to locate true owner; and officer's personnel records showed in addition that on two occasions during eating period he had neglected his duties and failed to take proper enforcement action in field when serious crimes were reported to him by involved victims and that he projected a negative attitude towards his job responsibilities, dismissal from police department did not constitute an abuse of discretion for neglect of duty.
8. **Guido v. City of Marion**, 280 N.E.2d 81 (Ind. Ct. App. 1972)—Held that since the testimony of the chief of police and of the policeman himself showed that the policeman missed three scheduled appearances in court and was absent without leave from his scheduled shift all on a single day and since one of the penalties provided by statute for absence without authorized leave or violation of neglect of orders is dismissal, imposing a penalty of dismissal was not arbitrary or capricious regardless of whether a reasonable man might have imposed a different penalty.
9. **Haywood v. Municipal Court**, 271 N.E.2d 591 (Mass. 1971)—Holds that a decision of Civil Service Commission upholding imposition of 200 hours of punishment duty on police officer for allegedly sleeping while on patrol was warranted by the evidence.

10. **People v. Heckt**, 306 N.Y.S.2d 320 (Sup. Ct. 1969)—Holds that police officers knowing participation in illegal card games within the city and failure to make proper arrests were within the statute penalizing official misconduct requiring intent to obtain a benefit or injure or deprive another person of a benefit, in view of benefit to organizers of games from their participation.
11. **Carroll v. Goldstein**, 217 A.2d 676 (R.I. 1966)—Held that police officer who during an investigation of alleged auto accident reported by him left his post and failed to ascertain whether the accident had in fact occurred and made no effort to see or question principals allegedly involved violated rule of city police department that police officer shall make full reports of all cases and accidents and injuries to persons or property which shall come to their notice and justified officer's demotion for neglect of duty.
12. **State v. McCall**, 141 S.E.2d 250 (N.C. 1965)--Indictment charging city captain of detectives with willfully and corruptly failing to discharge his official duties in investigating theft case by permitting prime suspect to go home after apprehension without posting bond or being charged with a crime was insufficient to justify dismissal for neglect of duty where case was in the investigative stage.
13. **City of Evansville v. Nelson**, 199 N.E.2d 703 (Ind. 1964)—Holds that substantial evidence supported finding and decision of Civil Service Commission that police officer violated departmental regulation in being drunk while on duty and in failing to respond to a police call by superior officer, although he had agreed to do so, warranting his suspension.
14. **Lenchner v. Miami Beach**, 156 So.2d 767 (Fla. Ct. App. 1963)—Evidence supported findings that police officer who had been relieved of duties knew that certain premises were being used for gambling operations but failed to arrest persons conducting them and failed to notify his superiors thereof and that officer had been guilty of disgraceful conduct.
15. **Stafford v. Firemen's & Policemen's Civil Service Commission**, 355 S.W.2d 555 (Tex. Civ. App. 1962)—Holds that the police officer's failure to make complaint respecting existence of prostitutes subjected him to removal regardless of any alleged instructions from a superior officer, and there was substantial evidence to support decision that detective was properly dismissed for conduct prejudicial to good order.
16. **Lewis v. Board of Trustees**, 212 N.Y.S.2d 677 (App. Div. 1961)—Holds that the dismissal of a police officer found guilty of dereliction of duty in sleeping and leaving the village unprotected was not unreasonable as an abuse of

discretion where authorized by statute, though the hearing officer had recommended only a twenty-day suspension.

17. **Firemen's & Policemen's Civil Service Commission v. Shaw**, 306 S.W.2d 160 (Tex. Civ. App. 1957)–Upheld the suspension of a police lieutenant for ordering his subordinates to discontinue enforcement of a local ordinance against pinball machines.
18. **Krause v. Valentine**, 48 N.Y.S.2d 901 (App. Div. 1944)–Holds that evidence that police officer left his post and was found in barroom on three different occasions within two months and that officer committed insubordination by refusing to return to his post when ordered to do so by his superior justified his dismissal from the police force.
19. SEE ALSO:
    Jenkins v. Curry (Procedure–B)
    Pierne v. Valentine (Retirement)
    Smith v. Lansden (Conduct Unbecoming)
    Zeboris v. Kirwan (Mistreatment of Prisoners)

DISCOVERY OF PERSONNEL AND INTERNAL AFFAIRS RECORDS

A. Civil Cases

1. **City of Tucson v. Superior Court**, 544 P.2d 1113 (Ariz. Ct. App. 1976)–Holds discovery in suit alleging police brutality and negligence on the part of city in retaining officers after it knows, or should know, of their vicious propensities is to be limited only to information concerning complaints made in regard to assault or other incidents involving police officers which would show their vicious propensities rather than discovery of *any* complaints filed with the department concerning the acts of the officers in question.
2. **Ogilvie v. City of New York**, 353 N.Y.S.2d 238 (App. Div. 1974)–Stands for the proposition that one who commences a civil suit against a police officer involving conduct while on duty should have access to the police officer's personnel file in order to prepare his suit.
3. **Boyd v. Gullett**, 64 F.R.D. 169 (D. Md. 1974)–Under federal law, there is no general privilege, for purposes of discovery, against disclosure of police investigative files, except with respect to ongoing investigations, but certain nonfactual information may be submitted to court for *in camera* review before files will be turned over to the plaintiff.
4. **McMillan v. Ohio Civil Rights Commission**, 315 N.E.2d 508 (Ohio Ct. C.P. 1974)–Held that the Civil Rights Commission, investigating a complaint lodged by a discharged black policeman, was not entitled to discover information contained in police personnel files which pertained to pre-employment inquiries and investigations of other individuals, when there was clear and convincing evidence of a necessity to maintain confidentiality.
5. **Los Angeles v. Superior Court**, 109 Cal. Rptr. 365 (1973)–Required a city to answer interrogatories relating to the past suspension of an officer, but refused to require the city to answer interrogatories concerning whether other persons had complained about that officer's behavior.
6. **Gaison v. Scott**, 59 F.R.D. 347 (D. Haw. 1973)–Plaintiff in civil rights suit is entitled to disclosure of factual data contained in arrest reports and closing reports concerning his arrest in the absence of strong public policies in favor of confidentiality; but evaluative summaries claimed by city to be guarded by executive privilege would be disclosed only after *in camera* inspection by court.
7. **United States v. Reynolds**, 345 U.S. 1 (1953)–When formal claim of executive privilege is made to prevent discovery, and the claim makes a sufficient showing of necessity for security reasons, it can only be overcome by a showing of greater need for release of the documents.

B. Criminal Cases

1. **State v. Pohl**, 554 P.2d 984 (N.M. Ct. App. 1976)–Holds that records may be confidential as against the public at-large but inspection must be allowed when defendant's guilt or innocence may hinge on whether a jury believes an arresting officer is the aggressor in an incident giving rise to criminal charge. The court held that the lower court should not have automatically quashed the subpoena for the officer's file, but that it should have conducted an *in camera* inspection to determine whether the files contained evidence material to the defense.
2. **People v. Superior Court of County of Santa Clara**, 133 Cal. Rptr. 440 (1976)–Held that a defendant charged with assault with a deadly weapon, but defending on the basis that the police officer was the aggressor, could compel discovery of information in the personnel file of a police officer who was off duty at the time he was the alleged victim of the assault. The

off-duty status did not make the file any more accessible to the defendant or any less in the possession of the prosecution.

3. **Cooper v. United States**, 353 A.2d 696 (D.C. 1975)--Discovery of police personnel files was refused because although defendant claimed he was seeking information regarding prior violent acts of officers with whom he had been involved in an automobile chase and shootout and information concerning promotions or investigations of weapons firings, he was unable to show why he believed such information could be found in the files, and also refused the court's offer to view the files *in camera*. The court therefore quashed the subpoena for the materials, concluding that it was "really nothing more than a fishing expedition."
4. **Pitchess v. Superior Court**, 522 P.2d 305 (Cal. 1974)--Determined that certain affidavits filed by an accused, who was charged with assaulting deputy sheriffs and who was claiming self defense, stated sufficient need for the discovery of records in the hands of the prosecution. The sheriff was precluded from asserting a common law privilege to refuse to divulge official information, since the sole means of obtaining such a privilege was through a later statutory provision contained in the Evidence Code.
5. **Hill v. Superior Court**, 112 Cal. Rptr. 257 (1974)--Refused to reverse a lower court's denial of a request to inspect arrest and detention records of a prosecution witness who was the only witness to a crime. The court said that the mere suspicion of the defense that the witness might have committed a crime was not enough to override the possible deterrent effects such disclosure might have on the reporting of crimes.
6. **People v. Woolman**, 115 Cal. Rptr. 324 (Ct. App. 1974)--Defendant, who was accused of assaulting a police officer and who was claiming self defense, was not entitled to discovery of officer's personnel file, when *in camera* inspection of the file, from which defense and prosecution were excluded, showed that file contained nothing favorable to the defense which was not already known.
7. **People v. Fraiser**, 348 N.Y.S.2d 529 (1973)--Provides that a defendant is not entitled to a *subpoena duces tecum* for the purpose of ascertaining whether police records might reveal "bad acts" by police witnesses that might be useful for impeachment.
8. **People v. Norman**, 350 N.Y.S.2d 52 (1973)--Even if a defendant can produce evidence that he has good cause to believe that a police witness's file contains impeachment material, a court need not honor the demand until the police officer's credibility becomes an issue; that is, after he has taken the stand.
9. **Joe Z. v. Superior Court**, 91 Cal. Rptr. 594 (1970)--Suggests that a court, in deciding whether to grant a motion for discovery, should balance the relevance and necessity of the information to the party seeking it with the legitimate protective interests of the party desiring to prohibit inspection.
10. **Ballard v. Superior Court**, 49 Cal. Rptr. 302 (1966)--Defendant in rape case was not entitled to discovery of all information in the prosecution's hands, absent some showing of what specifically was requested and that the request had some plausible justification.
11. **Brady v. Maryland**, 373 U.S. 83 (1963)--The Supreme Court held that "the suppression by the prosecution of evidence favorable to the accused upon request violated due process where the evidence is material either to guilt or to punishment irrespective of the good faith or bad faith of the prosecution."

EXCESSIVE PENALTY

1. **Garsik v. Frank**, 387 N.Y.S.2d 22 (App. Div. 1976) (mem.)--Penalty of reprimand for first offense, and fine equal to three days' pay for two subsequent offenses, was upheld in the case of an officer who was found guilty of wearing unauthorized accessories on uniform, failure to wear cap and cap device, and a failure to carry handcuffs, revolver, and holster.
2. **Slominski v. Codd**, 382 N.Y.S.2d 773 (App. Div. 1976)--Upheld dismissal of police officer for his abuse of power in issuing summonses against a restaurant for alleged violations of law after he believed he was overcharged for meals therein. Fellow officer who engaged in same conduct was merely fined 15 days' pay. Court found no abuse of discretion in view of the fact that the fellow officer had never been guilty of misconduct during his 17 years of service, while the dismissed officer in four years of service had been guilty of numerous instances of misconduct.
3. **Silverstein v. Goddin**, 389 N.Y.S.2d 609 (App. Div. 1976)--Held that in view of petitioner's 26 years of service, and previously unblemished record, penalty of two-month suspension without pay imposed by the city comptroller for insubordination was disproportionate, and was reduced to suspension without pay for 15 days.
4. **Alfieri v. Murphy**, 366 N.Y.S.2d 10 (App. Div. 1975)--Upheld the discharge of a fifteen-year police veteran who was charged with shoplifting. The court

said that even though criminal charges were dropped, the punishment was not disproportionate, because of the need to preserve the appearance of police integrity.

5. **Rubenstein v. Murphy**, 353 N.Y.S. 2d 182 (App. Div. 1974)–Dismissal of a police officer on misconduct charges filed after officer was granted disability retirement effective at a later date, which would give him benefit of unused annual and terminal leave, was excessive penalty where officer had 30 years of service leading to a service connected disability. An appropriate punishment would be suspension and loss of pay up to the date of retirement.
6. **Glass v. Town Board**, 329 N.Y.S.2d 960 (1972)–Held that the dismissal of an officer for going beyond the boundaries of his assigned post and remaining there for an unreasonable period of time was overly harsh. The court reduced the officer's punishment to a two-month suspension without pay.
7. **Ostler v. City of Omaha**, 138 N.W.2d 826 (Neb. 1965)–Is similar to **Heffernan**, *infra*, in that it is authority for the proposition that where a statute is worded in the alternative, a police officer cannot be both suspended and demoted.
8. **Gartsu v. Walsh**, 152 A.2d 225 (R.I. 1959)–Held that the indefinite suspension of a police captain contravened the statute which held that a public employee could be suspended only for a reasonable time. The indefinite suspension was deemed unreasonable.
9. **State ex rel. Heffernan v. Board of Fire and Police Commissioners**, 18 N.W.2d 461 (Wis. 1945)–Held that where possible sanctions (e.g., dismissal, reduction in rank or suspension) are set forth in the alternative, a police officer convicted of conduct subversive of discipline could not be both suspended and reduced in rank.
10. SEE ALSO:
    Abbott v. Phillips (Moonlighting)
    Bancroft v. Usher (Illicit Relations)
    City of Little Rock v. Hall (Conduct Unbecoming)
    Gallagher v. Cawley (Bribery & Gratuities)
    Guido v. City of Marion (Dereliction)
    Hansen v. Civil Service Bd. (Alcohol)
    Holborrow v. New York City Transit Authority (Associations)
    Hunn v. Madison Heights (Mistreatment of Prisoners)
    In re Brady (Alcohol)
    Lewis v. Bd. of Trustees (Dereliction)

Lindeen v. Illinois State Merit Bd. (Alcohol)
Madden v. City of Stockton (Misuse of Firearms)
McCallister v. Priest (Incompetence–A)
Pope v. Marion County Sheriff's Merit Bd. (Alcohol)
Schonlau v. Price (Tampering with Evidence)
Short v. Looney (Illicit Relations)
Smith v. Murphy (Pension Rights–A)
Tolan v. Murphy (Pension Rights–A)
Wright v. Looney (Conduct Unbecoming)

FAILURE TO PAY DEBTS

1. **Rusignuolo v. Orechio**, 360 A.2d 326 (N.J. 1976)–Held failure to pay just debts, a violation of a police rule as promulgated in town ordinance, to be a proper basis for police disciplinary action, though the legality of the rules as applied would depend on the facts of the particular case. The court indicated, as an example, that it would be improper to use this disciplinary power to resolve a bona fide dispute as to payment, quality of merchandise, and the like.
2. **Rutledge v. City of Shreveport**, 387 F. Supp. 1277 (W.D. La. 1975)–Holds that a police officer cannot be discharged for seeking voluntary bankruptcy, since this would frustrate the purposes of the federal bankruptcy laws which are designed to give the debtor a chance to start over in life. Prohibiting filing for bankruptcy may increase the likelihood of police corruption, since the officer might seek illicit sources of income to settle his debts rather than face losing his job.
3. **White v. Bloomberg**, 345 F. Supp. 133 (D. Md. 1972)–Discharge for a single debt overturned because there was no evidence of any connection between single debt and efficiency of postal service and because discharge did not accomplish regulation's intent of enabling removal of inveterate deadbeats.
4. **Nodes v. City of Hastings**, 170 N.W.2d 92 (Minn. 1969)–Holds that a police officer's negligent and inexcusable conduct in failing to pay his just debts impairs his usefulness as one charged with enforcement of the law.
5. **Jenkins v. Macy**, 237 F. Supp. 60 (E.D. Mo. 1964), *aff'd*, 357 F.2d 62 (8th Cir. 1966)–Holds that eleven debts leading to forty complaints justify discharge for failure to pay debts or make conscientious efforts to pay them.
6. **McEachern v. Macy**, 233 F. Supp. 516 (W.D.S.C. 1964), *aff'd*, 341 F.2d 895 (4th Cir. 1965)–Holds that eight debts, including three over six years

old, with widespread knowledge of who the employer is, are sufficient to justify dismissal for bringing discredit upon agency.

7. **Fantozzi v. Board of Fire and Police Commissioners**, 182 N.E.2d 577 (Ill. App. 1962)–Holds that substantial evidence did not sustain findings that retention of a police officer who filed petition for voluntary bankruptcy would place a social stigma on the department and impair reputation and efficiency of the department. The court also ruled that hearsay evidence was not admissible before the Board.
8. **Sayles v. Board of Fire and Police Commissioners**, 166 N.E.2d 469 (Ill App. 1960)–Holds that evidence was sufficient to sustain finding by Board that policeman had failed to pay his taxes and personal bills, had signed an assignment of wages in violation of police rules, and had destroyed his usefulness and efficiency as a police officer.
9. **Carter v. Forrestal**, 175 F.2d 364 (D.C. Cir. 1949)–Holds that two creditors' judgments and sixteen complaints against civilian employee of military justifies dismissal for such cause as will promote the efficiency of the service.
10. **Anderson v. Board of Civil Service Commissioners**, 290 N.W. 493 (Iowa 1940)–Holds that the removal of a police officer on sole ground that he failed to pay his creditors was arbitrary and void where officer did all he could to fulfill obligations which were in the main for necessities and which he was unable to meet due to adverse circumstances, notwithstanding that city officials suffered some inconvenience and annoyance from officer's creditors.
11. **City of Fort Smith v. Quinn**, 278 S.W. 625 (Ark. 1925)–Holds that discharge for indebtedness is not justified where there was no rule against having debts and no showing of misconduct or failure to perform duties.
12. SEE ALSO:
    State ex rel. Foxall v. Cossairt (Pension Rights–A)

FILING SUIT AGAINST SUPERIORS

1. **Abbott v. Thetford**, 529 F.2d 695 (5th Cir. 1976)–Held the discharge of a probation officer for filing suit against the orders of his superior to be a violation of the officer's constitutional rights to litigate. The court established the test for determining the constitutionality of the order as whether, from an objective standpoint, the exercise of the officer's right disrupts and materially affects the operations of the agency.

2. **Norton v. Santa Ana**, 93 Cal. Rptr. 37 (Ct. App. 1971)–Holds that the dismissal of a city police lieutenant from the police department which was based, at least in part, on suits in which he sought recovery for libel and slander against the police chief, which were part of a personal vendetta and direct challenge to the authority of the police chief to manage and supervise his department, and the effect of which was to create internal dissension on a grand scale if allowed to continue, did not deny lieutenant his constitutional right to access to the courts.
3. **State ex rel. Kennedy v. Remmers**, 101 S.W.2d 70 (Mo. 1936)–Holds that a policeman could not be dismissed for retaining counsel and filing an action against the Board of Police Commissioners without first obtaining the permission of the chief of police. A departmental rule to the contrary was found unconstitutional.
4. **State ex rel. Christian v. Barry**, 175 N.E. 855 (Ohio 1931)–Holds that a police officer could not be discharged for exercising his constitutional right to bring suit, and that a departmental order requiring officers to obtain permission before instituting a civil suit or settling a claim was unconstitutional.
5. SEE ALSO:
   Paris v. Civil Service Comm'n (Conduct Unbecoming)
   State ex rel. Foxall v. Cossairt (Pension Rights–A)

FORCED RESIGNATION

1. **Weid v. Marion County**, 552 P.2d 1294 (Or. 1976)–Deputy sheriff's letter of resignation as requested by his superior was held to represent an involuntary resignation and, in effect, was equivalent to a dismissal. The deputy's superior was directed to follow the proper procedures applicable to dismissals if he desired to terminate the deputy's employment.
2. **Voss v. City of Roseburg**, 539 P.2d 1105 (Or. Ct. App. 1975)–City police sergeant's letter in reply to city manager's offer to reinstate him, following suspension based upon sergeant's acceptance of certain conditions, was deemed to be a voluntary letter of resignation. The court found no coercion nor any indication of any unlawful action by which the sergeant's resignation was obtained through fear or threats; the court specifically cited the letter in which he had stated that "the proposed reduction in rank has not affected my decision" and that "I don't feel I want to do this [work for] now with the . . . police department."
3. **Christie v. United States**, 518 F.2d 584 (Ct. Cl. 1975)–Federal employee who subjectively perceived the necessity of resigning when confronted with

notice of possible forthcoming discharge made a voluntary choice to resign, and the mere apprehension of unpleasantness which would accompany a challenge to the validity of her termination was insufficient to prove that she had submitted her resignation under duress.

4. **Valenzuela v. Board of Civil Service Commissioners**, 115 Cal. Rptr. 103 (Ct. App. 1974)—Directed the lower court to exercise its independent judgment to determine whether weight of evidence supported Civil Service Commission's finding that the petitioner's resignation as an employee of the water department was not the product of coercion or duress.
5. **Bellamy v. Gates**, 200 S.E.2d 533 (Va. 1973)—Officer who elected to resign from police force after having been informed by police chief that a judge had suggested it as one of three alternatives to being discharged from force could not recover damages from either police chief or judge in civil action alleging duress. The police chief was found to be exercising a discretionary function for which he could not be liable, and judges are exempt from liability for official acts.
6. **Cacchioli v. Hoberman**, 338 N.Y.S.2d 865 (1972)—Held that the threat to fire a probationary police officer if he did not tender his resignation did not constitute duress if the department had the right to discharge him. If the only basis for seeking the resignation was that the officer had previously been adjudged a youthful offender, the court would order his reinstatement on the ground that the resignation was coerced.
7. **Crouch v. Civil Service Commission**, 459 S.W.2d 491 (Tex. 1970)—Held that the resignation of a police officer after he had been suspended for entering a building and stealing several transistor radios was voluntary, since there was ample evidence to support the contention that the officer's resignation was prompted by his desire to finalize the matter at the earliest possible time so that he might obtain other employment.
8. **Rich v. Mitchell**, 273 F.2d 78 (D.C. Cir. 1959)—A federal employee who resigned after having been told by his supervisor that if he did not resign within three days the department would bring charges against him which could lead to fine and imprisonment as well as dismissal, did not make out a case for duress in the absence of any showing that supervisor knew or believed the proposed charges were false.
9. **Jocher v. Brennan**, 123 N.Y.S.2d 779 (Sup. Ct. 1953)—Held that where a noncitizen fraudulently secured the position of police officer by using a borrowed birth certificate, the petitioner's resignation under threat of dismissal was not made under duress.

10. **Willbourn v. Deans**, 240 S.W.2d 791 (Tex. 1951)—Ruled that there was insufficient evidence to establish that former sheriff was forced to resign. The only threats communicated to him were that if he refused to resign, legal proceedings would be brought to remove him from office. These threats did not constitute duress, since a threat to do what one has a legal right to do, such as bringing suit in court to enforce a claimed civil right, cannot constitute duress.
11. **Fox v. Piercey**, 227 P.2d 763 (Utah 1951)—Ruled that plaintiff's resignation from the fire department was not obtained by duress. The court held that the fact that the fire chief told the plaintiff that unless he resigned he would be discharged and that the discharge would be accompanied by adverse publicity was insufficient evidence to show that the fireman's resignation was involuntary. The court ruled that the fire chief's conduct amounted to the giving of advice and that "persuasion or advice does not constitute duress."
12. **Varela v. Board of Commissioners**, 238 P.2d 62 (Cal. App. 1951)—Held that a police sergeant who resigned under the threat of being prosecuted for the crime of accepting a bribe, of which he was innocent, had the right to seek reinstatement to the police force, provided that he acted with reasonable promptness and diligence in pursuing his claim.
13. **Moreno v. Cairns**, 127 P.2d 914 (Cal. 1942)—Held that the section of the Los Angeles City Charter requiring any public employee claiming that he had been unlawfully suspended, laid off or discharged to file within 90 days a written demand for reinstatement with the Civil Service Commission includes those asserting that their resignations had been coerced. Thus the court refused to reinstate an assistant fire commissioner who filed his reinstatement petition a year after his resignation. The plaintiff claimed that he resigned rather than be summarily discharged and incur the attendant loss of pension rights.
14. SEE ALSO:
    Battle v. Mulholland (Illicit Relations)

GAMBLING

1. **Donnelly v. Police Department**, 336 N.Y.S.2d 508 (App. Div. 1972)—Upholds a departmental determination that a police inspector could be disciplined for giving evasive answers to a grand jury investigating meetings and telephone calls between the inspector and a known gambler.

2. **McNeal v. Civil Service Commission**, 372 S.W.2d 614 (Ark. 1963)–Held that a Civil Service employee's operation of a gambling device violated a city civil service rule, permitting discharge for behavior unbecoming to a gentleman, or of such nature as to bring disgrace or disrepute upon a municipal department.
3. **In re Baker's Appeal**, 185 A.2d 521 (Pa. 1962)–Held that the Civil Service Commission did not abuse its discretion in discharging a police lieutenant, who had on three occasions visited an illegal gambling club.
4. **Campbell v. Hot Springs**, 341 S.W.2d 225 (Ark. 1960)–Held that the dismissal of an officer from the police force was authorized where that officer openly admitted working in a gambling house in his off-time.
5. SEE ALSO:
   Firemen's and Policemen's Civil Service Comm'n v. Shaw (Dereliction)
   King v. City of Gary (Conduct Unbecoming)
   Lenchner v. Miami Beach (Dereliction)
   People v. Heckt (Dereliction)

HAIRSTYLES

1. **Quinn v. Muscare**, 425 U.S. 560 (1976)–Upheld fire department regulations barring all facial hair except neatly trimmed mustaches, on the basis of **Kelley**, *infra*. The court did not rule on whether due process requires a presuspension hearing, because the department had revised its procedures to provide such hearings.
2. **Kelley v. Johnson**, 425 U.S. 238 (1976)–Holds that hairstyle regulations do not deprive police officers of Fourteenth Amendment rights. Officers challenging hairstyle regulations must show that there is no rational relationship between the regulations and the promotion of safety of persons and property. The overall need for discipline, *esprit de corps*, and uniformity defeated officer's challenge based on liberty guaranty of the Fourteenth Amendment.
3. **Hyatt v. Montgomery County**–(Oral Opinion) (D. Md. 1975)–Holds a county police grooming order invalid because of its vague and subjective standards but not necessarily invalid if carefully drawn.
4. **Schott v. Fornoff**, 515 F.2d 344 (4th Cir. 1975)–Holds unconstitutional a "white sidewall" rule as so extreme as to be unconstitutional.

5. **Marshall v. District of Columbia**, 392 F. Supp. 1012 (D.D.C. 1975)–Holds that a police officer has no right to demand an exemption from department grooming standards on the basis of religious beliefs, and has no right to be assigned to undercover work where he could continue to wear long hair and a beard.
6. **Burback v. Goldschmidt**, 521 P.2d 5 (Ore. Ct. App. 1974)–Holds that the need for a neutral and uniform appearance justifies rules limiting police officer hairstyles.
7. **Bujel v. Borman**, 384 F. Supp. 141 (E.D. Mich. 1974)–Holds that an employer's hairstyle regulation which applies only to males does not violate Title VII of the Civil Rights Act of 1964 absent a showing that it is used to hinder men from getting, enjoying, or keeping jobs.
8. **Stradley v. Anderson**, 478 F.2d 188 (8th Cir. 1973)–Regulation setting standards of appearance and hairstyle was rational means of maintaining efficiency and discipline of police force and assuring public confidence, and the department's interests thus outweighed the personal preferences of the officer challenging the regulation.
9. **Akridge v. Barres**, 321 A.2d 230 (N.J. 1974), *cert. denied*, 420 U.S. 966 (1975)–Sustained the validity of police department hairstyle regulations despite the plaintiffs' contentions that the regulations contravened their First Amendment rights to free speech and expression. The court quoted from the decision in **Richards v. Thurston**, 424 F.2d 1281 (1st Cir. 1971): "However, we reject the notion that plaintiff's hair length is of a sufficiently communicative character to warrant the protection of the First Amendment. That protection extends to a broad panoply of methods of expression, but as the nonverbal becomes less distinct, the justification for the substantial protections of the First Amendment becomes more remote."
10. **Yarbrough v. City of Jacksonville**, 363 F. Supp, 1176 (M.D. Fla. 1973)–Upheld plaintiff's dismissal from the Jacksonville Fire Department on the ground of insubordination for refusing to obey an order to cut his hair and trim his sideburns in order to meet departmental grooming regulations. In upholding the departmental regulation, the federal court held that "this court is unwilling to interfere with the reasonable conclusions of the responsible officers in the Fire Protection Division that there is a rational relationship between longer hair and personal safety of its firemen . . . . The second basis for this court's conclusion that the hair regulation *sub judice* does not encroach upon constitutional freedom of expression is the firm conviction

that it is not the function of the judiciary to interfere with a fire chief's reasonable notion as to what is necessary to maintain discipline within a 'quasi-military' organization."

11. **Rinehard v. Brewer**, 360 F. Supp. 105 (S.D. Iowa 1973)—Held that prison hair regulation for inmates was reasonable on two grounds: 1) need for instant identification, and 2) health and safety.
12. **Cupit v. Baton Rouge Police Department**, 277 So.2d 454 (La. 1973)—Upholds the dismissal of plaintiffs from the Baton Rouge Police Department for refusing to comply with departmental hair regulation despite the fact that the plaintiffs' religious beliefs precluded them from shaving. The court noted that the plaintiffs conceded that as long as the regulation bore a reasonable relationship to the efficient operation of the department, the regulation would not be an unconstitutional restraint on their freedom of religion.
13. **Greenwald v. Frank**, 337 N.Y.S.2d 225 (App. Div. 1972)—Police Department hairstyle rule upheld.
14. **Olsyewski v. Council of Hempstead Fire Department**, 334 N.Y.S.2d 504 (Sup. Ct. 1972)—Upheld discharge of fireman for refusing to shave his goatee. The regulation was held to be reasonable on the grounds that facial hair would detrimentally affect a fireman's ability to use his equipment.
15. **Schneider v. Ohio Youth Commission**, 287 N.E.2d 633 (Ohio Ct. App. 1972)—Affirmed the suspension of a social worker for refusing to trim his hair. However, unless there is specifically shown to be such an expression of philosophy, idealism or point of view through a style of one's hair, no protection under the First Amendment may successfully be claimed. No such showing was present in this case.
16. **Garrett v. City of Troy**, 341 F. Supp. 633 (E.D. Mich. 1972), *aff'd* 473 F.2d 912 (1973)—Sustained the discharge of a city employee, an engineering assistant, for wearing a mustache and sideburns. This court found that the city acted on the basis of substantial evidence that plaintiff's appearance drew unfavorable comments from the general public and from city employees which interfered with the proper functioning of the city.
17. **Lindquist v. Coral Gables**, 323 F. Supp. 1161 (S.D. Fla. 1971)—Holds that the regulation of Coral Gables Fire Department prohibiting members from wearing sideburns extending below earlobes is invalid for failure of the city to show any relationship between sideburns and interference with proper functioning of fire department; and member suspended for violating regulation was entitled to reinstatement with full retroactivity of tenure, status and salary.

18. **Elko v. McCarey**, 315 F. Supp. 886 (E.D. Pa. 1970)—Where fire department members had not established any immediate irreparable injury that could not be redressed by utilization of available administrative remedies and judicial review by city service regulations, proceedings in suit under Civil Rights Act for injunctive and declaratory relief with respect to suspension for ten days without pay and threatened further serious disciplinary action for violation of fire commissioner's memorandum regulating length and manner of grooming of sideburns, chin whiskers and mustaches, would be stayed pending exhaustion of such remedies and judicial review.
19. **Lucia v. Duggan**, 303 F. Supp. 112 (D. Mass. 1969)—Held that the dismissal of a teacher for wearing a beard, and other charges, as a result of proceedings and on charges of which he was given no notice was a deprivation of the teacher's procedural due process rights. The right of a teacher to wear a beard constitutes an interest which may not be taken away without due process of law.
20. **Finot v. Pasadena City Board of Education**, 58 Cal. Rptr. 520 (Ct. App. 1967)—Action of Board of Education and school district in assigning high school teacher who had taught in classroom to less desirable job of home teaching because he wore a beard in violation of administrative policy or principle, was not arbitrary, capricious, unreasonable, in bad faith, or abuse of statutory discretion. Nor did it violate the Privileges and Immunities or Equal Protection Clauses of the Federal Constitution.

ILLICIT RELATIONS

1. **Singer v. Civil Service Commission**, 530 F.2d 247 (9th Cir. 1976)—The dismissal of a government employee who openly and purposely flaunted his homosexuality, and indicated further continuance of such activities while identifying himself as an employee of a federal agency, was not arbitrary or capricious nor in violation of his First Amendment rights. The court distinguished this case from *Norton v. Macy, infra*, by finding Singer's careless display of unorthodox sexual conduct in public to have had a disrupting effect upon the efficiency of the respective agency.
2. **Faust v. Police Civil Service Commission**, 347 A.2d 765 (Pa. Cmwlth. 1975)—Adultery committed by police officer while off duty, and in private, is grounds for dismissal as "immorality" and "conduct unbecoming an officer." Because of the state interest in maintaining public confidence in the police force, an officer who had been "warned" of such a relationship

may be dismissed for such adulterous activity, and such dismissal will be upheld on appeal.

3. **Safransky v. State Personnel Board**, 215 N.W.2d 379 (Wis. 1974)—Holds that homosexual houseparent for mentally retarded teenage boys could be discharged where it was shown that he had made advances or remarks to other employees and made remarks about dressing up boys in girls clothing. This was a sufficient nexus between homosexuality and job performance to justify the dismissal.
4. **Society for Individual Rights v. Hampton**, 63 F.R.D. 399 (N.D. Cal. 1973)—Holds that U.S. Civil Service Commission cannot exclude persons from government employment solely because they are homosexuals. A person can be discharged for immoral behavior only if such behavior actually impairs the efficiency of the service.
5. **Baker v. Hampton**, No. 2525-71 (D.D.C., Dec. 21, 1973)—Holds that particular circumstances must be enumerated which would justify dismissal of federal employee on charges relating to homosexual conduct.
6. **Acanfora v. Board of Education**, 359 F. Supp. 843 (D. Md. 1973), *aff'd*, 491 F.2d 498 (4th Cir. 1974), *cert. denied*, 419 U.S. 836 (1974)—Homosexual junior high school teacher could not be refused employment, transferred to nonteaching duties or dismissed from faculty merely because he was a homosexual. Without some showing that his job performance was affected, or that he had discussed homosexuality with teachers or students, or that his homosexuality was notorious, the teacher was protected by the right of privacy. Reinstatement was denied because the teacher had attracted national attention.
7. **Gayer v. Schlesinger**, 490 F.2d 740 (D.C. Cir. 1973)—Holds that security clearance may be withdrawn only if there is a rational connection between the homosexual conduct and national security. Refusal of employee to answer any questions is grounds for revocation of the clearance. Court refused to outlaw all questions related to homosexual conduct, only those overly broad or intimate.
8. **Short v. Looney**, 324 N.Y.S.2d 309 (1971)—Holds that decision of Appellate Division modifying penalty of dismissal of police sergeant to suspension without pay for 15 months for untoward conduct while off duty and in the course of private employment would not be disturbed.
9. **Battle v. Mulhoiland**, 439 F.2d 321 (5th Cir. 1971)—Holds that in action instituted by Negro police officer who, under Mississippi law, could be dismissed from his employment without cause, evidence raised substantial issues of fact as to whether he was discharged, and if so whether his pressured resignation eventuated from his action in permitting two white

women to board in his home and whether such conduct would materially and substantially impair his usefulness as police officer that precluded summary judgment for defendants.

10. **Norton v. Macy**, 417 F.2d 1161 (D.C. Cir. 1969)—Holds that a civil servant could not be discharged because of his homosexuality unless it was rationally related to job performance. Unstable personality, obnoxious overtures while on the job, effect on public, and potential for blackmail are all relevant factors for judgment.
11. **Wasemann v. Roman**, 168 S.E.2d 548 (W. Va. 1969)—Holds that where regulations of police department required obedience to laws, and police officer, who was named as defendant in a bastardy proceeding, gave two directly opposite affidavits under oath, one of which was by necessity false, the officer was guilty of false swearing, which constituted a violation of police department regulations and was a proper cause for dismissal.
12. **Steward v. Leary**, 293 N.Y.S.2d 573 (1968)—Holds that dismissal of a married policeman on the ground that he was living with an unmarried woman, thereby conducting himself in a manner tending to bring adverse criticism on police department, was not so disproportionate to the conduct as to be arbitrary, capricious or unreasonable.
13. **Righter v. Civil Service Commission**, 136 N.W.2d 718 (Mich. Ct. App. 1965)—Holds that evidence supported findings of failure of good behavior on part of police officer, and that discharge of officer who had been observed visiting single woman at such hours and in such manner as to bring discredit upon police department was not improper or excessive as a matter of law.
14. **Dew v. Halaby**, 317 F.2d 582 (D.C. Cir. 1963)—Air traffic controller appointed "subject to investigation" could be discharged for any reason which could have justified not hiring him in the first place. Employee admitted homosexual conduct, although he was now married and had a child, and although psychiatrist testified that adolescent curiosity was the cause of the past homosexual conduct.
15. **Riley v. Board of Police Commissioners**, 157 A.2d 590 (Conn. 1960)—Holds that where policeman, following his appearance before City Board of Police Commissioners concerning his relationship with 16-year-old girl, was ordered to refrain from seeing, talking to, or associating with the girl, and was warned that failure to obey the order would be considered insubordination, Board's action in subsequently demoting policeman from rank of sergeant to patrolman for failure to obey the order was warranted. When the policeman continued his association with the girl following his demotion, the Board was warranted in finding his conduct constituted sufficient cause for dismissal.

16. **Miglieri v. Lee**, 149 N.E.2d 193 (Ill. App. 1958)–Holds that the findings of the Commission that patrolman was guilty of conduct unbecoming a police officer and of immoral conduct were not against the manifest weight of the evidence that the patrolman was illicitly involved with a 15-year-old girl.
17. **Bancroft v. Usher**, 165 N.Y.S.2d 187 (App. Div. 1957)–Holds that dismissal of village patrolman rather than suspension for 20 days or reprimand was abuse of discretion, where the customary and sanctioned practice was for the operator of a patrol car to take women and children home if they needed transportation and patrolman engaged in no improper conduct and merely permitted a girl under age 21 to remain in the patrol car for a longer period of time than was necessary to take her directly home.
18. **Mayor of Beverly v. First District Court**, 97 N.E.2d 181 (Mass. 1951)–Holds that District Court improperly ruled that evidence before mayor and Civil Service Commission in support of charge that police officer was guilty of conduct unbecoming to an officer, in that officer had sexual intercourse with a married woman who was not his wife, was unworthy of belief and that the result reached by the Mayor and Commission appeared not to be based upon exercise of unbiased and reasonable judgment.
19. **Brewer v. City of Ashland**, 86 S.W.2d 669 (Ky. 1935)–Holds that married police officer having child by woman other than his wife was legally dismissed by city as being guilty of conduct rendering him unfit for employment by city.
20. SEE ALSO:
    Bruns v. Pomerleau (Associations)
    Kramer v. City of Bethlehem (Conduct Unbecoming)
    Stafford v. Firemen's and Policemen's Civil Service Comm'n (Dereliction)
    Wesley v. Police Board (Standards of Judicial Review)

INCOMPETENCE

A. Incompetence–low performance

1. **Wilson v. State Personnel Board**, 130 Cal. Rptr. 292 (Ct. App. 1976)–Upheld dismissal of law enforcement officer (fish and game warden) for inefficiency in citing others to appear in court on a given day and then failing to file such citations in court until two years later, even though such action did not violate any specific regulation or rule.

2. **Bodenschatz v. State Personnel Board**, 93 Cal. Rptr. 471 (Ct. App. 1971)–Holds that statistical evidence compiled by California Highway Patrol comparing traffic officer's level of enforcement activity while unsupervised to that of various groups of fellow officers and also to his own while working under supervision of a superior officer could be used for purposes of evaluating the efficiency of officer.
3. **Heinberg v. Department of Employment Security**, 256 So.2d 747 (La. App. 1971)–Holds that where a civil service employee failed to appeal "substandard" service ratings, those ratings became final and irrefutable as a basis for his dismissal. Therefore, his only opportunity to challenge the validity of those ratings was at the time they were made and not at the time they were used as the basis for his dismissal.
4. **Alonzo v. Louisiana Department of Highways**, 268 So.2d 52 (La. App. 1972)–Holds that a comptroller for the highway department can be dismissed on incompetence grounds for failure to execute his duties properly.
5. **Peabody v. Personnel Commission**, 245 A.2d 77 (N.H. 1968)–Holds that a state toll collector can be dismissed because of a shortage of tolls in the lane of which he is in charge.
6. **McCallister v. Priest**, 422 S.W.2d 650 (Mo. 1968)–Holds that in order to discharge a commissioned officer (here a major) from the police force on inadequate performance grounds, the Board of Police Commissioners must allege that the officer is unqualified to serve as a police officer. If, as here, they merely charge that he is incapable of performing the functions of his rank, the proper form of discipline is demotion.
7. SEE ALSO:
    McDonald v. Dallas (Procedure–J)
    Thompson v. Lent (Firearms)

B. Incompetence–physical

1. **Meith v. Dothard**, 418 F.Supp. 1169 (M.D. Ala. 1976)–Found 5'9", 160-pound height and weight requirements set for job of state trooper not to be rationally related to the achievement of any legitimate state interest. The court found that body height and weight have some relationship to strength, but was unconvinced that a person below an arbitrarily defined level would invariably lack the necessary strength to perform the required tasks of state trooper.
2. **Massachusetts Board of Retirement v. Murgia**, 427 U.S. 307 (1976)–Upheld the right of a state to set a mandatory retirement age for police officers. The

Court held that the mandatory retirement rule rationally furthers the state's purpose of protecting the public by assuring physical preparedness of its uniformed officials. Since physical ability usually declines with age, the mandatory cutoff removes those whose fitness presumably has diminished.

3. **Lockman v. Van Vorris,** 374 N.Y.S.2d 778 (App. Div. 1975)—Upheld the termination of police officer's employment within a year after certification and appointment due to his subsequent failure to meet visual acuity requirements which he would not also have met if the appropriate administrative authorities had not been inept in their duty to make a preliminary determination at the time of his appointment. The court held that the civil service commission would not have been able to refuse to recognize the defective appointment in the absence of statutory provisions that prohibited hiring of police officers who did not meet physical requirements and that allowed the department to investigate the qualifications and background of "eligibles" within three years after appointment.
4. **Boyd v. Santa Ana,** 491 P.2d 830 (Cal. 1971)—Holds that where a police officer's disability arises out of and in the course of his duties, a city may not deprive him of valuable disability and retirement benefits by discharging him.
5. **Dobbins v. Los Angeles,** 89 Cal. Rptr. 758 (Ct. App. 1970)—Holds that a policeman can properly be discharged because of a physical disability caused by an off-duty injury, notwithstanding that standards of physical fitness were not written into the applicable regulations.
6. **O'Neal v. San Francisco,** 77 Cal. Rptr. 855 (Ct. App. 1970)—Holds that where officer had acquired a history of "grand mal" epileptic seizures which have affected his on-duty performance, sufficient cause for dismissal because of physical disability is present.
7. **Barber v. Retirement Board,** 95 Cal. Rptr. 657 (Ct. App. 1971)—Holds that where no position is available that a fireman, disabled in the performance of his duty, is capable of occupying, ordering his involuntary retirement is not an abuse of discretion.
8. **State v. Cantrell,** 203 S.E.2d 493 (Ga. 1974)—Holds that where statute provides that before a civil service employee can be retired for medical reasons he must receive a medical examination, involuntary retirement of an employee without such an examination is invalid.
9. **Otero v. New Mexico State Police Board,** 495 P.2d 374 (N.M. 1972)—Holds that action by the State Police Board in dismissing a patrolman for a physical disability (diabetes) must be affirmed by the district court on appeal if supported by substantial evidence. Here, the evidence was substantial and the dismissal was affirmed.
10. **Tafoya v. New Mexico State Police Board,** 472 P.2d 973 (N.M. 1970)—Holds that dismissal of a state police officer for failure to pass a medical examination is removal for incompetence. Therefore, in dismissing him, the State Police Board must comply with procedural requirements of a state statute regulating removal for incompetence.
11. **Johnson v. State Department of Institutions,** 198 So.2d 159 (La. App. 1967)—Holds that where a civil service employee is demoted on the recommendation of doctors that he is physically unable to handle his present position, the employee bears the burden of proving that his dismissal was arbitrary and capricious.
12. **Hamaker v. Gagnon,** 297 A.2d 351 (R.I. 1972)—Holds that where a civil service clerk-typist, disabled from performing her job by an injury, is transferred to a position she is physically able to perform, her failure to perform her new work in a reasonable time and with due diligence is grounds for her dismissal.

C. Incompetence—mental

1. **Peterson v. Department of Natural Resources,** 219 N.W.2d 34 (Mich. 1974)—Holds that public employees may not be subjected to psychiatric examination unless the examination is work-related and thorough, a copy of the report is given to the employee, and the doctor is available for questioning by the employee and his lawyer.
2. **Semerad v. City of Schenectady,** 276 N.Y.S.2d 357 (App. Div. 1967)—Holds that where a policeman's revolver discharged during an altercation with his wife, at which time the policeman suffered a complete lapse of memory regarding the incident, the city manager had adequate evidence to conclude that the policeman is emotionally unfit for police duty.
3. **Carr v. New Orleans Police Department,** 144 So.2d 452 (La. App. 1962)—Holds that a police officer who suffers mental disorder while so employed is subject to discharge by the appointing authority if the disorder renders him unfit or unable to discharge his duties properly.
4. **Lantini v. Daniels,** 247 A.2d 298 (R.I. 1968)—Holds that where a policeman, injured while on duty, is found competent to return to work and is ordered to return, his refusal to report justified his dismissal. Where qualified doctors disagree on the officer's medical or mental condition, a hearing

board has the right to weigh the evidence and accept or reject the testimony of either medical expert.

D. Incompetence–probationary officers

1. **Tabone v. Codd**, 387 N.Y.S.2d 122 (App. Div. 1976)–Upheld termination of probationary police officers, one on the basis that police commissioner's evaluation of his scholastic career at the academy warranted the conclusion that his attitude was immature and irresponsible, and the other on the basis of medical information in his file that he did not appear to be a good prospect for police employment. Since the termination of the officers' employment did not impugn their good names, or impose stigmas which would foreclose their freedom to take advantage of other opportunities, they were not entitled to hearings prior to termination.
2. **Connaster v. City of Knoxville** (Tenn. Ch. Ct. 1975)–Upholds the dismissal of probationary officers who failed to pass a psychological examination. Although no hearing was required, the employees were entitled to a copy of the psychologist's reports and to place evaluations from their own psychologist in their personnel files.
3. **Clark v. City of Manchester**, 305 A.2d 668 (N.H. 1973)–Holds that a probationary officer can be discharged without written reasons for unfitness caused by an off-duty injury. The period within which the probationary officer is out of service with the injury does not count toward the completion of his probationary period.
4. **Application of Going**, 170 N.Y.S.2d 234 (Sup. Ct. 1958)–Holds that a probationary patrolman can be dismissed at the end of his probationary period without a hearing. Statutory power of the civil service commission to dismiss a probationary employee during the probationary period is concurrent with the statutory power of the police commissioner to dismiss at the end of the probationary period.
5. **Hanson v. Kennedy**, 163 N.Y.S.2d 301 (Sup. Ct. 1957)–Holds that where the police commissioner relies on the recommendation of the Examining Committee of Police Surgeons in dismissing a probationary officer because of a physical defect, the dismissal is not unreasonable even though the officer presents contrary medical testimony.
6. **People ex rel. Ballinger v. O'Conner**, 142 N.E.2d 144 (Ill. App. 1957)–Holds that a petition by a probationary officer to compel his reinstatement filed a year after his dismissal (for an alleged tubercular condition) is barred by the officer's tardiness in filing suit. It recognizes the right of the police commissioner to discharge a probationary officer at any time during his probationary period if the officer proves to be physically disabled.

E. Incompetence–procedural and related matters

1. **Brockman v. Skidmore**, 387 N.Y.S.2d 426 (1976)–Where acts of misconduct charged against a police officer were not willfully and intentionally perpetrated, but seemed to be the result of mental illness, a police disciplinary proceeding was appropriate and the department need not follow the statutory vehicles for injury into mental health issues.
2. **Papasidero v. Murphy**, 328 N.Y.S.2d 558 (Sup. Ct. 1971)–Holds that where a policeman is discharged without receiving a statement of formal charges to which he is entitled, the discharge is invalid. An attempt to present him with formal charges seven years later is barred by the statute of limitations.
3. **McGlasson v. United States**, 397 F.2d 303 (Ct. Cl. 1968)–Holds that a civil service employee can be involuntarily retired on disability grounds where the decision is based solely on the conclusions of psychiatric and medical examiners and made without a prior adversary hearing. The due process argument was not raised in the opinion.
4. **Bouley v. Bradley Beach**, 126 A.2d 53 (N.J. App. 1956)–Holds that a statute (providing that an officer, who was retired for disability purposes and who has recovered from the disability, may be reinstated if there is a position available on the force) was held not to contemplate the removal of an officer from the force to make room for the returning pensioner.

INSUBORDINATION

1. **Shoucair v. Department of Police**, 314 So.2d 751 (La. App. 1975)–Upholds the dismissal of an officer who was forgetful of his duties and deemed his forgetfulness trivial. The officer was originally suspended, but this was changed to dismissal when, upon being informed of his suspension, he became insubordinate, disrespectful and arrogant toward his superior officers.
2. **Stephens v. Department of State Police**, 532 P.2d 788 (Ore. 1975)–Held, "Insubordination can be rightfully predicated only upon a refusal to obey some order which a superior officer is entitled to give and entitled to have obeyed." A state trooper was entitled to take military leave as a matter of law, and cannot be found insubordinate for taking that leave, even where a superior has directly ordered him to report for duty.

3. **Coursey v. Board of Fire and Police Commissioners**, 234 N.E.2d 339 (Ill. App. 1967)—Decision to remove police officer from police force was reasonably related to his misconduct in leaving his beat without permission, failing to file a full report, and insubordination; to the discipline and efficiency of the department; and to maintenance of public confidence in the department.
4. **Parrish v. Civil Service Commission**, 425 P.2d 223 (Cal. 1967)—Held that a social worker could not be dismissed for his refusal to participate in mass early morning raids upon the homes of welfare recipients, when his refusal was based on his reasonable belief that raids were unconstitutional.
5. **Zisner v. Board of Fire and Police Commissioners**, 172 N.E.2d 33 (Ill. App. 1961)—Holds that firemen could be suspended for a period of ten days without pay for failure to attend a training session ordered by the fire chief. Required attendance did not violate a state maximum hours statute because none of the firemen had reached the maximum hours allowed for the month in question on the day the exercise was scheduled.
6. **Cook v. Civil Service Commission**, 2 Cal. Rptr. 836 (Ct. App. 1960)—Where sergeant in police department of city was asked by chief of police what sergeant meant when he told fellow officers that he was happy to know that the chief of police would not be around much longer, and sergeant replied that he was not required to explain anything to the chief of police and that third persons had "enough on you to run you out of town," and sergeant refused to tell who such persons were, sergeant was guilty of "insubordination" justifying his discharge under provision of city charter providing that appointing authority shall have power to remove employee in classified services from his position for insubordination.
7. **Roller v. Stoecklein**, 143 N.E.2d 181 (Ohio 1957)—Removal of police officer on ground of insubordination because he failed and refused to obey an unconstitutional order of chief of police prohibiting employees in safety department from parking their private automobiles, during duty hours, in several places on a public street, reserved by custom or policy and not by law (in the absence of any immediate and general public necessity) for adjoining businessmen, was unlawful, arbitrary and void, and violated the constitutional rights of the officer as a citizen.
8. **Garvin v. Chambers**, 232 P. 696 (Cal. 1924)—Holds that a police officer, while suspended for an alleged offense, had no duty to answer his chief's questions regarding that offense. Therefore, he could not be dismissed for insubordination when he refused to answer such questions.

9. SEE ALSO:
   Bokowski v. Civil Service Comm'n (Alcohol)
   Borders v. Anderson (Untruthfulness)
   Gasperas v. Bd. of Fire & Police Comm'rs (Standards of Judicial Review)
   Gaudette v. Bd. of Public Safety (Conduct Unbecoming)
   In re Gioglio (Criticism)
   Krolick v. Lawrey (Alcohol)
   MacIntyre v. Retirement Bd. (Pension—A)
   Norton v. Santa Ana (Filing Suit)
   Richardson v. City of Pasadena (Polygraph)
   Riley v. Bd. of Police Comm'rs (Illicit Relations)
   State ex rel. Christian v. Barry (Filing Suit)

INTERNAL INVESTIGATIONS

1. **May v. Shaw**, 386 N.Y.S.2d 625 (Sup. Ct. 1976)—Held that police officer, who was on suspension from department and awaiting hearing, could receive second suspension for refusal to answer department officials' questions concerning incidents that formed the basis of the original charges.
2. **Dwyer v. Police Board of City of Chicago**, 334 N.E.2d 239 (Ill. App. Ct. 1975)—Upheld the reinstatement of a police officer who had been discharged for responding to departmental inquiry that he had exercised his Fifth Amendment rights before a grand jury. Court held that where none of the questions put to the officer by the grand jury had any relation to his official duties, he could not be disciplined for any response to a departmental inquiry concerning his actions before such grand jury, even though such action allegedly violated department rules prohibiting failure to give evidence to grand jury and prohibiting action which brings discredit upon the department. Court found *Conlisk, infra*, not binding.
3. **McLean v. Rochford**, 404 F.Supp. 191 (N.D. Ill. 1975)—Held that privilege of police officer against self-incrimination was not violated when he was dismissed, not because he exercised his privilege against self-incrimination, but because he refused to answer questions narrowly and specifically related to his duties as a police officer after being advised that nothing he said could be used against him in either a departmental disciplinary proceeding or a criminal proceeding. Cited *Conlisk, infra*.
4. **Broderick v. Police Commissioner**, 330 N.E.2d 199 (Mass. 1975)—Held that police commissioner could require officers to respond to questionnaire which inquired into alleged off-duty misconduct of a number of unnamed

officers at an out-of-state celebration if the conduct may be grounds for disciplinary action and the questions are narrowly related to that conduct.

5. **Confederation of Police v. Conlisk**, 489 F.2d 891 (1973), *cert. denied*, 416 U.S. 956 (1974)—Police officers may not be discharged solely for invoking the privilege against self-incrimination before grand jury, although refusal to answer specific questions relating to official duties asked by public employer may be grounds for dismissal if the officer has been informed that failure to answer may result in dismissal, and has been assured that his answers and the fruits thereof will not be used in any criminal proceeding.
6. **Seattle Police Officers' Guild v. City of Seattle**, 494 P.2d 485 (Wash. 1972)—Holds that the Fifth Amendment privilege against self-incrimination was not a bar to discharge of city police officers who refused to answer questions in context of police department internal administrative investigation into alleged police misconduct, where the questions were specifically, directly, and narrowly related to past performance of their official duties; the officers were not required to waive any immunity from prosecution; and they were advised that refusal to cooperate could lead to their dismissal.
7. **Boulware v. Battaglia**, 344 F. Supp. 889 (D. Del. 1972), *aff'd*, 478 F.2d 1398 (1973)—Held that although police officers have a right to be free from unreasonable searches and seizures, even in departmental proceedings, no Fourth Amendment violation occurred when a police officer, who had informed his superiors of a possible conspiracy among other officers and was attempting to verify his accusations, participated in and recorded a number of phone conversations with the alleged conspirators.
8. **People v. Tidwell**, 266 N.E.2d 787 (Ill. App. 1971)—The warrantless search of a guard's locker at the county jail was found to be a permissible search, even though not incident to arrest, since the jail administrators had an equal right of access to the locker.
9. **Allen v. Murphy**, 322 N.Y.S.2d 435 (1971)—Supports the proposition that the divulgence and use of evidence obtained by means of an unauthorized wiretap would be prohibited from departmental hearings determining whether a police officer should be dismissed for misconduct.
10. **Biehunik v. Felicetta**, 441 F.2d 228 (2d Cir. 1971), *cert. denied*, 403 U.S. 932 (1971)—A police commissioner's command to 62 officers to appear in a lineup, on pain of discharge, to allow citizens alleging police assaults to make possible identifications, was upheld as reasonable in view of the public interest at stake, even though no probable cause to arrest existed.

11. **Fahy v. Commission to Investigate Allegations of Police Corruption**, 319 N.Y.S.2d 242 (1971)—Holds that eight-page financial questionnaire which police officers were directed to complete by subpoenas served upon them by commission appointed to investigate, and which sought exact amounts expended for past three years by officer, his wife and his dependents for a detailed list of items, bore no direct relation to purpose for which commission was set up and would be vacated.
12. **Gardner v. Broderick**, 393 U.S. 273 (1968)—Holds that if a policeman had refused to answer questions directly relating to the performance of his official duties, without being required to waive his immunity with respect to the use of his answers or the fruits thereof in a criminal prosecution of himself, the privilege against self-incrimination would not have been a bar to his dismissal. However, his dismissal solely for his refusal to waive the immunity to which he is entitled cannot stand.
13. **Garrity v. New Jersey**, 385 U.S. 493 (1967)—Holds that the threat of removal from public office under the forfeiture-of-office statute to induce police officers to forego the privilege against self-incrimination secured by the Fourteenth Amendment rendered the resulting statements involuntary and inadmissible in state criminal proceedings.
14. **Katz v. United States**, 389 U.S. 347 (1967)—The acts of the Government in bugging a public telephone and recording conversations violated the privacy justifiably relied upon by persons using the telephone and therefore constituted an unreasonable search and seizure within the meaning of the Fourth Amendment.
15. **Schmerber v. California**, 384 U.S. 757 (1966)—Physical tests, when based on probable cause or incident to arrest, do not violate one's Fourth Amendment rights if performed reasonably under the circumstances.
16. **Slochower v. Board of Education**, 350 U.S. 551 (1956)—Summary dismissal of college professor for invoking the privilege against self-incrimination before a legislative committee violated due process.
17. SEE ALSO:
    Gerace v. County of Los Angeles (Conduct Unbecoming)
    McPherson v. New York City Hsg. Authority (Procedure—E)
    Smyth v. Lubbers (Procedure—E)
    Varela v. Bd. of Comm'rs (Forced Resignation)

LABOR RELATIONS

1. **Olshock v. Village of Skokie**, 411 F.Supp. 257 (N.D. Ill. 1976)—Held that policemen's actions in reporting for duty out of uniform and refusing to

work in uniform did not constitute a lawful protest made for purpose of collective bargaining, but instead was a strike in violation of a rule that policemen have no constitutionally protected right to strike.

2. **Dowling v. Bowen**, 385 N.Y.S.2d 355 (App. Div. 1976)—Held that police officers who had detained city-owned and operated vehicles for time-consuming inspections and had issued summonses ordering them back to their garages, and who had abstained from the performance of other duties, had engaged in strike actions. The court found such conduct occurring over a three-day period to be commensurate with a campaign to induce the city to rescind an order which had demoted certain high-ranking police officials for budgetary reasons.
3. **Vorbeck v. McNeal**, 429 U.S. 874 (1976)—A state statute that prohibited police officers from engaging in collective bargaining was upheld on the grounds that there is no constitutional right to engage in collective bargaining.
4. **Hortonville Joint School District v. Hortonville Education Association**, 423 U.S. 1301 (1976)—Upheld the right of a local school board to fire teachers who went on strike in violation of a state law. The court held that the Due Process Clause of the Fourteenth Amendment did not guarantee the teachers that the decision to terminate them would be made or reviewed by a body other than the school board.
5. **Tassin v. Local 832, National Union of Police Officers**, 311 So.2d 591 (La. App. 1975)—Upheld the right of policemen, whose attempts to obtain recognition of their Union from mayor and aldermen had been unsuccessful, to picket on the public sidewalks outside aldermen's private businesses. The court noted that the municipal government did not provide the aldermen with office space, so that most of their business, including governmental business, was carried on in private establishments.
6. **Lontine v. Van Cleave**, 483 F.2d 966 (10th Cir. 1973)—Holds that a deputy sheriff's right to join a union was protected by the First Amendment, and he could not be discharged by the sheriff for exercising a constitutional right. This did not mean that sheriff could be required to bargain or that the legislature could not prohibit strikes.
7. **Police Officers Guild, NUPO v. Washington**, 369 F. Supp. 543 (D.D.C. 1973)—A statute prohibited police officers from joining any organization claiming the right to strike. Court held the statute was overly broad, since it forbade advocacy of the right to strike. While actual resort to a strike was punishable, it was an unreasonable intrusion on free speech to prohibit anyone from merely claiming the right to strike.

8. **Newport News Fire Fighters Association v. Newport News**, 339 F. Supp. 13 (E.D. Va. 1972)—Holds that the right to join a union is protected by the First Amendment. However, this cannot be extended to require city to bargain because the right to bargain collectively is a legislatively-created right. Employees may petition, assemble, and speak with employer, since these activities are protected, and should not be confused with bargaining.
9. **Los Angeles Unified School District v. United Teachers—Los Angeles**, 100 Cal. Rptr. 806 (Ct. App. 1972)—Holds that public employees do not have the right to strike in absence of statutory grant, and a temporary restraining order against engaging in and inducing employees to engage in a teachers strike was properly granted.
10. **Melton v. City of Atlanta**, 324 F. Supp. 315 (N.D. Ga. 1971)—A state statute made it a misdemeanor for police officers to join unions. Court found the statute overbroad and said a strike prohibition would meet same state need.
11. **AFSCME v. Woodward**, 406 F.2d 137 (8th Cir. 1969)—City employees, who were discharged for union membership, sued for reinstatement. Court held that union membership is protected under the First Amendment freedom of association. No paramount interest limiting public employment because of union membership.
12. **Atkins v. City of Charlotte**, 296 F. Supp. 1068 (W.D.N.C. 1969)—Holds that a state cannot make it a misdemeanor for public employees to join labor unions, including national unions. State may ban strikes, since this would not infringe on First Amendment rights as broadly. Statute voiding all contracts between unions and units of government is valid; only legislature may require bargaining on the part of government.
13. **McLaughlin v. Tilendis**, 398 F.2d 287 (7th Cir. 1968)—Teachers, who were discharged for joining a union, sued for reinstatement. Court held that union membership is protected by First Amendment; interference with that right violates due process. Without illegal conduct or proof of adverse effect on performance, teachers cannot be discharged for joining a union.
14. **Ball v. City Council**, 60 Cal. Rptr. 139 (Ct. App. 1967)—Holds that even though chief of police could be dismissed without cause and without a hearing or notice, this did not give the city the right to dismiss him because of his union membership and participation in union activities.
15. **Thornhill v. Alabama**, 310 U.S. 88 (1940)—Although the rights of employers and employees are subject to modification and qualification in the public interest, it does not follow that the state in dealing with the evils arising from a labor dispute may impair the effective exercise of the right to discuss freely labor relations which are matters of public concern.

16. SEE ALSO:
Klein v. Civil Service Commission (Criticism)
Magri v. Giarrusso (Criticism)
Olshock v. Village of Skokie (Procedure–C)
Tygrett v. Washington (Probationary Employment)

MISTREATMENT OF PRISONERS

1. **Collins v. Codd**, 379 N.Y.S.2d 733 (1976) (mem.)–Sustained police commissioner's finding that police officer, after handcuffing prisoner, had wrongfully and without cause thrown her to the ground, put his knee in her back and dragged her to a patrol car, pushed her in and then choked her with a nightstick. A fine of 10 days' vacation was imposed based upon a weighing of conflicting testimony among all witnesses.
2. **Hunn v. Madison Heights**, 230 N.W.2d 414 (Mich. Ct. App. 1975)–Upheld the dismissal of a police officer charged with borrowing $120 from a prisoner and with supplying the same prisoner with a six-pack of beer. Ruled that a discharge following a suspension is permitted under the law which forbids the imposition of successive suspensions.
3. **Williams v. Department of Corrections**, 316 So.2d 411 (La. App.), *aff'd*, 320 So.2d 563 (La. 1975)–Upheld the dismissal of a corrections officer who struck a student-inmate at a training school in violation of corrections department rules prohibiting the use of corporal punishment by officers except in self-defense or to prevent destruction of property.
4. **Zeboris v. Kirwan**, 325 N.Y.S.2d 112 (App. Div. 1971)–Holds that imposition of three-day suspension on member of state police who allowed 17-year-old youth to escape from his custody while youth was being transported to county jail was not an abuse of discretion.
5. **Barlow v. New Orleans**, 228 So.2d 47 (La. App. 1969)–Holds that police officer has a duty to exercise reasonable and ordinary care and diligence to prevent injury to prisoners in his custody although he is not charged with negligence in failing to prevent that which he cannot reasonably foresee might happen.
6. **Board of Police Commissioners v. Olson**, 245 A.2d 54 (N.J. Super. 1968)–Holds that an ordinance adopted by borough council pursuant to statute authorizing ordinances to establish police department and to prescribe rules for discipline thereof, may provide that day-to-day management of affairs of police department be vested in or delegated to Board of Police Commissioners established by the ordinance and that Board may conduct hearing on charges against members of department and, without seeking concurrence or approval of council, impose minor penalties. Mistreatment of a prisoner, if true, justified disciplinary action against the officer.
7. **Harless v. Bichsel**, 327 S.W.2d 791 (Tex. Civ. App. 1959)–Holds that a written statement made by the chief of police and filed with the Civil Service Commission, wherein the police chief named the proper section of the personnel rules and charged the policeman with conduct prejudicial to good order and failure or refusal to carry out instructions, and further named and quoted the police department regulation with respect to treatment of prisoners, and specified the particular actions of the policeman in using unnecessary force upon a prisoner by hitting and kicking him and verbally abusing him by cursing him, was a legal and adequate statement and met the statutory requirements for specifying grounds for suspension or removal of policeman.
8. **Swars v. Council of Vallejo**, 206 P.2d 355 (Cal. 1949)–Holds that evidence that arrested intoxicated prisoner was unharmed immediately prior to arrival of petitioner police officer at police station, that petitioner threatened to close prisoner's mouth because prisoner addressed petitioner with words of degradation, that petitioner placed his hand against prisoner's face, and that prisoner was found almost immediately thereafter on the ground suffering from severe injuries, justified discharge of officer on grounds that he unmercifully and unnecessarily had beaten prisoner.
9. SEE ALSO:
City of Little Rock v. Hall (Conduct Unbecoming)
Cusson v. Firemen's & Policemen's Civil Service Comm'n (Procedure–D)
Daniel v. Porter (Procedure–C)
Schadt v. Sardino (Procedure–C)

MISUSE OF FIREARMS

1. **Peters v. Civil Service Commission of City of Tucson**, 559 P.2d 698 (Ariz. Ct. App. 1977)–Sustained suspension of police officer for violating regulation establishing test for right to discharge firearm in performance of duty, notwithstanding his claim that the suspension was based on hindsight, since subjects turned out to be unarmed juveniles who had not committed a forcible felony and whose escape did not pose a threat to life, despite the possibility of a high-speed chase.

2. **Thompson v. Lent**, 383 N.Y.S.2d 929 (App. Div. 1976)–Held Board of Police Commissioners unwarranted in their finding of the unlawful use of a firearm by a police officer. The undisputed evidence indicated that the police officer had been stabbed in the stomach, and, either immediately thereafter or contemporaneously therewith, had fired a shot that killed the assailant. The court, in finding no violation of the departmental rule on self-defense, did sustain the evidence that showed the incompetency of the officer for having failed to summon appropriate assistance and for having sought the aid of an unarmed private citizen.
3. **Fornuto v. Police Board of City of Chicago**, 349 N.E.2d 521 (Ill. App. Ct. 1976)–Where an officer was not carrying his service revolver because its holster strap broke when he went on duty, and he was carrying another pistol which he was qualified to carry as a second weapon, such a technical violation of departmental rule requiring an officer to arm himself with a regularion weapon did not warrant his discharge.
4. **Kelley v. Town of Colonie**, 376 N.Y.S.2d 238 (App. Div. 1975)–Held where police detective offered no explanation for his conduct at a nightclub which involved not only behavior which was clearly disorderly but also the actual use of firearm, the town board was justified in terminating the detective's employment as a result of the incident.
5. **Abeyta v. Town of Taos**, 499 F.2d 323 (10th Cir. 1974)–Upholds the discharge of police officers who fired their revolvers at police cars and buildings in protest of the town council's handling of their grievances.
6. **Lally v. Department of Police**, 306 So.2d 65 (La. App. 1974)–Upheld the suspension of an officer for using a nonregulation weapon while off duty.
7. **Glover v. Murphy**, 343 N.Y.S.2d 746 (App. Div. 1973)–Held that finding by the Police Board that a police officer failed and neglected to safeguard his service revolver and shield was not supported by substantial evidence, where revolver and shield were stolen from him while he was asleep in a hotel room and it was not shown that he acted irresponsibly and carelessly with items of police property entrusted to him or that he at any time allowed the property out of his immediate control.
8. **Stribling v. Mailliard**, 85 Cal. Rptr. 924 (Ct. App. 1970)–Holds that where only one specific relevant incident was pleaded to show unreasonableness of regulation requiring policemen to carry revolvers while off duty and no allegation was made that police disciplinary powers would not be put into effect against off-duty officer alleged to have made wrongful use of his weapon, complaint did not make out a case for judicial intervention.
9. **Baumbartner v. Leary**, 311 N.Y.S.2d 468 (App. Div. 1970)–Holds that evidence failed to sustain the first specification of charges on which a policeman was dismissed, namely that the officer willfully, wrongfully, and without just cause fatally shot his friend; but that evidence sustained the specification that the officer failed and neglected to properly safeguard his service revolver.
10. **City of Vancouver v. Jarvis**, 455 P.2d 591 (Wash. 1969)–Upholds the dismissal of three police officers who wrongfully took a supply of plastic ammunition and shot up the station house with at least 57 rounds.
11. **Madden v. City of Stockton**, 1 Cal. Rptr. 70 (Ct. App. 1959)–Holds that where a policeman holding a civil service rank of sergeant of police was at time of an incident leading to his dismissal acting as police sergeant, special assignment, for which he received approximately $25.00 a month more, but not a different civil service rating, which was revocable and not permanent, revocation of special assignment and return of policeman to his permanent rank could not be considered a demotion and hence not disciplinary, and subsequent discharge of policeman arising out of same incident did not have effect of penalizing him twice for same offense. The sergeant had held a cocked revolver at the head of another officer because he was angry.
12. **Donovan v. Board of Police Commissioners**, 163 P. 69 (Cal. 1916)–In proceedings to review the dismissal of a police sergeant who, though knowing that robbery was being perpetrated, gave his revolver to another, and allowed the other to interfere and kill the robber, warranted dismissal on ground that the sergeant was guilty of conduct unbecoming an officer.
13. SEE ALSO:
    Baker v. Kennedy (Retirement)
    King v. City of Gary (Conduct Unbecoming)
    Pell v. Board of Education (Standards of Judicial Review)
    Semerad v. City of Schenectady (Incompetence–B)

MOONLIGHTING

1. **Trelfa v. Village of Centre Island**, 389 N.Y.S.2d 22 (App. Div. 1976)–Held departmental rule which states that a member of the police force "shall devote his entire time and attention to the service of the . . . department and shall not engage in any other business or calling except that when a member . . . is suspended from duty without pay, he may engage in another lawful business or calling during the suspension," not to be vague or overbroad, as it clearly proscribes outside employment.
2. **Abbott v. Phillips**, 313 N.E.2d 321 (N.Y. 1974)–Affirmed the dismissal of a police officer who held outside employment while on sick leave due to

injuries received in an accident. Because of a prior record of disciplinary action there was no justification for reducing the punishment.

3. **City of Crowley Firemen v. City of Crowley**, 264 So.2d 368 (La. App. 1972), *aff'd*, 280 So.2d 897 (La. 1973)—Where evidence showed long history of moonlighting by fire fighters, with no adverse incidents; bad faith by city in passing rule; and one day-on, one day-off work cycle, and firemen sleeping on duty, an absolute prohibition on moonlighting violates due process. Court indicates that under proper circumstances it might approve the rule.
4. **Cox v. McNamara**, 493 P.2d 54 (Ore. Ct. App. 1972)—Holds that regulation restricting off-duty employment by police personnel and exceptions contained therein permitting police officers to make investments, rent their own property, teach law enforcement subjects, and engage in extra employment designed to improve police image, were reasonable and not inconsistent with proper and effective internal police administration.
5. **Bock v. Long**, 279 N.E.2d 464 (Ill. App. 1972)—Holds that evidence supported the Board's determination that a police captain whose wife acquired interest in dramshop, and who filed joint federal income tax return with his wife and provided gratis services to his wife as proprietor of the establishment, was possessed of interest in the dramshop in violation of statute prohibiting law enforcement officials from being in any way interested in the manufacture, sale or distribution of alcoholic liquor, and thus was properly discharged.
6. **Brenckle v. Township of Shaler**, 281 A.2d 920 (Pa. Ct. App. 1972)—Holds that a township resolution which prohibited outside employment of police officers other than on their days off, holidays, or vacations was authorized by statute, and was not an arbitrary, unreasonable and unnecessary restriction on the officers' constitutional rights.
7. **State v. Llopis**, 257 So.2d 17 (Fla. 1971)—Holds a state criminal statute prohibiting outside employment which would impair employee's "independence of judgement" unconstitutionally vague as a matter of law, but court sympathizes with law's goals.
8. **Fisher v. March**, 477 P.2d 148 (Utah 1970)—Holds that questions, in questionnaire concerning outside employment, addressed to city employees, asking the identity of employers, number of hours worked, type of work and whether such employers do business with the city, were neither onerous nor unreasonable and did not violate the Employees' Ethics Act.
9. **Hopwood v. City of Paducah**, 424 S.W.2d 134 (Ky. Ct. App. 1968)—Holds that city ordinance providing that no member of police department would be permitted to engage in any other occupation or employment for more than four hours during any work day or more than 16 hours within five working days of any week does not deprive members of police department of rights to enjoy life and liberty and to acquire and protect property.
10. **Flood v. Kennedy**, 239 N.Y.S.2d 665 (1963)—Holds that New York City police department rule precluding policemen from engaging in outside occupations except when suspended without pay or on vacation or other leave was valid.
11. **Croft v. Lambert**, 357 P.2d 513 (Ore. 1961)—Holds that statute providing that no deputy, assistant or clerk shall accept any employment for compensation while holding an appointment from an officer of Multnomah County was not unconstitutional on theory that it was unreasonable, arbitrary, and special or class legislation.
12. **Lombardino v. Firemen's & Policemen's Civil Service Commission**, 310 S.W.2d 651 (Tex. Civ. App. 1958)—Holds that evidence would support the Commission's finding that the detective had violated penal code article prohibiting collection of debts by any peace officer for compensation and that he had engaged in outside business without written permit from chief of police.
13. **Huhnke v. Wischer**, 72 N.W.2d 915 (Wis. 1955)—Fireman who was moonlighting received a ninety-day suspension. The rule prohibiting outside employment was upheld. The nature of duties, always being subject to call, semi-military organization, importance of discipline, support the reasonable rule designed to promote departmental efficiency.
14. **Isola v. Borough of Belmar**, 112 A.2d 738 (N.J. 1955)—Holds that ordinance which prohibited policemen from pursuing other work in nonworking hours and which, by nonseparable provision, allowed Board of Governors to grant permission to other work was invalid for failure to fix standards to guide commissioners in deciding upon applications for exemptions.
15. **Willard v. Civil Service Board**, 63 N.W.2d 801 (S.D. 1954)—Holds that the evidence was sufficient to establish that Board had not acted either fraudulently or in an arbitrary or willful disregard of undisputed and indisputable proof in determining that chief of police had discharged policeman in good faith or cause. Officer had worked 8 hours per day at another job, but only had permission to work 4 hours per day.
16. **Hayes v. Civil Service Commission**, 108 N.E.2d 505 (Ill. App. 1952)—Holds that when police officer acquired an interest in tavern, he violated a rule of Chicago Police Department expressly prohibiting any member of the Department from being engaged in any other business.

17. **Johnson v. Trader**, 52 So.2d 333 (Fla. 1951)—Holds that the Civil Service Board's rule prohibiting city civil service members from engaging in sale of alcoholic beverages or any other enterprise inconsistent with their duties as city employees, was a lawful exercise of the Board's power under the city charter.
18. **Hofbauer v. Board of Police Commissioners**, 44 A.2d 80 (N.J. 1945)—Holds that a patrolman's work as toolmaker in an outside part-time capacity, in violation of rule of Board of Police Commissioners, removed patrolman from classification of an officer holding office during good behavior and justified the Board in dismissing him.
19. **Calfapietra v. Walsh**, 49 N.Y.S.2d 829 (Sup. Ct. 1944)—There is a rational relationship between a rule prohibiting outside employment and the efficient conduct and administration of the fire department. Employee who averaged over 100 hours per week working on two jobs, without sufficient time for rest, could not properly and efficiently perform his duties as fireman.
20. **Bell v. District Court**, 51 N.E.2d 328 (Mass. 1943)—Validity of rule prohibiting outside employment is to be upheld unless it is shown that rule cannot have any rational relation to the maintenance of an efficient fire-fighting force.
21. **Reichelderfer v. Ihrie**, 59 F.2d 873 (D.C. Cir. 1932), *cert. denied*, 287 U.S. 631 (1932)—Rule prohibiting firemen from holding outside employment and requiring devotion of full attention to duties is reasonable because of nature of work. Similar rule might not be valid for other types of employees.
22. **People ex rel. Rogers v. Tinney**, 172 N.Y.S. 355 (1918)—Rule requiring assistant fire department engineers to attend all fires and alarms precludes holding any outside employment which would prevent carrying out that rule, even in the absence of any incident in past.
23. **People ex rel. Ullrich v. Bell**, 4 N.Y.S. 869, *aff'd mem.*, 125 N.Y. 722 (1891)—Proof that policeman ordered cigars from manufacturer to be delivered to a number of persons in small quantities, that cigars were charged to him, and that he was in business of canvassing for the sale of cigars shows *prima facie* violation of police regulation prohibiting policemen from engaging in any other business.
24. SEE ALSO:
O'Hara v. Comm'r of Public Safety (Political Activity)

PENSION RIGHTS

A. Misconduct As A Bar To Receiving A Pension

1. **Shanahan v. Policemen's Annuity and Benefit Fund of City of Chicago**, 357 N.E.2d 582 (Ill. App. Ct. 1976)—Construed statute providing that "whenever any person who 'shall have received' any benefits from a policemen's pension fund shall be convicted of a felony such policeman shall receive 'no further' pension allowance or benefit" to apply only to officers who were convicted of felonies *after* they had already been receiving benefits. The former police officers here had committed service-connected felonies while still assigned to the force and were not at the time collecting pensions.
2. **Steigerwart v. St. Petersburg**, 316 So.2d 554 (Fla. 1975)—Upheld a city police pension fund regulation which grants a pension to any officer who has twelve years of service and who is discharged for cause, but denies a pension to an officer removed for willful neglect of duty, disobedience, habitual drunkenness, or conviction of a felony.
3. **Ballard v. Board of Trustees**, 324 N.E.2d 813 (Ind. 1975), *appeal dismissed*, 423 U.S. 806 (1975)—Holds that pensions under state compulsory contribution plan are gratuities and create no vested rights. Therefore, the discontinuance of payments to a retired police officer convicted of manslaughter was not an unconstitutional taking of property under the legal doctrine that no conviction shall work a forfeiture of estate.
4. **Tolan v. Murphy**, 333 N.Y.S.2d 296 (1972)—Reversed the dismissal of a police officer for selling, contrary to departmental rules, information concerning criminal records to a private detective agency. The dismissal had resulted in a forfeiture of $150,000 of vested pension rights. The court ruled in placing Tolan on three years' suspension that dismissal is the ultimate punishment, and it is to be invoked only for the most egregious misconduct.
5. **Smith v. Murphy**, 330 N.Y.S.2d 146 (1972)—Held that dismissal and forfeiture of pension rights are too harsh a punishment for a police officer of twenty-two years who solicited and received unlawful gratuities.
6. **Leonard v. City of Seattle**, 503 P.2d 741 (Wash. 1972)—Held that criminal misconduct occurring after retirement and receipt of pension benefits will not work a forfeiture of one's pension. The court ruled that such a forfeiture would be violative of the provisions of the Washington Constitution which hold that no conviction shall work a forfeiture of estate.
7. **Hatfield v. Board of Firemen, Policemen, and Fire Alarm Operators Pension**

Fund, 472 S.W.2d 319 (Tex. Civ. App. 1971)—Denied a disability pension for mental depression which was shown to be a product of one's misconduct.

8. **Hozer v. State Police and Firemen's Pension Fund**, 230 A.2d 508 (N.J. 1967)—Ruled that a pardon will not erase the effect of a criminal conviction so as to make one, heretofore ineligible for a pension, eligible for one.
9. **Skaggs v. Los Angeles**, 275 P.2d 9 (Cal. 1954)—Held that a criminal conviction alone will not work a forfeiture of pension rights for one who meets all the statutory requirements for a pension. The court adopted the position that when the plaintiff had served twenty years his right to a pension vested and his subsequent misconduct (conviction of receiving a bribe) could not serve as a bar to the receipt of his previously earned pension rights.
10. **Rockenfield v. Kuhl**, 46 N.W.2d 17 (Iowa 1951)—Held that a felony conviction will only work a forfeiture of pension benefits if the conviction occurs prior to the receipt of pension benefits.
11. **McFeely v. Board of Pension Commissioners**, 59 A.2d 412 (N.J. 1958)—Reversed the order rescinding the pension granted to a former Hoboken chief of police on the ground that there were pending indictments against him which rendered his service something less than honorable. The court ruled that indictments alone will not work a forfeiture of pension rights.
12. **Pangburn v. Ocean City Police and Firemen's Pension Fund**, 56 A.2d 914 (N.J. 1948)—Held that suspensions for misconduct involving violations of departmental rules will not serve to render one's tenure as an officer dishonorable. A New Jersey statute required twenty years of honorable service as a condition precedent to the receipt of a pension.
13. **Van Coppenolle v. City of Detroit**, 21 N.W.2d 903 (Mich. 1946)—Held that one who is already receiving pension payments can lose such benefits for criminal conduct occurring while he was a police officer.
14. **State ex rel. Foxall v. Cossairt**, 65 N.E.2d 870 (Ohio 1946)—Held that one who persists in contracting debts which one cannot repay is acting dishonestly and thus is not entitled to pension benefits when discharged for such misconduct.
15. **Delia v. Valentine**, 56 N.Y.S.2d 505 (1945)—Ruled that the disposition of pending criminal charges is a requirement for the receipt of a pension.
16. **State ex rel. Kirby v. Board of Fire Commissioners**, 29 A.2d 452 (Conn. 1942)—Held that in the absence of a statutory provision, a pension will not be denied on the basis of a criminal conviction alone. The relevant statute provided for a loss of pension benefits only in the event that the officer failed to pay his dues to the pension fund.

17. **MacIntyre v. Retirement Board**, 109 P.2d 962 (Cal. 1941)—Is authority for the proposition that an officer who is dismissed for conduct unbecoming an officer, disobedience of specific orders, and insubordination, is not entitled to a pension despite the fact that he has reached the retirement age with the necessary years of service.
18. **Walter v. Police and Fire Pension Commission**, 198 A. 383 (N.J. 1938)—Ruled that a felony conviction will work an automatic forfeiture of pension rights. Walter applied for a pension two years after his position as a police officer was automatically forfeited by force of a statute when he was convicted on a felony indictment charging him with malfeasance in office. The New Jersey statute required an individual to be a member of the police department at the time of his application for a pension.
19. **Plunkett v. Board of Commissioners**, 173 A. 923 (N.J. 1934)—The court took the position that the requirement of honorable service must be met during the entire period of one's tenure as a fireman. Plunkett was dismissed from the Hoboken Fire Department after twenty-nine years of service for embezzlement of funds from the Firemen's Relief Association. The statutory requirements for a pension were fifty years of age with twenty years of honorable service.
20. **Fromm v. Board of Directors**, 195 A. 32 (N.J. 1932)—Is authority for the position that a policeman's disability payments can be terminated for conviction of a misdemeanor. The court ruled that a criminal conviction will render one's service dishonorable.
21. **Daly v. Otis**, 267 P. 921 (Cal. 1928)—Held that a forfeiture of pension benefits will result only when an individual's misconduct is subsumed under the statutory bases providing for the forfeiture of pensions.
22. SEE ALSO:
    Boyd v. Santa Ana (Incompetence—B)

B. Refund of Money Paid to Police Pension Funds

1. **Sandell v. St. Paul Police Relief Ass'n**, 236 N.W.2d 170 (Minn. 1975)—Held that in absence of specific legislative authority or any provision in articles of police relief association allowing refund to officers of their contributions, officers were not entitled to refund when they left employment prior to becoming eligible for benefits. Court based support for finding on lack of any contractual provision for refunds and decisions of other jurisdictions uniformly denying refunds under similar circumstances. Citing *Derby*, *infra*, and *McFeely*, *infra*, it held there could be no claim of the fund's unjust

enrichment because in return for contributions one has had the benefit and protection of the pension system during the period he is contributing.

2. **Conrad v. City of Thornton**, 553 P.2d 822 (Colo. 1976)—Held that state statutes restricting use of pension funds do not prohibit a home rule city from contracting with its firemen and policemen to refund their individual contributions upon termination of employment prior to qualification for pension benefits.
3. **Policemen's and Firemen's Retirement Fund v. Shields**, 521 S.W.2d 82 (Ky. Ct. App. 1975)—Under a statute which permitted the refund of pension contributions upon withdrawal or retirement from service, a police officer dismissed for misconduct was entitled to regain his mandatory contributions to a pension fund.
4. **Billings v. City of Orlando**, 287 So.2d 316 (Fla. 1973)—Held a refund of only 50 percent of the amounts deducted from their salaries as pension fund contributions did not deny the officers equal protection of law and was not a denial of due process, since the only property rights to pensions are statutory.
5. **Gould v. El Paso**, 440 S.W.2d 696 (Tex. 1969)—Held that a fireman who voluntarily terminated his employment with the El Paso Fire Department cannot obtain a refund of pension contributions where the statute is silent on the issue of refunds.
6. **Derby v. Police Pension & Relief Board**, 412 P.2d 897 (Colo. 1966)—Held that police officers whose service had been terminated for either voluntary or involuntary reasons prior to becoming eligible for the receipt of their pensions could not get a refund of pension payment contributions.
7. **Reagan v. Board of Firemen, Policemen, and Fire Alarm Operators Pension Fund**, 307 S.W.2d 958 (Tex. 1957)—Held that a police officer cannot receive a refund of pension contributions where the relevant pension statute does not make provisions for such a refund. The court ruled that refunds are denied where (as in the case at bar) the officer was dismissed for cause.
8. **Bowen v. Board of Trustees**, 76 So.2d 43 (La. App. 1954)—Held, where at the time a police officer joined the force only sixteen years of active service were required to become eligible for pension rights, but the length of service was subsequently raised to twenty (20) years the officer was not entitled to such pension after sixteen years, nor to any refund of any contributions to such retirement fund. The right to pension is fixed as of the time of eligibility, and until it is earned the right to a pension is inchoate and may be modified by subsequent legislation.
9. **McFeely v. Pension Commission**, 73 A.2d 757 (N.J. 1950)—Held that absent statutory authorization, a police officer cannot receive a refund of pension fund contributions.
10. **Donovan v. City of Rye**, 65 N.Y.S.2d 737 (1946)—Is authority for the proposition that a refund of pension fund contributions will be made if the officer voluntarily terminates his employment.

POLITICAL ACTIVITY

1. **Paulos v. Breier**, 507 F.2d 1383 (7th Cir. 1974)—Upheld the suspension of a police detective who had solicited fellow officers' support for a political candidate. By writing a letter to other officers urging them to vote for a particular candidate, the court fourt that he had violated a constitutionally valid departmental rule prohibiting solicitation for political purposes and the influence of one's office for political reasons.
2. **Elrod v. Burns**, 427 U.S. 347 (1976)—Held that, under the First and Fourteenth Amendments, Republican employees of sheriff's department could not be dismissed from non-civil service positions because they were not members of the incumbent sheriff's political party or otherwise affiliated with the Democratic Party. The Court stated that limiting patronage dismissals to policymaking positions is sufficient to prevent the goals of the in-party from being thwarted.
3. **Magill v. Lynch**, 400 F. Supp. 84 (D.R.I. 1975)—Holds that municipal firemen may run in a nonpartisan election as candidates for the offices of mayor and city councilman.
4. **Perry v. St. Pierre**, 518 F.2d 184 (2d Cir. 1975)—Upheld a city charter provision prohibiting police officers from engaging in solicitations for political candidates and from being a member of any political committee, upon pain of forfeiture of city government position.
5. **O'Hara v. Commissioner of Public Safety**, 326 N.E.2d 308 (Mass. 1975)—Officer was suspended without pay when he filed for candidacy and again when he was elected. Court upheld department's rule governing political activity. Rule was justified by conflict of interest that might be created because candidate-police officers might not fully enforce the law.
6. **Boston Police Patrol Association v. City of Boston**, 326 N.E.2d 314 (Mass. 1975)—Department can require officers who become political candidates to take leave without pay.
7. **Phillips v. City of Flint**, 225 N.W.2d 780 (Mich. Ct. App. 1975)—Held that two city charter provisions which prohibited city employees from engaging in certain types of political activity were unconstitutionally overbroad.

8. **Commonwealth ex rel. Specter v. Moak**, 307 A.2d 884 (Pa. 1973)—City charter required city employees to resign prior to becoming candidate for office. Court upheld charter under compelling state interest test on the grounds that candidates would use their jobs to intimidate other employees and would neglect work while campaigning.
9. **Lecci v. Cahn**, 360 F. Supp. 759 (E.D.N.Y. 1973)—Police union sued to overturn law prohibiting police officers from contributing to or joining political organizations. Court found the law to be overly broad since it did not limit the prohibition to partisan politics. The court also said that **Mitchell**, *infra*, was not controlling because of the abolition of the right-privilege doctrine and use of the compelling interest test.
10. **United States Civil Service Commission v. National Association of Letter Carriers**, 413 U.S. 548 (1973)—The Supreme Court reaffirmed the Hatch Act and **Mitchell**, *infra*, without reaching the compelling state interest question. It relied on the finding that the statute was not overly broad because of ninety years of interpretation as to the exact meaning of the restrictions. The Hatch Act is specifically limited to partisan activities. No mention was made of the possible alternatives to an absolute ban, which was a crucial point in many of the lower court decisions prior to this one which found similar state laws unconstitutional. Among the government policies supporting the Act were: fear of favoritism in hiring and promotion, fear of the building up of political machines, fear of an appearance of partiality in dealing with the public, and a desire to promote impartial execution of the laws.
11. **Broadrick v. Oklahoma**, 413 U.S. 601 (1973)—Upholds the constitutionality of a state's "Little Hatch Act" on the grounds that it was not substantially overbroad and was constitutional as applied. The law under attack was similar to the Hatch Act provisions in NALC, *supra*. The conduct of the employees challenging the statute was patently within the scope of the prohibited activities, so they could not properly challenge the whole statute.
12. **Mancusso v. Taft**, 341 F. Supp. 574 (D.R.I. 1972), *aff'd*, 476 F.2d 187 (1st Cir. 1973)—City charter required city employees to resign or be discharged upon becoming a candidate for office. Court said the charter provision did not satisfy a compelling state interest and it violated the Equal Protection Clause. The need for efficient and impartial civil service could be met through conflict of interest laws, punishment of actual misconduct or abuse of position, and granting leaves of absence. Statute should also specify which offices were covered, since the charter prohibited running for any office in any state. Suit was brought by a police officer.

13. **Kaufman v. Pannuccio**, 295 A.2d 639 (N.J. 1972)—Police lieutenant was elected to the city council. A taxpayer filed suit challenging his right to sit on the council. Court ruled that the common law doctrine of incompatibility required lieutenant to give up one job or the other. Incompatibility exists where one person holds two positions, one of which is subordinate to the other. In this case, the city council set police wages and decided on matters of tenure and promotion in the department.
14. **Gray v. City of Toledo**, 323 F. Supp. 1281 (N.D. Ohio 1971)—A statute and police department rules prohibited giving or receiving political contributions, holding party office, running for office, or making speeches. Court found the statute too broad, since it was not limited to partisan political activity. Nonpartisan political activity is protected by the First Amendment.
15. **Hobbs v. Thompson**, 448 F.2d 456 (5th Cir. 1971)—Firemen were ordered to remove bumper stickers from their cars under rule prohibiting public employees from becoming involved in politics. Court found the statute overly broad, felt it would inhibit employees in the exercise of protected speech. There was no relationship between bumper stickers and efficiency of the department.
16. **Johnson v. State Civil Service Commission**, 157 N.W.2d 747 (Minn. 1968)—Motor vehicle clerk, who filed as a candidate for court clerk in a city 100 miles away, was discharged. Statute permitted state employees to run for unpaid offices only. Court upheld the statute because of the evils of the spoils system, influence peddling, and failure to devote full attention to duties which would result. After the suit was begun the legislature amended the law to allow one-year leaves of absence and running for offices paying less than $600.00 per year.
17. **Minielly v. State**, 411 P.2d 69 (Ore. 1966)—Deputy sheriff challenged statute requiring him to resign prior to becoming a candidate for office, in this case for sheriff. Court ruled statute unconstitutional because it was too broad to satisfy the compelling state interest test. However, the court said that narrowly drawn statutes prohibiting government employees from running against their superiors would be upheld.
18. **United Public Workers v. Mitchell**, 330 U.S. 75 (1947)—Federal statute prohibited participating in political management or political campaigns, other than by voting or expressing opinions. A party committeeman who was fired sued for reinstatement. Supreme Court upheld the statute, since only partisan political activity was prohibited. Court reaffirmed **Curtis**, *infra*, and noted fears of favoritism and building of political "machines" within government agencies.

19. **Ex parte Curtis**, 106 U.S. 371 (1882)–This case is the first major civil service-politics case. A federal statute prohibited soliciting or accepting political contributions from other federal employees; violation was a misdemeanor. Curtis was convicted. Supreme Court upheld the statute, noting that it preserved the efficiency and integrity of the service and the impartiality and independence of employees. It also noted that only contributions among government employees were forbidden, not outside contributions.
20. SEE ALSO:
Kilburn v. Colwell (Bribery)
Murchiafava v. Baton Rouge (Procedure–J)
Stolte v. Laird (Conduct Unbecoming)
Tygrett v. Washington (Probationary Employees)

POLYGRAPH

1. **Talent v. City of Abilene**, 508 S.W.2d 592 (Tex. 1974)–Dismissal of fireman for failure to take lie detector test was held to be an unauthorized exercise of authority. The subject of the ordered examination related to the fireman's arrest for receiving stolen property. The court held that the fire chief who issued the order had "no roving commission to detect crime or to enforce the criminal law," and that he could not compel the tenured employee to submit to a polygraph examination when the charged crime bore no relation to the performance of his duties as a fireman or to his accounting for his public trust.
2. **Chambliss v. Board of Fire and Police Commissioners**, 312 N.E.2d 842 (Ill. App. 1974)–Holds that a polygraphist is a competent witness at an administrative hearing where he is a certified operator who administered the test under proper conditions.
3. **Richardson v. City of Pasadena**, 500 S.W.2d 175 (Tex. Civ. App. 1973)–Trial court, as affirmed by Court of Appeals, held that a police officer is guilty of insubordination in refusing a direct order to submit to a polygraph examination during a departmental investigation when reasonable cause exists to believe that the police officer so ordered can supply relevant information. The Texas Supreme Court, however, reversed the dismissal on other grounds (see Procedure - C), declining to rule on the polygraph issue.
4. **Engel v. Township of Woodbridge**, 306 A.2d 485 (N.J. Super. 1973)–Holds that because New Jersey statute prohibiting lie detector tests by employers does not exempt police officers, an officer could not be required to submit to a polygraph test on pain of dismissal.

5. **Grabinger v. Conlisk**, 320 F. Supp. 1213 (N.D. Ill. 1970), *aff'd*, 455 F.2d 490 (7th Cir. 1972)–Officers who were suspended for fifteen days, in part for refusal to take a polygraph examination without the presence of their attorneys, were not denied any constitutional right to counsel since their responses at the examination could not have been used against them in any later criminal proceedings.
6. **Clayton v. New Orleans Police Department**, 236 So.2d 548 (La. App. 1970)–Holds that where police officers, who refused to take a polygraph test ordered by their superior as a result of a homicide involving a victim who knew the policemen, were discharged for violation of department rules relating to abiding by instructions issued from authoritative sources and to cooperating with other officers in the performance of their duty, the officers were not denied due process even though they had been advised they were suspects.
7. **Roux v. New Orleans Police Department**, 223 So.2d 905 (La. App. 1969), *cert. denied*, 227 So.2d 148 (La. 1969), *cert. denied*, 397 U.S. 1008 (1970)–Holds that a police officer who is dismissed on account of his refusal to submit to polygraph test to verify his earlier statements is not denied due process where he is not asked to waive immunity and is informed that he is not a suspect.
8. **Molino v. Board of Public Safety**, 225 A.2d 805 (Conn. Super. 1966)–Holds that, in the absence of a rule requiring police officers to submit to a polygraph test, police officers cannot be discharged for refusing to submit to the test under a rule requiring them to be truthful at all times. There was no claim that the officers had not been truthful at all times.
9. **Stope v. Civil Service Commission**, 172 A.2d 161 (Pa. 1961)–Holds that under city civil service regulation authorizing dismissal by appointing authority of an employee, "just cause" did not exist for refusal of police officers to take a polygraph test with regard to checks and cash missing from a business place.
10. **Frazee v. Civil Service Board**, 338 P.2d 943 (Cal. App. 1959)–Holds that even though polygraph results are inadmissible in court, they have some value in investigative work. Dismissal for refusing to take a polygraph test upheld.
11. **McCain v. Sheridan**, 324 P.2d 923 (Cal. App. 1958)–Holds that refusal to complete a polygraph examination is grounds for dismissal, since police officer's conduct must be above suspicion.
12. SEE ALSO:
Seattle Police Officers Guild v. Seattle (Internal Investigations)

PROBATIONARY EMPLOYEES

1. **Perry v. Blair**, 374 N.Y.S.2d 850 (App. Div. 1975)—Held that probationary police officer was entitled to a hearing in connection with his discharge following an arrest on charge of rape and unlawful imprisonment, since his dismissal was predicated on considerations reaching beyond the scope of his job performance and affected his good name, reputation, honor, and integrity.
2. **Matthews v. Frank**, 367 N.Y.S.2d 102 (App. Div. 1975)—Ordered police department to remove notation that a police cadet resigned with "charges pending" from the cadet's personnel file, because disciplinary board had taken no action regarding complaint against the cadet. Department could enter notation that the cadet resigned while a complaint against him had been referred to board.
3. **Velger v. Cawley**, 525 F.2d 334 (2d Cir. 1975)—Held that a stigma which foreclosed employment attached to summarily discharged probationary officer, because the officer's personnel file which contained an allegation suggesting a suicide attempt, was made available to prospective employers. Department could change its disclosure procedures to prevent dissemination of derogatory and possibly stigmatizing allegations, unless notice of charges and a hearing were first afforded to dischargee. Otherwise, due process requires that such notice and hearing be offered before dismissal can be effective.
4. **Purdy v. Cole**, 317 So.2d 820 (Fla. Ct. App. 1975)—Held that probationary officer who was summarily dismissed for a misstatement in his employment application could be discharged without a hearing. However, the officer was entitled to a hearing, but not reinstatement, because the discharge was also based on his failure to disclose exercise of free speech and assembly rights during anti-police demonstration.
5. **Casey v. Roudebush**, 395 F. Supp. 60 (D. Md. 1975)—Holds that a probationary police officer is entitled to a hearing on a charge of being intoxicated and asleep while on duty, for the sole purpose of cross-examining the witnesses against him, but that he is not entitled to reinstatement. A hearing is required because of the possible adverse effect of the dismissal of the officer's attempt to find another job. In the alternative, the department may simply expunge the charges from his notice of dismissal and forego a hearing. This would provide sufficient protection from the adverse effects, since the new employer would not be informed of the reason for the dismissal.
6. **Reeves v. Golar**, 357 N.Y.S.2d 86 (App. Div. 1974)—Holds that a probationary officer is entitled to a hearing where traces of quinine and morphine were found in a urine test, on the ground that the dismissal was not for unsatisfactory work performance, but was for non-work reasons. The hearing was deemed necessary to prevent arbitrary or capricious dismissals.
7. **Couper v. Madison Board of Police and Fire Commissioners**, 369 F. Supp. 721 (W.D. Wis. 1974)—Where state statutes appear to authorize an appointment of a police chief which can be terminated only for 'cause,' the statutes confer tenure on those so appointed. The fact that a letter of appointment indicates that the chief of police is subject to one year's probation does not mean his statutorily granted property interest in the position has been withdrawn. Thus, regardless of the terms of the letter of appointment, a chief of police would be entitled to procedural due process before his employment could be terminated.
8. **Bradford v. Tarrant County Junior College District**, 492 F.2d 133 (5th Cir. 1974)—Nontenured college teacher was entitled to direct reinstatement if she could show that her contract was not renewed for exercise of constitutional rights.
9. **Louisville Professional Fire Fighters Association v. City of Louisville**, 508 S.W.2d 42 (Ky. Ct. App. 1974)--Statute allowing appointing authority to dismiss probationary employee without a written statement of reasons is constitutional. The essence of probationary employment is that the employer have unfettered discretion in deciding whether to retain a probationary employee. Courts should only question the reasons behind the discharge or demotion if it is a punitive action directed at the employee's exercise of a constitutional right.
10. **McNeill v. Butz**, 480 F.2d 314 (4th Cir. 1973)—Liberty is infringed and procedural due process is required when government action threatens an employee's (probationary or nonprobationary) good name, reputation, honor or integrity, or if the dismissal imposes a stigma or other disability which forecloses future employment opportunities.
11. **Davis v. Winters Independent School District**, 359 F. Supp. 1065 (N.D. Tex. 1973)—Nonrenewal of nontenured teacher's contract did not infringe his constitutional rights. Requirements of procedural due process apply only to the deprivation of liberty or property rights under the protection of the

Fourteenth Amendment and the First Amendment's free speech protection.

12. **Clark v. City of Manchester**, 305 A.2d 668 (N.H. 1973)–Dismissal of probationary officer without hearing or statement of reasons did not violate his constitutional rights. Probationary employee is not entitled to due process protection unless a showing is made that governmental conduct 1) damages his standing in the community, 2) imposes a stigma that will foreclose future employment opportunities in his profession, or 3) violates a constitutional right such as free speech.
13. **Williams v. Civil Service Commission**, 307 A.2d 628 (N.J. Super. 1973)–Probationary public employment cannot justify denial of a hearing in all cases without consideration of individual circumstances. Where employee's re-employment is jeopardized or his standing in community is damaged, or good name, reputation, honor or integrity is threatened, due process requires a hearing.
14. **Perry v. Sindermann**, 408 U.S. 593 (1972)–Lack of formal contractual tenure is irrelevant to employee's free speech claim. Government may not deny benefit on basis that infringes constitutional rights. Tenure status is highly relevant to procedural due process claim but is not entirely dispositive. Employee may have right to procedural due process in absence of formal tenure if he can show *de facto* tenure from the circumstances of his employment.
15. **Board of Regents v. Roth**, 408 U.S. 564 (1972)–Requirements of procedural due process apply only to deprivation of liberty and property protected by Fourteenth Amendment. Employee's liberty is deprived if government refuses to rehire him under circumstances that bring his good name, reputation, honor or integrity into question or impose a stigma which forecloses future employment opportunities. To have a property interest, employee must have legitimate claim of entitlement to it.
16. **Orr v. Trinter**, 444 F.2d 128 (6th Cir. 1971)–Constitutionally impermissible reasons for refusal to rehire a teacher requiring procedural due process for untenured teachers are: exercise of rights guaranteed by First Amendment, Self-incrimination Clause of Fifth Amendment, Due Process Clause of Fifth and Fourteenth Amendments and Equal Protection Clause of Fourteenth Amendment. Interest of nontenured teacher in knowing reasons for nonrenewal of contract not sufficient to outweigh interest of school board in free and independent action with respect to employment of probationary employees.
17. SEE ALSO: Incompetence–D
18. SEE ALSO:
    Bd. of Educ. v. Calderon (Procedure–A)

Cacchioli v. Hoberman (Forced Resignation)
Edge v. Leary (Associations)
Phillips v. Adult Probation Dep't (Conduct Unbecoming)
Packett v. San Francisco (Untruthfulness)

PROCEDURE

A. Acquittal of a Crime as a Bar to Subsequent Police Disciplinary Hearing

1. **Flynn v. Bd. of Fire and Police Commissioners of City of Harrisburg**, 342 N.E. 2d 298 (Ill. App. Ct. 1975)–Held discharge of police officer by board even though state had voluntarily dismissed criminal charges against him. "Cause" was held to have existed because of officer's acts in criminally damaging property and assaulting another.
2. **Board of Education v. Calderon**, 110 Cal. Rptr. 916 (1973), *appeal dismissed*, 419 U.S. 807 (1975)–Held that a probationary public school teacher's prior acquittal of criminal charge does not preclude his dismissal on the same charge in a subsequent administrative disciplinary hearing.
3. **Reeb v. Civil Service Commission**, 503 P.2d 629 (Colo. Ct. App. 1972)–Held that a civil servant (i.e., a supervisor of a school for girls) could not be removed from office for the identical offense for which she was previously acquitted in a criminal prosecution.
4. **Howle v. Personnel Board of Appeals**, 176 S.E.2d 663 (Ga. 1970)–Held that the same conduct which served as the predicate for an unsuccessful criminal prosecution can also serve as the basis for the departmental removal of an officer. Howle was dismissed for conduct unbecoming an officer and persistently failing to perform his duties.
5. **Simpson v. City of Houston**, 260 S.W.2d 94 (Tex. 1953)–Stands for the proposition that acquittal in a criminal matter is not conclusive in or a bar to a subsequent civil proceeding (a police disciplinary hearing). Simpson, a Houston policeman, was dismissed from the force for accepting a bribe after having been acquitted of a similar charge in a criminal prosecution.
6. **Ludolph v. Board of Police Commissioners**, 86 P.2d 118 (Cal. App. 1938)–When police lieutenant's case before the board of police commissioners was continued and lieutenant after conviction in criminal court appeared without objection before the board which heard evidence to assist it in determining penalty to be imposed, police lieutenant could not attack jurisdiction of board on ground that second hearing was a new and separate trial for acts occurring after he was under suspension and no longer amen-

able to the rules of the department and deprived lieutenant of his office without due process of law.

7. **Kavanaugh v. Paull**, 177 A. 352 (R.I. 1935)—Held that the chief of police could be removed from office for operating an automobile while intoxicated despite the fact that a jury acquitted the chief of police of the same offense. The court noted the different standards of proof required in criminal prosecutions and administrative proceedings.
8. SEE ALSO:
   Bowie v. Dept. of Police (Alcohol)
   Comm'r of Civil Service v. Mun. Ct. of Brighton District (Conduct Unbecoming)
   Foran v. Murphy (Conduct Unbecoming)
   Gaudette v. Bd. of Public Safety (Conduct Unbecoming)
   Kryvicky v. Hamtramck Civil Service Comm'n (Conduct Unbecoming)

B. **Admissibility of a Police Officer's Record in a Disciplinary Proceeding**

1. **Bal v. Murphy**, 389 N.Y.S.2d 373 (App. Div. 1976)—Held that an administrative agency, in imposing sanctions against errant employees, is free to consider the prior records of those employees in determining punishment to be imposed, and that, therefore, a police commissioner has a right to review the prior record of a patrolman in connection with charges and specifications against him.
2. **Jenkins v. Curry**, 18 So.2d 521 (Fla. 1944)—Permitted the introduction of police officer's prior record, which included three suspensions for neglect of duty, conduct unbecoming an officer and drunkenness, into evidence in hearing before the Director of Public Safety to determine whether the officer should be discharged for being intoxicated on duty.
3. **Millburn Township v. Civil Service Commission**, 16 A.2d 824 (N.J. 1940)—Held that a prior disciplinary record is not admissible with respect to the guilt or innocence of the officer but is relevant for the purpose of determining his punishment after his guilt has been determined.
4. **Hughes v. Department of Public Safety**, 273 N.W. 618 (Minn. 1937)—Held that it is permissible to consider an officer's prior record when the officer is charged with inefficiency. In its decision, the Minnesota Supreme Court noted that "inefficiency does not consist of a separate act, but embraces a course of conduct . . . ."
5. **McGuire v. Wynne**, 229 N.Y.S. 753 (1928)—Held that a police commissioner erred in considering the record of a police officer in determining his guilt upon the charges preferred against the officer.

6. SEE ALSO:
   Abbott v. Phillips (Moonlighting)
   Lindeen v. Illinois State Merit Bd. (Alcohol)
   Stanton v. Bd. of Fire & Police Comm'rs of Village of Bridgeview (Dereliction of Duty)

C. **Conduct of Hearings**

1. **May v. Shaw**, 386 N.Y.S.2d 625 (Sup. Ct. 1976)—Held that policeman, though entitled by statute to counsel at an administrative hearing which resulted in his dismissal, did not possess a constitutional right to legal *representation* at a prior proceeding which was purely investigatory. However, the Court did rule that a person should be entitled to *advice* from his lawyer concerning his legal rights in administrative investigations where that person's livelihood may depend upon correctness of a spontaneous decision, particularly where he is required to make decisions requiring knowledge of erudite points of law.
2. **Steer v. City of Missoula**, 547 P.2d 843 (Mont. 1976)—Recognizes the limited, noncriminal nature of hearings before a police commission as to suspension or discharge of an employee and the understandable lack of legal expertise on the part of the commission's members as reasons for not requiring Rules of Criminal Procedure to be imposed on hearings of this type. Police officer's attorney had attempted to preclude the commission's filing of additional charges after the proceedings had been initiated.
3. **In re Dewar**, 548 P.2d 149 (Mont. 1976)—Held that a police commission's statutory power to hear and determine charges brought against municipal police officers, a quasi-judicial function, would be meaningless without a corresponding power to compel testimony (subject to same restrictions that guide a district court in trial of similar cases).
4. **Paytas v. City of Warren Police Department**, 248 N.W.2d 561 (Mich. Ct. App. 1976)—Held that *uncharged* allegations of misconduct may not be considered by a civil service commission when disciplining a fireman or policeman. A letter containing prejudicial background material and incidents arising more than 90 days prior to the formal charges had been submitted to the commission by a senior inspector as a recommendation for dismissal.
5. **Olshock v. Village of Skokie**, 401 F. Supp. 1219 (N.D. Ill. 1976)—Striking police officers' constitutional rights were violated when the village fired only those who insisted on their right to counsel at their hearings and refused to sign stipulations admitting that they had disobeyed orders when

they reported for duty out of uniform. The court awarded back pay to the officers less any damages owed to the village.

6. **Daniel v. Porter**, 391 F. Supp. 1006 (W.D.N.C. 1975)—Ordered a demoted sergeant restored to his rank, because he was denied due process at administrative hearing. Specifically, there was no notice of the charges against the sergeant; there was no right to subpoena or cross-examine witnesses; the board's decision was not based on the record developed at the hearing; and the board acquitted the sergeant of the charge against him but demoted him because of evidence of other rule violations with which he was never charged.
7. **Schadt v. Sardino**, 368 N.Y.S.2d 599 (App. Div. 1975)—Reverses the dismissal of a police officer accused of brutality solely because he was not given the right to cross-examine other officers who admitted their own guilt and implicated the officer. The others involved received much lighter penalties. The right of cross-examination was necessary since there was absolutely no other evidence against the officer, and he was entitled to know whether his accusers had made a deal for lighter punishment or had any other bias against him.
8. **Richardson v. City of Pasadena**, 513 S.W.2d 1 (Tex. 1974)—Supreme Court reversed, on procedural due process grounds, lower court affirmance of policeman's dismissal for refusing to take a polygraph test. The only evidence provided at the commission hearing consisted of conflicting testimony from both the policeman and the chief of police. A few days after the hearing had ended, affidavits were received by the commission corroborating the chief of police's testimony. The court held that the ex parte receipt, reading, and use of these affidavits after the close of the hearing and without notice to the policeman and an opportunity to cross examine the new witnesses or to submit rebuttal testimony constituted a violation of his right to procedural due process. (The Court of Appeals, subsequently, upheld reinstatement of officer based on Supreme Court's reversal of his dismissal. 523 S.W.2d 506 (Tex. Civ. App. 1975)).
9. **Deering v. City of Seattle**, 520 P.2d 638 (Wash. 1974), *cert. denied*, 419 U.S. 1050 (1975)—Held that a fireman suffered no deprivation of constitutional rights when due process, although absent at trial board disciplinary hearing, was fully provided in a *de novo* hearing before the Civil Service Commission.
10. **Fitzgerald v. Cawley**, 368 F. Supp. 677 (S.D.N.Y. 1973)—The double jeopardy ban and speedy trial provision of the Constitution are applicable only to criminal proceedings, not to departmental hearings. However, an officer cannot be compelled to testify at a departmental hearing unless he is assured that his statements will not be used in any criminal proceeding.

11. **Kelly v. Sterr**, 299 A.2d 390 (N.J. 1973), *cert. denied*, 414 U.S. 822 (1974)—Held that a departmental hearing to determine whether a state trooper had properly performed his duties was not analogous to a criminal trial, and that therefore the trooper was not entitled to an open hearing nor all the other procedural safeguards afforded a defendant in a criminal trial.
12. **Jones v. Civil Service Commission**, 489 P.2d 320 (Colo. 1971)—The Civil Service Commission's discharge of an employee could not be successfully challenged on the basis that an admission of the employee, which was made without his having had the benefit of the usual criminal safeguards, was used as evidence at an administrative hearing for violation of a departmental rule. The hearing board's refusal to consider the defense of entrapment was also upheld by the court.
13. **Gamble v. Kelley**, 409 S.W.2d 374 (Tenn. 1966)—Determined that a city charter gave police officers a right to a hearing and to be personally present or represented by counsel at that hearing. The court also ruled that no evidence could be adduced outside of the hearing.
14. **Fichera v. State Personnel Board**, 32 Cal. Rptr. 159 (Ct. App. 1963)—Holds that a State Personnel Board properly adopted the proposed decision of a hearing officer recommending dismissal of state police officers and entered dismissal orders notwithstanding that the Board members had not read or otherwise familiarized themselves with record of proceedings, with phonographically recorded evidence, or with exhibits or documents, and only one Board member had read written arguments submitted by parties.
15. **Civil Service Commission v. Polito**, 156 A.2d 99 (Pa. 1959)—Is authority for the proposition that a police officer must be afforded the opportunity to cross-examine witnesses and to present his own rebuttal witnesses.
16. **Bush v. Beckman**, 131 N.Y.S.2d 297 (1954)—Held that in a proceeding to remove a police officer for cause the latter is entitled to a reasonable adjournment so that his counsel could be present to represent him and cross-examine adversary witnesses.
17. **Klinkenberg v. Valentine**, 11 N.Y.S.2d 56 (1939)—Held that a police officer at a disciplinary hearing is entitled to give his own testimony in support of his defense.
18. **In re Greenbaum**, 94 N.E. 853 (N.Y. 1911)—Held that at a removal proceeding, the accused police officer has the right to have the witnesses who testify against him testify under oath and to cross-examine them in a reasonable manner.

19. **Gibbs v. City of Manchester**, 61 A. 128 (N.H. 1905)—Involved a statute which requires that a police officer be removed for cause only after a hearing at which time the officer has been afforded the right to cross-examine his accusers.
20. SEE ALSO:
Boulware v. Battaglia (Internal Investigations)
City of Mishawoka v. Stewart (Standards of Judicial Review)

D. Degree of Proof Needed to Remove a Police Officer for Cause

1. **Nation v. Bd. of Fire and Police Commissioners of City of Taylorville**, 352 N.E.2d 464 (Ill. App. Ct. 1976)—Held that a showing of cause for discharge of police officer requires evidence tending to show some substantial shortcoming which renders his continuance in office in some way detrimental to efficiency and discipline of the service, and actions which law and good public policy recognize as good cause for no longer allowing an officer to hold his position.
2. **Cusson v. Firemen's & Policemen's Civil Service Commission**, 524 S.W.2d 88 (Tex. Civ. App. 1975)—Ruled that substantial evidence supported the discharge of a police officer on charges of failing to carry out a police dispatcher's instructions, filing a false report, committing an unnecessary act of violence against a prisoner, and failing to preserve the peace by allowing another police officer to abuse a prisoner.
3. **Heidebur v. Parker**, 505 S.W.2d 440 (Mo. 1974)—Held that at a hearing to dismiss a police officer for cause the burden of proof rests with the police superintendent. The accused officer is required to present his defense only after the superintendent has made out a *prima facie* case.
4. **City of Glasgow v. Duncan**, 437 S.W.2d 199 (Ky. 1969)—Ruled that there must be reasonably sufficient evidence to discharge a police officer for cause.
5. **Cruz v. San Antonio**, 440 S.W.2d 924 (Tex. 1969)—Held that the test in applying the substantial evidence rule is whether the evidence is such that reasonable minds could not have reached the conclusion the administrative tribunal (here the Civil Service Commission) must have reached in order to justify its action.
6. **Kelly v. Murphy**, 282 N.Y.S.2d 254 (1967)—Sets forth the New York substantial evidence rule in a case involving a New York City police officer who was charged with advising another officer to make false statements to investigative officers. Substantial evidence in such instances requires more than merely some evidence from unreliable sources. The New York State rule has long been that whether evidence is substantial is to be determined in the light of the record as a whole.
7. **City of San Antonio v. Poulos**, 403 S.W.2d 168 (Tex. 1966)—Ruled that a trial court is to uphold the order of dismissal if the latter is supported by substantial evidence.
8. **Oratowski v. Civil Service Commission**, 123 N.E.2d 146 (Ill. 1954)—Stands for the view that a policeman can be dismissed for cause even if the charge is not proved beyond a reasonable doubt.
9. SEE ALSO:
Adamek v. Civil Service Comm'n (Standards of Judicial Review)
Barr v. San Diego (Conduct Unbecoming)
Borders v. Anderson (Tampering with Official Documents)
City of Evansville v. Nelson (Dereliction)
Fantozzi v. Bd. of Fire & Police Comm'rs (Failure to Pay Debts)
Gasperas v. Bd. of Fire & Police Comm'rs (Standards of Judicial Review)
Hess v. Town of Vestal (Alcohol)
Kammerer v. Bd. of Fire & Police Comm'rs (Conduct Unbecoming)
Kerr v. Police Bd. (Dereliction)
Norton v. Santa Ana (Filing Suit)
Otero v. New Mexico State Police Bd. (Incompetence)
Taylor v. Civil Service Comm'n (Standards of Judicial Review)
Yielding v. Stevens (Conduct Unbecoming)

E. Evidence

1. **Rizzo v. Bd. of Fire and Police Commissioners of Village of Franklin Park**, 337 N.E.2d 735 (Ill. App. Ct. 1975)—Held that in an administrative action investigating alleged misconduct of policemen, prior recorded testimony from a previous hearing of the witnesses who invoked privilege against self-incrimination at hearing *de novo*, was admissible.
2. **McPherson v. New York City Housing Authority**, 365 N.Y.S.2d 862 (1975)—Narcotics paraphernalia obtained as a result of an illegal search and seizure was inadmissible as evidence in a disciplinary proceeding against a housing patrolman. A finding of guilt and subsequent dismissal of the officer on the basis of such evidence were annulled.
3. **Smyth v. Lubbers**, 389 F. Supp. 777 (W.D. Mich. 1975)—Holds that the exclusionary rule is applicable in noncriminal disciplinary proceedings, and that therefore evidence seized in illegal search of student's dormitory room could not be admitted at disciplinary hearing.

4. **Jones v. City of Hialeah**, 294 So.2d 686 (Fla. Ct. App. 1974)–Although technical rules of evidence do not apply in the same sense before a police disciplinary board as they do in courts, the hearsay rule should not be totally discarded in situations where individuals are threatened with loss of public employment. In this case, the alleged hearsay admitted at the hearing did not constitute prejudicial error.
5. **Brown v. Murphy**, 348 N.Y.S.2d 777 (App. Div. 1973)–Held that it was improper, during disciplinary proceeding, to admit hearsay evidence regarding laboratory tests indicating that police officer's urine revealed presence of cocaine. The court ruled that, though compliance with technical rules of evidence is not required in disciplinary proceedings, under the circumstances, the receipt of hearsay evidence might deprive a party of a fair hearing.
6. **Richardson v. Perales**, 402 U.S. 389 (1971)–Administrative hearings need not be governed by strict rules of evidence. The conduct of the hearing rests within the hearing examiner's discretion.
7. **Kolanda v. Pembridge**, 305 N.Y.S.2d 445 (App. Div. 1969)–Holds that statute requiring corroboration of accomplice testimony, required in criminal cases, did not apply to hearing which led to discharge of police officer from police department for alleged acts of misconduct.
8. **American Rubber Products Corporation v. NLRB**, 142 F.2d 47 (7th Cir. 1954)–Hearsay evidence admitted without objection must be given its natural and probative effect, and hearsay evidence admitted over objection will not be cause for reversal if supported by other direct evidence.
9. **Schwartz v. Civil Service Commission**, 117 N.E.2d 874 (Ill. App. 1954)–Upheld the dismissal of a Chicago police officer for being intoxicated while on duty. The Court ruled that the admission of hearsay testimony was not prejudicial when the evidence related to a charge of which the police officer was not found guilty.
10. **Mayor of Everett v. Superior Court**, 85 N.E.2d 214 (Mass. 1949)–Reversed the decision of the Superior Court quashing the mayor's decision to suspend three licensed commissioners for delinquent performance of their official duties. The court ruled that the mayor was conducting a quasi-judicial hearing, and that the introduction of hearsay evidence could only be a ground for reversal if the introduction of the evidence "resulted in a denial to them of substantial justice."
11. **Diaz v. United States**, 223 U.S. 442 (1912)–Stands for the proposition that when hearsay evidence is admitted with consent, or without objection, it is to be given its natural and probative effect.

12. SEE ALSO:
    Bowie v. Dept. of Police (Alcohol & Drugs)
    Comm'r of Civil Service v. Mun. Ct. of Brighton District (Conduct Unbecoming)
    Chambliss v. Bd. of Fire & Police Comm'rs (Polygraph)
    Fantozzi v. Bd. of Fire & Police Comm'rs (Failure to Pay Debts)
    Frazee v. Civil Service Bd. (Polygraph)
    Jones v. Civil Service Comm'n (Procedure–C)

F. Impartial Hearing Officer

1. **Gladstone v. Kelley**, 382 N.Y.S.2d 537 (App. Div. 1976)–Held that although chief of detectives was a member of the board of chiefs, there was no impropriety in selecting him to hear charges against a police officer of conduct unbecoming, because the hearing officer had nothing to do with preliminary proceedings relating to charges and certifications.
2. **Cummings v. Falls City**, 235 N.W.2d 627 (Neb. 1975)–Held that police officer, who was suspended by the civil service commission, did not meet burden of proving that civil service commissioner, who was present at a meeting which lasted about 1 1/2 hours in the home of the assistant police chief where complaints against the officer were formulated, should have disqualified himself from the case. He was unable to show bias or prejudice needed to overcome the presumption of impartiality.
3. **Police Commissioner v. Municipal Court**, 332 N.E.2d 901 (Mass. 1975)–Holds that a police officer charged with a violation of department rules is denied a fair hearing before an impartial hearing officer where the policeman's attorney represented the hearing officer's wife in an acrimonious divorce proceeding brought by the wife against the hearing officer. Although no bias or partiality was shown in this case, the policeman was nevertheless entitled to a new hearing before a disinterested hearing officer.
4. **Ferrari v. Melleby**, 342 A.2d 537 (N.J. App. 1975)–Ruled that the chief of police be removed as the hearing officer in a disciplinary action involving the deputy chief. While the court reiterated the general rule that superior officers are not per se disqualified from serving as hearing officers or from imposing discipline, in certain cases, justice and due process require that some other person be appointed to hear the case.
5. **Barr v. Pine Township Board of Supervisors**, 341 A.2d 581 (Pa. Cmwlth. 1975)–Ruled that police officer was not denied a fair hearing because only

two of the three county supervisors were present since there was no statutory requirement for a unanimous board. The fact that one supervisor prepared the charges was not prejudicial since the supervisor did not participate in the investigating or bringing of charges, but he merely drafted the charges at the chief of police's request.

6. **Mank v. Granite City**, 288 N.E.2d 49 (Ill. App. 1972)–Ruled that the fact that the police chief's father was sitting on the Board, which had been convened to determine the truth and severity of charges alleged to suffice for police officer's discharge from duty, was alone sufficient to deny the officer a statutorily guaranteed fair and impartial hearing.
7. SEE ALSO:
   Hortonville Jt. Sch'l Dist. v. Hortonville Educ. Ass'n. (Labor Relations)

G. Open Hearings

1. **Klein v. Board of Fire and Police Commissioners**, 318 N.E.2d 726 (Ill. App. 1974)–Ruled that Board had not abused its discretion by restricting attendance at some of its disciplinary proceedings to members of accused officer's immediate family, in order to preserve order and decorum. Record indicated that hearings had been impeded and disrupted by audience and plaintiff's supporters.
2. **Fitzgerald v. Hampton**, 467 F.2d 755 (D.C. Cir. 1972)–Where a regulation calling for closed hearings is promulgated for the protection of the employee, that protection can be waived, and due process requires, "if not by statutory mandate, then by regulation or practice," that at the employee's request, an administrative hearing to challenge the legality of civil service discharge be open to the press and the public.
3. **FCC v. Schreiber**, 381 U.S. 279 (1965)–The FCC did not abuse its discretion under the rule making authority conferred by the Communications Act by requiring public hearings in the absence of a showing of irreparable harm to the individual which would outweigh the public interest in disclosure.
4. SEE ALSO:
   Kelly v. Sterr (Procedure–C)

H. Right to a Hearing

1. **Bishop v. Wood**, 426 U.S. 341 (1976), *aff'd* 408 F.2d 1341 (4th Cir. 1974)–Ruled that a municipal employee has no property right to continued employment when neither the state nor the city has a regulation or policy

which would create such an expectation. Therefore, the employee, a municipal police officer, can be terminated without formal notice or hearing. The officer's good name, reputation, honesty and integrity were not impaired by his dismissal since the city did not make the reasons for his discharge public.

2. **Buckalew v. City of Grangeville**, 540 P.2d 1347 (Idaho 1975)–City charter provided that police chief's tenure was for specific term. Court held that former chief, who had been removed prior to the expiration of his appointed term, had legitimate claim to continued employment and could not be dismissed without notice and a hearing.
3. **Jamerson v. South Mansfield**, 297 So.2d 490 (La. App. 1974)–Upholds plaintiff's dismissal as deputy marshall without a statement of reasons and a hearing. The court ruled that the appellant was not protected by the Due Process Clause of the Fourteenth Amendment due to the fact that the simple expectancy of continued employment is not a protectable property interest. The court also noted that the village did not have a civil service law and thus the appellant lacked the protection of civil service status.
4. **Valenzuela v. Board of Civil Service Commissioners**, 115 Cal. Rptr. 103 (1971)–Holds by way of dicta that a statute which provides for removal only for cause requires (by implication) a hearing.
5. SEE ALSO:
   Gamble v. Kelley (Procedure–C)
   Gibbs v. City of Manchester (Procedure–C)
   Tabone v. Codd (Incompetence–D)
   Perry v. Blair (Probationary Employees)
   Weinberg v. Macey (Tampering with Official Documents)

I. Right to Transcript

1. **Aluisi v. County of Fresno**, 324 P.2d 920 (Cal. App. 1958)–Since due process requires that administrative proceedings be subject to judicial review, a record of those proceedings is necessary to the proper exercise of a court's appellate function. A corollary to this is that a petitioner is entitled to point out to the court anything in the record which is favorable to his position. When the record is incomplete, as was the case here, the court's task becomes impossible and a remand to the administrative board for rehearing and reconsideration of the charges is proper.
2. **Bowles v. Baer**, 142 F.2d 787 (7th Cir. 1944)–Parties to hearings which might materially affect their rights are entitled to be present in person or

represented by counsel and to be furnished with a record of the proceedings.

J. Sufficiency of Notice

1. **Danison v. Paley**, 355 N.E.2d 230 (Ill. App. Ct. 1976)--Where formal investigation had been initiated to determine whether police officer had filed a false report, and those in command of the force had focused upon the officer and the specific charge of which he was accused, and, although no decision had been made, there was a possibility that he would be dismissed, the officer was entitled to notice of the investigation and charges against him.
2. **Faust v. Police Civil Service Commission of Borough of State College**, 347 A.2d 765 (Pa. Commw. Ct. 1975)—Held that police officer, who was dismissed for alleged adultery, and who was warned by superior officer three days before he was discovered by the woman's husband that it was in his and the department's best interest for the association to cease, had sufficient notice that such conduct might be the basis for action by the department.
3. **Farrel v. Department of Police**, 290 So.2d 457 (La. App. 1974)—Where department notified officer of his right to appeal suspension from police department but failed to notify him of right to appeal dismissal arising out of same circumstances, officer did not lose his right to appeal the dismissal even though he filed late.
4. **Niazy v. Utica Civil Service Commission**, 206 N.W.2d 468 (Mich. Ct. App. 1973)—Notice of charges given on the day of the hearing was held to be insufficient to satisfy due process requirements, and the failure of the accused officer to object to the insufficiency did not constitute a waiver of rights, since it could be shown that the officer had no knowledge of his right to reasonable notice.
5. **Baker v. Woodbury**, 492 S.W.2d 157 (Mo. Ct. App. 1973)—An officer who was appealing his dismissal from the police force was estopped from complaining that the mayor and chief of police had failed to specify the acts which warranted dismissal because the officer had neglected to bring the matter to their attention at earlier stages of the proceedings, when corrective measures could have been taken.
6. **McAnulty v. Snohomish School District**, 515 P.2d 523 (Wash. 1973)—Holds that the fact that teacher had actual notice of his discharge and reasons for discharge did not satisfy statutory requirement that teacher be notified in writing of discharge and cause or causes for such action.
7. **Firemen's and Policemen's Civil Service Commission**, 404 S.W.2d 308 (Tex. 1966)—Held that a Texas statute which prohibited the amending of charges did not preclude the levying of additional charges which were predicated upon different acts of misconduct. Thus, the court sustained both the indefinite and six months suspensions.
8. **Luacaw v. Fire Commissioner**, 214 N.E.2d 734 (Mass. 1965)—Holds that city fireman who received inadequate notice of dismissal could have asserted his rights in a mandamus proceeding but lost his right to do so by instead requesting a hearing before Civil Service Commission.
9. **Jones v. Mayor of Athens**, 123 S.E.2d 320 (Ga. 1961)—Holds that where statute provides that public employee may not be discharged except after notice, it is necessary only that notice be unequivocal. Thus, written notice to policeman was not required following a hearing and discharge by civil service commission for conduct unbecoming an officer and detrimental to the service.
10. **Cook v. Civil Service Commission**, 2 Cal. Rptr 836 (Ct. App. 1960)—Holds that where discharged sergeant was, upon his request, given a more detailed statement of charges, the fact that the initial statement described charges in general terms was of no consequence.
11. **O'Neil v. City of New York**, 178 N.Y.S.2d 334 (1958)—Ruled that the fact that the officer was served with written charges nineteen days after his suspension for assault upon a civilian was not prejudicial to the officer where he did not deny that he knew at all times the reason for his suspension. The relevant statute, stated "the commissioner shall have the power to suspend, without pay, pending the trial of charges, any member of the Force. If any member so suspended shall not be convicted by the commissioner of the charges so preferred, he shall be entitled to full pay from the date of suspension, notwithstanding such charges and suspension."
12. **Marchiafava v. Baton Rouge Fire and Police Civil Service Board**, 96 So.2d 26 (La. 1957)—Holds that notice of dismissal served on police officer by chief of police informing him of his dismissal for engaging in proscribed political activities was sufficient notwithstanding the fact that it did not spell out all the details of the activity charged against the officer.
13. **Owens v. Ackerman**, 136 N.E.2d 93 (Ohio 1955)—Holds that order of removal which simply charged officer with conduct unbecoming an officer, without more, did not comply with mandatory requirement of statute pro-

viding that appointing authority should furnish an accused employee with a copy of the order for removal and his reasons for the same.

14. **McDonald v. Dallas**, 69 S.W.2d 176 (Tex. 1934)–Holds that letter of secretary of Civil Service Board addressed to city manager, stating that board had found policemen's efficiency grades below standard, and had determined to remove policemen, is not notice to policemen of alleged action of Board.
15. **State v. Tacoma**, 33 P.2d 88 (Wash. 1934)–Holds that where member of city police force was discharged by commissioner of public safety, written notice of discharge signed by chief of police, although irregular in some respects, does not invalidate order of discharge.
16. **Nichols v. Sunderland**, 247 P. 614 (Cal. 1926)–Holds that writing stating reasons for removal of detective sergeant is capable of amendment providing that Civil Service Board is not bound by technical rules of pleading.
17. SEE ALSO:
    Harless v. Bichsel (Mistreatment of Prisoners)
    Papasidero v. Murphy (Incompetence–E)
    Twp. of Upper Moreland v. Mallon (Conduct Unbecoming)

K. Suspension or Discharge Pending a Hearing or Trial

1. **Behan v. City of Dover,,** 419 F.Supp. 562 (D. Del. 1976)–Held that the presence of a suspected thief in the police department would seem to pose a continuing danger to persons or property so as to justify a short suspension, without prior notice or a hearing, pending the outcome of an investigation.
2. **Arnett v. Kennedy**, 416 U.S. 134 (1974)–Holds that if a statute creates a property right in employment and procedures to protect that right, the employee is entitled to no more protection than that provided by statute, i.e., employee is not entitled to a prior hearing unless it is provided in the statute. A post-termination hearing is adequate to protect a federal employee's interest in liberty. The standard of "such cause as will promote the efficiency of the service" does not include constitutionally protected speech, and the act is, therefore, not overbroad.
3. **State ex rel. Todd v. Hatcher**, 301 N.E.2d 766 (Ind. Ct. App. 1973)–Upheld a fireman's suspension without pay. The court ruled that a statute providing for the suspension of a fireman pending a hearing superseded an earlier statute which provided for a suspension only after a hearing. The court ruled that the statute providing for a hearing was repealed by implication by the later enactment.

4. **State ex rel. Spence v. Metropolitan Government**, 469 S.W.2d 777 (Tenn. 1971)–Held that even though the Civil Service Commission erred in not granting the complainant a hearing within a reasonable time, the complainant should not have been restored to her former position without a hearing before the Commission.
5. **Goldberg v. Kelly**, 397 U.S. 254 (1970)–Held that a fundamental principle of due process is the opportunity to be heard at a reasonable time and in a reasonable manner.
6. **Wilson v. City of Minneapolis**, 168 N.W.2d 19 (Minn. 1969)–Held that the Minneapolis Charter and the Civil Service Commission's rules enabled the police superintendent to suspend a police officer without a formal hearing despite the superintendent's order requiring the conducting of a formal hearing as a predicate to a disciplinary suspension.
7. **Gould v. Looney**, 304 N.Y.S.2d 537 (1969)–Held that the Nassau County Police Rules and Regulations allowed the Police Commissioner to suspend an officer charged with soliciting a bribe in advance of a disciplinary hearing. However, the court ruled that the Commissioner had no authority to couple the suspension with a loss of pay if the officer were required to perform administrative duties.
8. **Cain v. Civil Service Commission**, 411 P.2d 778 (Colo. 1966)–Held that a police officer who was discharged without a hearing was not denied due process of law where the city and county charters provided for an appeal before the Civil Service Commission.
9. **Romanowski v. Board of Education**, 213 A.2d 313 (N.J. Super. 1965)–Temporary suspension for indictment for malfeasance in office pending outcome of case is within the power of the Board.
10. **State ex rel. Kuszewski v. Board of Fire and Police Commissioners**, 125 N.W.2d 334 (Wis. 1963)–Held that the chief of police had the implied authority to suspend an officer indefinitely pending a trial on criminal charges. However, the court ruled that the officer could not be deprived of his salary pending the criminal trial.
11. **O'Shea v. Martin**, 230 N.Y.S.2d 935 (1962)–Held that due to the nature of a police officer's relationship with the community, an officer could be dismissed upon the return of an indictment for assault. The dismissal of the indictment did not have any bearing upon the disciplinary proceedings.
12. **McKeithen v. City of Stamford**, 183 A.2d 280 (Conn. 1962)–Is authority for the position that the chief of police has the implied authority to suspend a police officer without pay pending the determination of the officer's guilt or innocence in a criminal trial.

13. **Brenner v. City of New York**, 192 N.Y.S.2d 449 (1959)—Held that statute requiring the filing of departmental charges as the condition precedent to suspending without pay would be satisfied if the charges were filed within a reasonable time after suspension.
14. **McElroy v. Trojak**, 189 N.Y.S.2d 824 (Sup. Ct. 1959)—Holds that a police officer may be suspended without pay prior to the filing of formal charges with the administrative board, provided such charges are brought within a reasonable time.
15. SEE ALSO:
    Aycock v. Police Committee (Criticism)
    City of Tulsa v. Parrish (Back Pay)
    Graham v. Asbury Park (Back Pay)
    May v. Shaw (Internal Investigations)
    O'Hara v. Comm'r of Public Safety (Political Activities)
    People ex rel. Maxwell v. Conlisk (Back Pay)
    Quinn v. Muscare (Hairstyles)
    Snider v. Martin's Ferry (Back Pay)

RECOVERY OF BACK PAY

1. **Guthrie v. Civil Service Board of City of Jasper**, 342 So.2d 372 (Ala. Civ. App. 1977)—Held that where the city service board did not suspend the policeman pending outcome of his appeal from his discharge by the police chief, the officer would be entitled to recover his salary for the period of time between his discharge by the police chief and the upholding of discharge by the board.
2. **Kleschick v. Civil Service Commission**, 365 A.2d 700 (Pa. Commw. Ct. 1976)—When charges of possession of marijuana were dismissed against a police officer due to an unlawful search and seizure, the officer was not mandatorily entitled to back pay for period of dismissal, in spite of the department's decision to reinstate him. The awarding of back pay was in the discretion of the commission, unless the original action complained of was undertaken by the department for political, religious, or racial reasons.
3. **O'Keefe v. Murphy**, 381 N.Y.S.2d 821 (1976)—Held that a member of the police force is not entitled to a salary during his suspension provided he has been convicted of the charges.
4. **People ex rel. Maxwell v. Conlisk**, 306 N.E.2d 640 (Ill. 1975)—Police officer who was suspended for more than 30 days and thereafter reinstated when charges against him were withdrawn, was entitled to be compensated for entire period of suspension. Statute which provides that superintendent has authority to suspend officers for period not to exceed 30 days would not be interpreted to mean that officer could not be entitled to payment for that period.
5. **Solomon v. Civil Service Commission**, 236 N.W.2d 94 (Mich. Ct. App. 1975)—Held that city is entitled to reduce amount of damages recoverable by policeman for wrongful discharge by whatever sums policeman earned or could have earned in his employment after discharge under the doctrine of mitigation of damages. Policeman is not a "public officer" to whom mitigation doctrine would not apply.
6. **Picconi v. Lowery**, 366 N.Y.S.2d 631 (1975)—Held that where a fireman's punishment has been reduced from dismissal to a six months suspension, the fireman was entitled to his back pay for the period beyond the six months suspension less any additional moneys he might have earned during this period.
7. **Snider v. Martin's Ferry**, 260 N.E.2d 129 (Ohio Ct. App. 1970)—Held that a police officer who was suspended when charged with burglary was not entitled to back pay for the period of his suspension even though he was found not guilty in a second trial after his first conviction was set aside.
8. **Adams v. Rubinow**, 251 A.2d 49 (Conn. 1968)—Although salary payments may be discontinued for the period during which a public officer is suspended, he may recover any salary withheld upon a finding that the suspension was unlawful.
9. **Manobianco v. City of Hoboken**, 232 A.2d 856 (N.J. 1967)—Upheld the city's defense of laches and ruled that an officer could not maintain an action for a judicial determination of the illegality of his suspension two years and three months after a grand jury returned a no bill. The Court held that a "judicial determination" of illegality was the condition precedent to the recovery of back pay.
10. **Kaminsky v. City of New York**, 246 N.Y.S.2d 780 (1964)—Held that a suspended police officer who has been restored to duty could recover his back pay without any deduction for the amount earned during the suspension from outside employment.
11. **McKeithen v. City of Stamford**, 183 A.2d 280 (Conn. 1962)—Held that it is the general rule, both in Connecticut and elsewhere, that in the absence of specific statutory provision to the contrary, "where a public officer is wrongfully suspended or expelled, he is entitled to recover the salary accruing during the period he is thus unlawfully removed from his office." The court also ruled that the police commissioner has the inherent authority to

suspend officers for a reasonable time pending the resolution of criminal charges. Officers who were properly suspended prior to their dismissal were not entitled to pay for the period of their suspension.

12. **Graham v. Asbury Park**, 174 A.2d 244 (N.J. 1961)–Held that a police officer who was suspended pending the outcome of criminal charges and who was subsequently acquitted could recover the salary lost during his suspension under a New Jersey statute which provided for the payment of back pay to a municipal employee who was illegally suspended.
13. **State ex rel. Livingston v. Maxwell**, 353 P.2d 690 (Okla. 1960)–The power of the mayor to suspend was determined to be ancillary to his power to appoint, and therefore until the suspension of the chief of police was nullified or invalidated, the police chief had no legal right to the salary of his office.
14. **Vega v. Borough of Burgettstown**, 147 A.2d 620 (Pa. 1958)–Held that a police chief is a public employee and that he is entitled to his salary during the period of his improper dismissal with a deduction for the amounts earned in his private capacity while he was improperly dismissed. "Appellant's acceptance of an initial appointment as a policeman, and a subsequent appointment as chief of police resulted for present purposes in a contract of employment and any sums earned by him during the period of unlawful dismissal were properly deducted from the salary due him as chief of police."
15. **City of Tulsa v. Parrish**, 333 P.2d 564 (Okla. 1958)–Where police officer was suspended pending hearing on misconduct charges, and hearing resulted in discharge, and the police officer then appealed to the District Court which granted a remand for a rehearing, and the officer was subsequently discharged anew, he was not entitled to compensation for any period between the initial suspension and his final discharge.
16. **City of Anniston v. Dempsey**, 36 So.2d 314 (Ala. 1948)–Held that where a civil service statute permitted the chief of police to summarily suspend without pay an officer for improper conduct for a period not to exceed 30 days in any one year and the policeman had already been suspended for 15 days, a forty-five-day summary suspension was illegal with respect to the additional 30 days. Therefore, the officer was entitled to recover his salary during the period of the illegal suspension.
17. **Strohmeyer v. Little Ferry**, 56 A.2d 885 (N.J. 1948)–Held that in the absence of a statute an officer acquitted of departmental charges cannot recover back pay covering the period of his suspension. "Apart from statute that there is no right of recovery for a salary not earned seems clear."

18. **Curry v. Hammond**, 16 So.2d 523 (Fla. 1944)–Held that a police officer whose suspension has been reversed is a public officer and not a public employee, and thus the city is not entitled to set off against the back salary which must be repaid the earnings of the officer while he was suspended.
19. **Ecker v. City of Cincinnati**, 3 N.E.2d 814 (Ohio 1936)–Held that an officer who did not render any services during the duration of his suspension could not recover his back salary despite the fact that district attorney decided to *nolle prosequi* the bribery indictment.
20. SEE ALSO:
    Aycock v. Police Committee (Criticism)
    Baker v. Kennedy (Retirement)
    Brenner v. City of New York (Procedure–K)
    Flynn v. Giarrusso (Criticism)
    Gould v. Looney (Procedure–K)
    Lindquist v. Coral Gables (Hair Styles)
    Olshock v. Village of Skokie (Procedure–C)
    O'Neil v. City of New York (Procedure–J)
    State ex rel. Kuszewski v. Bd. of Fire & Police Comm'rs (Procedure–K)
    State ex rel. Todd v. Hatcher (Procedure–K)

RESIDENCY

1. **Miller v. Police Board of City of Chicago**, 349 N.E.2d 544 (Ill. App. Ct. 1976)–The requirement of a city police department rule that an officer "reside" in the city is synonymous with a requirement that he have his "residence" in the city, since the terms "reside" and "residence" have generally been held to be synonymous. The evidence showed that one tenant at the officer's city apartment address had never seen him in the three years that they both lived there, and the officer's child and wife, from whom he was not separated or divorced, resided at an address outside the city.
2. **Williamson v. Village of Baskin**, 339 So.2d 474 (La. Ct. App. 1976)–Held that a police chief was not a resident of the village by which he was employed where, although he rented rooms in the village for admitted purpose of attempting to comply with the statutory resident requirement, he never spent any appreciable time in such rooms, never spent a night there and never in any sense used the rooms as a place to live, even part-time or occasionally.

3. **McCarthy v. Philadelphia Civil Service Commission**, 424 U.S. 600 (1976)—Holds that city's requirement that city employees be bona fide city residents does not violate the right of interstate travel.
4. **Hunter v. Fraternal Order of Police**, 303 N.E.2d 103 (Ohio Ct. C.P. 1973), *cert. denied*, 424 U.S. 977—Held that city employees already living in the suburbs could not be required to move into the city, but employees hired in the future could be required to live there. The decision was based in part on a state constitutional provision forbidding retroactive laws.
5. **Wright v. City of Jackson**, 506 F.2d 900 (5th Cir. 1975)—Holds that there is no fundamental right to intrastate travel, so that a city need not justify a residence requirement under the compelling state interest test. There is a rational reason for requiring fire fighters to live within city limits.
6. **Detroit Police Officers Association v. City of Detroit**, 214 N.W. 2d 803 (Mich. 1974)—Held that residency requirement for Detroit policemen was mandatory subject for collective bargaining.
7. **Gantz v. City of Detroit**, 220 N.W.2d 433 (Mich. 1974)—Upholds the power of a civil service commission to declare vacant the position of any employee who fails to maintain a residence within the city.
8. **Donnelly v. City of Manchester**, 274 A.2d 789 (N.H. 1971)—Invalidates a residence requirement for teachers on the ground that they have performed the work for which they are paid, and therefore the district cannot attach further conditions to continued employment.
9. **Town of Milton v. Civil Service Commission**, 312 N.E.2d 188 (Mass. 1974)—Upholds a residents' hiring preference for police departments on the grounds that it was reasonably related to a state interest, namely promoting police-community cooperation, increasing police presence, increasing police knowledge of the community, and encouraging more conscientious police performance.
10. **Ector v. City of Torrance**, 109 Cal. Rptr. 849 (1973)—Upholds a residence requirement for all municipal employees as promoting legitimate governmental interests and not infringing on any right to travel or raise a family.
11. **Grabie v. City of Detroit**, 210 N.W.2d 379 (Mich. Ct. App. 1973)—Holds that the fact that an employee's family lives outside of the jurisdiction is not *prima facie* proof of nonresidence; that a full Civil Service hearing is required; and that if there is a broad waiver provision, personal hardship must be one factor considered.
12. **Detroit Police Officers Association v. City of Detroit**, 190 N.W.2d 97 (Mich. 1971), *appeal denied*, 405 U.S. 950 (1972)—Appeal from the Supreme Court of Michigan is dismissed for want of a substantial federal question. This amounts to a decision on the merits that a residency requirement for police officers does not violate any provisions of the Federal Constitution.
13. **Ahern v. Murphy**, 457 F.2d 363 (7th Cir. 1972)—Upholds the Chicago Police Department's residency requirement on the authority of **Detroit Police Officer's Association**, *supra.*
14. **Krzewinski v. Kugler**, 338 F. Supp. 492 (D.N.J. 1972)—Holds that the statute which requires policeman or fireman to surrender his constitutional right to travel in exchange for his job is justified by compelling state interest in promoting identity with community among police, in deterrent effect on crime by presence of off-duty police and in the resulting chance associations and encounters which might lead to invaluable sources of information, develop community rapport and put an end to misunderstanding and intolerance.
15. **Mercadente v. City of Paterson**, 266 A.2d 611 (N.J. Super. 1970), *aff'd*, 275 A.2d 440 (1971)—Holds that city fireman and policeman who maintained their respective domiciles outside the city but who, at the same time, each had a residence of sorts in the city failed to satisfy statutory requirement that "every person holding an office, the authority and duties of which relate to a municipality, shall reside within the municipality."
16. **Manion v. Kreml**, 264 N.E.2d 842 (Ill. App. 1970)—Rule of Chicago police board and ordinance of City of Chicago requiring Chicago patrolmen to be residents of City held valid.
17. **Quigley v. Village of Blanchester**, 242 N.E.2d 589 (Ohio Ct. App. 1968)—Holds that municipal ordinance which required members of police department to reside in or within two miles of municipality was proper enactment of sound municipal police power and was constitutional and that police officer who was not under civil service had no vested interest or right to property in such job.
18. **Berg v. City of Minneapolis**, 143 N.W.2d 200 (Minn. 1966)—Holds that evidence sustained finding that police department regulation requiring residence within city as a condition for continued employment as police officer was validly adopted and that, although plaintiff had served as good, competent police officer, it was within the power of the police department to suspend plaintiff from service as a police officer by reason of fact that he moved his residence to a place outside limits of city.
19. **State, County and Municipal Employees Local 339 v. Highland Park**, 108 N.W.2d 898 (Mich. 1961)—Holds that the ordinance requiring municipal employees to establish and maintain bona fide municipal residence was unconstitutional as arbitrary and unreasonable when applied to the

plaintiffs for whom housing facilities were not available within the corporate limits of the city.

20. **Marabuto v. Town of Emeryville**, 6 Cal. Rptr. 690 (Ct. App. 1960)–Holds that the resolution of the city council that all civil service employees maintain their residence in the city as condition of continued employment was not unreasonable as applied to firemen and policemen to insure that they could be relied on for a quick response in case of emergency.
21. **In re Gagliardi's Appeal**, 163 A.2d 418 (Pa. 1960)–Holds that ordinance requiring employees of a borough to reside within the borough and to be citizens thereof and authorizing the council to suspend employment until they comply or to dismiss them was not invalid on the ground that it had been pre-empted by the civil service statutes which set forth reasons for which borough policemen may be suspended or removed from their positions.
22. **Kennedy v. City of Newark**, 148 A.2d 473 (N.J. 1959)–Holds that the public interest is advanced by requiring public employees to reside within political unit providing their pay, and residence requirements may be made of other employees, as well as those who might be called for emergency work.
23. **Spencer v. Crowther**, 312 P.2d 567 (Utah 1957)–Holds that police officer was not a qualified elector of city within statute providing that one who is not a qualified elector of city shall not be eligible for any city office, and therefore, discharge of a police officer after he failed to move back into city was justified.
24. **Mosebar v. Moore**, 248 P.2d 385 (Wash. 1952)–Holds that statute providing that residence of civil service employee outside of limits of city or town by which he is employed shall not be grounds for discharge of any regularly appointed civil service employee otherwise qualified was a general statute and superseded provision of ordinance passed under authority of city charter requiring residence in city.

RETIREMENT AS A BAR TO DISCIPLINARY ACTION

1. **Frederick v. Combs**, 354 S.W.2d 506 (Ky. Ct. App. 1962)–Held that the retirement of the chief of police and the chief of detectives during the pendency of disciplinary proceedings did not terminate the Governor's authority to conduct the ouster proceedings against them.
2. **Baker v. Kennedy**, 161 N.Y.S.2d 720 (Sup. Ct. 1957)–Held that where police commissioner filed charges against a New York City police officer for assaulting his wife with a gun, but held in abeyance the disciplinary hearing pending the outcome of criminal proceedings predicated on the same incident, the fact that the officer submitted his resignation during the pendency of the criminal prosecution did not deprive the police commissioner of the power to try the officer after the latter's conviction.
3. **Pierne v. Valentine**, 291 N.Y. 333 (App. Div. 1943)–Held that the New York City Police Commissioner could not discipline a police officer for dereliction of duty, who had, prior to the filing of the disciplinary charges, submitted an application for retirement and a pension pursuant to a statute which held that an officer "shall be retired upon his own application."

STANDARDS OF JUDICIAL REVIEW

1. **Millsap v. Cedar Rapids Civil Service Commission**, 249 N.W.2d 679 (Iowa 1977)–State Supreme Court's review of a district court judgment upholding a decision of the city civil service commission temporarily suspending and demoting a city policeman was considered *de novo*: court gave weight to the trial court's findings of fact but was not bound by them.
2. **Dante v. Police Board of City of Chicago**, 357 N.E.2d 549 (Ill. App. Ct. 1976)–It is the duty of the board, not the court, to judge the credibility of witnesses in a discharge proceeding.
3. **Kreiser v. Police Board of City of Chicago**, 352 N.E.2d 389 (Ill. App. Ct. 1976)–Held that a police board's decision as to the existence of cause to warrant discharge of a policeman will not be reversed as long as it is related to the requirements of the service and is not so trivial as to be unreasonable.
4. **City of Jackson v. Thomas**, 331 So.2d 926 (Miss. 1976)–Held that exclusive remedy for police officer, who was dismissed for specific violations of departmental rules and regulations, was a demand for an investigation by the civil service commission; the circuit court had no jurisdiction to direct city to reinstate officer and reimburse him for back pay.
5. **Rizzo v. Goode**, 423 U.S. 362 (1976)–Holds that a federal court may not interfere with the discretionary authority of a police department to perform its official functions when there is insufficient showing that the complainants are threatened by real and immediate injury, and when the allegedly unconstitutional acts which were the basis for demanding relief are too few in number to establish a pattern of constitutional violations.
6. **Pell v. Board of Education**, 313 N.E.2d 321 (N.Y. 1974)–Holds that although issues decided by an administrative hearing board are usually not reviewable, when the punishment imposed is so disproportionate to the

offense as to be "shocking to one's sense of fairness," a court may review the decision and ameliorate the harshness of the sanctions.

7. **City of Mishawaka v. Stewart**, 310 N.E.2d 65 (Ind. 1974)--Administrative proceedings need not be conducted with all the procedural safeguards afforded in judicial proceedings, but should be conducted with the highest level of propriety practicable under the circumstances. The function of a reviewing court is merely to assure that the board did not go below minimal level of due process required, or did not base its opinion on a total lack of legal evidence.
8. **Basketfield v. Police Board**, 307 N.E.2d 371 (Ill. 1974)--The proper standard for review of a police board's dismissal of an officer for misconduct is whether the agency decision was contrary to manifest weight of the evidence. Where an officer was discharged by the police board, but the most serious charges on which that discharge was based were not sustained on appeal, the matter should be remanded to the police board even though discharge was a possible penalty for the charges sustained.
9. **Templin v. City Commission**, 187 So.2d 230 (Ala. 1966)--Held that the determination of weight and credibility of evidence on question of whether discharged fireman had violated a civil service rule was a matter for the Personnel Board, and the court's review was thus limited to considering whether the Board's ruling was supported by legal evidence.
10. **Taylor v. Civil Service Commission**, 178 N.E.2d 200 (Ill. 1969)--Held in affirming the Civil Service Commission's decision removing Taylor for conduct unbecoming an officer that the reviewing court cannot reweigh the evidence. The court can only judge whether the Commission's determination was contrary to the manifest weight of the evidence.
11. **Gasperas v. Board of Fire and Police Commissioners**, 235 N.E.2d 359 (Ill. 1968)--Affirmed the judgment of a lower court reversing the dismissal of a police officer who was charged with conduct unbecoming an officer and insubordination. While the findings and conclusions of an administrative agency on questions of fact are presumed to be prima facie true and correct, a court of review is required to consider the entire record in determining whether the findings are against the manifest weight of the evidence. The findings of an administrative agency must be supported by substantial evidence.
12. **State ex rel. Perry v. City of Seattle**, 420 P.2d 704 (Wash. 1966)--Holds that where, in a case of removal from position within classified civil service, appointing power filed with Civil Service Commission a written statement of reasons for removal, upon charges not utterly frivolous, and where party charged had full opportunity to be heard, and competent evidence was produced tending to prove the charges, the function of Superior Court on judicial review was simply to determine whether there was sufficient competent evidence to support the conclusion reached by the Commission.
13. **Adamek v. Civil Service Commission**, 149 N.E.2d 466 (Ill. 1958)--Reversed a lower court ruling overturning a police officer's dismissal for soliciting and receiving a bribe. The court held that the only function of the courts reviewing orders of administrative agencies is to consider the record to determine if the findings and orders of the administrative agency are against the manifest weight of the evidence.
14. **In re Ditko**, 123 A.2d 718 (Pa. 1956)--Held that a court can only reverse an administrative body's decision removing a police officer where a court, if the case were tried by a jury, would be required to enter a judgment notwithstanding the verdict.
15. SEE ALSO:
    Comm'rs of Civil Service v. Municipal Court (Conduct Unbecoming)
    Klein v. Board of Fire & Comm'rs (Procedure--G)
    Otero v. New Mexico State Police Board (Incompetence--B)
    Wesley v. Police Board (Illicit Relations)

STOLEN PROPERTY

1. **Norek v. Herold**, 334 N.E.2d 220 (Ill. App. Ct. 1975)--Upheld discharge of police officer in light of uncontroverted evidence that he possessed certain stolen parts of motorcycles, testimony by another officer that one of the motorcycles taken from the discharged officer's garage had stolen parts attached to it, and testimony that he had been seen riding a motorcycle which was later found to have stolen parts attached to it.
2. **Eppolito v. Bristol Borough**, 339 A.2d 653 (Pa. Cmwlth. 1975)--Upholds the dismissal of a police officer who used the license plate of another person on his own vehicle in order to avoid registration and inspection of the vehicle and payment of excise taxes. The officer knew that it was improper not to turn in the license plate or trace its owner.
3. **Commissioner v. Treadway**, 330 N.E.2d 468 (Mass. 1975)--Upholds the dismissal of a police officer who retained possession of a rifle, traced its ownership, learned that it was stolen property, and only surrendered it three years later during an official investigation of the incident.
4. SEE ALSO:
    City of Vancouver v. Jarvis (Misuse of Firearms)
    Crouch v. Civil Service Comm'n (Forced Resignation)
    Peabody v. Personnel Comm'n (Incompetence--A)

Plunkett v. Board of Comm'rs (Pension Rights)
Rokjer v. Prezio (Alcohol)
Snider v. City of Martin's Ferry (Back Pay)
Stope v. Civil Service Comm'n (Polygraph)
Talent v. City of Abilene (Polygraph)
Wright v. Looney (Conduct Unbecoming)

TAMPERING WITH EVIDENCE

1. **Schonlau v. Price**, 524 P.2d 311 (Colo. Ct. App. 1974)–Holds that an officer could be discharged for removing from official records a traffic ticket written by another officer, for altering it so that it appeared to be a warning ticket, and for failure to report a "payoff." The fact that another officer who engaged in somewhat different though related conduct received a suspension did not establish that the dismissal was arbitrary and capricious.
2. **Fischer v. Kelley**, 248 N.Y.S.2d 957 (Sup. Ct. 1964)–Upheld the dismissal of a police officer for knowingly filing a false summons and procuring other members of the police force to assist him in such falsification.

TAMPERING WITH OFFICIAL DOCUMENTS

1. **Camarelli v. New York State Department of Civil Service**, 353 N.Y.S.2d 275 (Sup. Ct. 1974)–Holds that a civil service employee could be discharged for misrepresentations on his employment application whether the statement were made with fraudulent intent or by mistake. However, if an error were made by the Civil Service Commission in interpreting accurately represented information, the employee could not be discharged.
2. **Messner v. Milwaukee Civil Service Commission**, 202 N.W.2d 13 (Wis. 1972)–Upholds the discharge of a social worker for deliberate falsification of her "time cards." Where the violation was deliberate and repeated over a prolonged period, her superiors were not required to issue a warning and wait for a subsequent violation to discharge her.
3. **Cacchioli v. Hoberman**, 338 N.Y.S.2d 865 (1972)–Holds that a police trainee could not be discharged for misrepresenting on his employment application that he had never been arrested when the evidence indicated that the representation was not "willful."
4. **State v. Falco**, 292 A.2d 13 (N.J. 1972)–Held that **Garrity**, *supra*, (Internal Investigations) could not be extended either to excuse police detective's nonperformance in office, *i.e.*, his failure to file required report about a fight at a tavern, or to excuse his bad performance in office, *i.e.*, his later

submission of a false official report when a superior officer after learning of the incident, called upon the defendant to file a report.

5. **Jones v. Louisiana Department of Highways**, 250 So.2d 356 (La. 1971)–Upholds the discharge of a highway department equipment superintendent for falsifying payroll records and submitting fraudulent expense account reports.
6. **Bennett v. Price**, 446 P.2d 419 (Colo. 1968)–Holds that city Civil Service Commission's discharge of police officer who violated department regulation prohibiting removal of personnel records from personnel office without permission was not unreasonable.
7. **Weinberg v. Macy**, 360 F.2d 816 (D.C. Cir. 1965)–Holds that an employee is entitled to a trial on the issue of whether an employee made a knowing misrepresentation where the employee's knowledge that he had previously been convicted in a criminal proceeding was controverted.
8. **Martin v. Civil Service Commission**, 129 N.E.2d 248 (Ill. App. 1955)–Holds that an officer could be discharged for signing another officer's name to an inventory of a prisoner's property and for other irregularities in the handling of the property. The importance of regularized procedures as a protection against "payoffs" by prisoners to police officers was emphasized.
9. SEE ALSO:
   Cusson v. Firemen's & Policemen's Civil Service Comm'n (Procedure–D)
   Marino v. Los Angeles (Dereliction)

TICKET-FIXING

1. SEE:
   Fischer v. Kelley (Tampering With Evidence)
   Olivo v. Kirwan (Conduct Unbecoming)
   Schonlau v. Price (Tampering With Evidence)

UNTRUTHFULNESS

1. **Hanzimanolis v. Codd**, 404 F.Supp. 719 (S.D.N.Y. 1975)–Held that the giving of false and evasive answers in the course of an official departmental investigation would be sufficient, in and of itself, to warrant dismissal from the police department.
2. **Cruz v. San Antonio**, 440 S.W.2d 924 (Tex. Civ. App. 1969)–Signing false sworn statement subsequently submitted with an application for a solicita-

tion permit constituted acts showing a lack of good moral character and sufficient cause for dismissal from the police force.

3. **Puckett v. San Francisco**, 25 Cal. Rptr. 276 (Ct. App. 1962)–Holds that where evidence of petitioner's unfitness based on a lack of integrity became known to police chief and such evidence was not made available or considered by the Civil Service Commission at time it placed petitioner on eligible list, police chief had discretion to act upon such evidence by terminating the appointment, even though the Civil Service Commission did not remove probationer from its list of eligible employees.
4. **Borders v. Anderson**, 22 Cal Rptr. 243 (Ct. App. 1962)–Holds that Commission's finding that police officer had disobeyed order of superior not to associate with a criminal was supported by substantial evidence, was contained within the charges, and was in itself sufficient justification for demotion order. Officer also lied to a judge in the course of a criminal proceeding.
5. **Wilber v. Walsh**, 160 A.2d 755 (Conn. 1960)–Holds that officers, in misrepresenting the length of their residence in city in their application for original appointment, had rendered themselves liable to dismissal from the department and that board had not acted illegally or arbitrarily.
6. See also: Tampering With Official Documents
7. SEE ALSO:
   Foran v. Murphy (Conduct Unbecoming)
   Kelly v. Murphy (Procedure–D)
   Molino v. Board of Public Safety (Polygraph)
   Sponick v. City of Detroit (Associations)
   Wasemann v. Roman (Illicit Relations)

APPENDIX C

Field Instruments

Structured Guideline Administrative Analysis

I. WRITTEN DIRECTIVES

1. *Existence and Types*–Determine whether the Department has the following written directives.
   1.1 Manual of rules and regulations
   1.2 Procedural manual, manual of standard operating procedures (General Orders)
   1.3 Written training bulletins
   1.4 Special operating orders
   1.5 Personnel orders
   1.6 Other written directives delineating officer expectations with respect to conduct and operations (either from the chief's office or by organizational entity).
2. *Preparation*–Who is responsible for the actual writing, coordination of writing, and preparation of written directives?
   2.1 Identify the usual procedure in the preparation of directives. (Who determines the need for directives, who prepares, who approves?)
   2.2 Do lower echelon personnel have any formal mechanism by which they provide input into the directive system (or management system which defines expected behavior)?

2.3 Have the employee organizations attempted to provide input or recommend changes in any of the department's written directives?
- How?
- When?
- Results (e.g., contract altered existing procedures)?

2.4 Is input from the lower echelon personnel or from the employee organization actively sought?
- Describe how sought?
- Is the officer who formally suggested a change identified and/or rewarded?

2.5 Determine whether organizational entities have promulgated directives governing operations (e.g., patrol division operating manual).
- 2.5.1 Is this under the chief's authority?
- 2.5.2 Can an officer be disciplined for violating such directives?

2.6 *Classification, Indexing and Control*—Determine whether there is logic to the methods of classifying and standardizing the various written directives.
- 2.6.1 Systematic classification of written directives by subject matter or organizational responsibility.
- 2.6.2 Standard identifiable format for each type of written directive.
- 2.6.3 Adequate reference indexing system.
- 2.6.4 Centralization and restriction of authority to issue written directives.
- 2.6.5 Uniformity and control of numbering and indexing systems.
- 2.6.6 Provisions for transferring directives into manual form.

2.7 *Concurrence*—Is concurrence reached before a new or revised written directive becomes effective?
- 2.7.1 Describe the formal procedure by which such concurrence is reached (as formally established by the department).
- 2.7.2 Describe how concurrence is actually reached if different from the formalized method.

2.8 *Update and Revision*—Determine the method by which existing directives are purged, revised and updated.
- 2.8.1 What is the formalized policy on purging, updating, and revising written directives?

- 2.8.2 How often does the review, purging, and update process take place?
- 2.8.3 What are the major reasons for update, review and revision of written directives?
  - 2.8.3.1 Recent court decisions
  - 2.8.3.2 Change in administration
  - 2.8.3.3 Improved methods of operation
  - 2.8.3.4 Suggestions from agency staff indicating some degree of participatory management
  - 2.8.3.5 Citizen suggestions indicating some degree of citizen participation in the operation of the police department and the department's responsiveness to citizen's suggestions.

3. *Distribution*—Determine if the distribution scheme is set up to assure that each sworn employee affected by a written directive receives a copy of new or revised written directives.
   - 3.1 Adequate distribution to ensure all personnel affected by the written directives are fully aware and acquainted with the contents. (Yes–No)
   - 3.2 Restricted distribution of those directives which apply to a limited number of persons or units. (Yes–No)
   - 3.3 Describe the distribution scheme.
   - 3.4 What mechanism is established for distribution of written directives to members or employees who are absent when new or revised directives are distributed?
4. *Training to Assure Understanding*—Determine if there is a mechanism to insure that the persons affected by new or revised written directives understand the directives.

   (For New Employees)
   - 4.1 How many hours of the training academy are devoted to a comprehensive review of rules, regulations, standard operating procedures, general orders and other directives which delineate departmental expectations relating to the police officer role?
   - 4.2 Who prepares the lesson plan for such training?
     - 4.2.1 How often is the lesson plan reviewed and updated to keep it current with revisions in written directives?
     - 4.2.2 Who is responsible for such updating?
     - 4.2.3 Is the lesson plan reviewed and approved by the chief of police?

4.3 Determine if there are any conflicts or inconsistencies between the training (and the lesson plan) and the written directives existing within the agency.

(For In-Service Employees)

4.4 Any roll call or in-service training relating directly or indirectly to disciplinary procedures, rules, regulations, etc.
- How often?
- Does this training explain the rationale for written directives?

5. *Misconduct Defined*

5.1 What is the definition of discipline (if any)?

5.1.1 Is this definition contained in written directives which are distributed to employees?

5.1.2 Is this definition explained to employees through training programs?

5.2 What standard is used to determine employee misconduct?

5.2.1 Which of the following written directives are used to justify the taking of disciplinary action in cases of misconduct?
- Rules and regulations
- Procedures, general orders, etc.
- Training bulletins
- Special operating orders
- Organizational entity directives
- Other

5.2.2 Can an officer be disciplined for any conduct which is not specifically codified as misconduct? (Give examples of such instances.)
- To what extent is the rule on conduct unbecoming an officer used as a catch-all?

II. INSPECTIONS

1. *Inspections as Part of Organization*–Determine whether the agency has an inspections unit specifically responsible for inspecting men, material, resource utilization, and the degree to which written directives are being followed.

1.1 Is the inspections unit identified and included in the table of organization?

1.1.1 Indicate where in the organizational structure the inspections unit is located.

1.1.2 Indicate the staffing for the inspections unit.

1.2 How long has the formal inspections unit been in existence?

1.3 Is the existence and the operations of the inspectional entity codified in the written directives system so that everyone knows of its existence, operations, and objectives?

2. *Division of Inspectional Labor*–Determine the expected inspection responsibility of each:

2.1 Inspections unit

2.2 First-line supervisors

2.3 Organizational entity commanders

2.4 Other

3. *Inspection of Written Directives Manual*–Determine if there is a formal method of inspecting officers' manuals to assure that:
- Officers are keeping manuals up-to-date.
- Manuals are available.

3.1 Department Policy–Are officers required, by written order, to maintain manuals of written directives?

3.1.1 Issuance of manuals numerically controlled?

3.2 Is there a formal, explicit inspections program for maintenance of manuals?

3.3 Inspections program for directives (if applicable).

3.3.1 Who is responsible for conducting such inspection?

3.3.2 How often are such inspections performed?

3.3.3 If officers are negligent or delinquent in maintaining their manual of written directives, and such delinquency is noted in the inspections program, are those officers subjected to any disciplinary action?

3.3.4 If officers are missing any written directives, how do they obtain duplicate copies?

III. SUPERVISORY RESPONSIBILITY FOR DISCIPLINE

1. *Explanation of Written Directives*

1.1 Are supervisors expected to explain written directives?

1.2 Do supervisors receive any special training in explaining new or revised written directives (or procedures)?
- Staff conferences

- In-service supervisory training
- Other

2. *Enforcement of Written Directives*
   - 2.1 Any special training to develop awareness of disciplinary responsibility (describe).
   - 2.2 How is the supervisor held accountable for effective and consistent discipline of subordinates?
   - 2.3 What is the immediate supervisor's authority to take disciplinary action?
     - 2.3.1 What authority is granted by written directives?
     - 2.3.2 What procedure and documentation is required from supervisors in order to impose:
       - Emergency suspension pending further action
       - Oral reprimand
       - Written reprimand
       - Extended suspensions.
3. *Supervisor's Responsibility in Investigating Misconduct*
   - 3.1 Internal—Describe the process for handling discipline where source is internal.
     - First action
     - Documentation required
     - Flow of documents and review.
   - 3.2 External (Citizen)—Describe the process for handling discipline where source is from the citizen.
     - First action
     - Documentation required
     - Flow of documents and review.
4. *Record Keeping Functions*—What records are kept by the immediate supervisor which indicate employee infractions?
   - 4.1 If such records are not kept on a personal basis by the immediate supervisor, is there a system set up where such records are kept on a divisional basis?
   - 4.2 What is the policy and procedure for purging such records?
   - 4.3 Are all employees aware that such records are kept, and are they privileged to inspect their records upon request?

IV. HANDLING CITIZEN COMPLAINTS

1. *Reception of Citizen Complaints*—Determine the extent to which citizen complaints are formally or informally received.
   - 1.1 Is it departmental policy that all citizens complaints:
     - 1.1.1 Be accepted
     - 1.1.2 Be reduced to writing
   - 1.2 Is it permissible (from management point of view) to handle some citizen complaints informally without a written investigation and complete routing through the chain of command?
     - 1.2.1 If yes, who determines which complaints are handled informally?
     - 1.2.2 If not, how can the department be assured that such practice is not occurring?
2. *Specific Procedures for Handling Citizen Complaints*—Determine the mechanism for receiving citizen complaints under the following circumstances:
   - 2.1 Reported to officer in field
   - 2.2 Reported to supervisor in field
   - 2.3 Reported to desk officer in station
   - 2.4 Reported by telephone
   - 2.5 Reported anonymously by telephone or letter
   - 2.6 Reported by letter
   - 2.7 Reported to chief
   - 2.8 Reported to city manager, mayor, or councilman
3. *Recording of Citizen Complaints*—Determine the method by which citizen complaints of police misconduct are recorded by considering the following:
   - 3.1 Document used to report the citizen's complaint
   - 3.2 Case number assigned
   - 3.3 Creation of files
     - 3.3.1 Index card prepared
   - 3.4 What standard information is automatically recorded (example, dates, times, persons involved, witnesses, etc.)?
   - 3.5 What specific requirements are made on the citizen who makes a complaint?
     - 3.5.1 Must a complaint be in writing?
     - 3.5.2 Must the citizen swear to the complaint?
     - 3.5.3 Must the complaint be notarized?
     - 3.5.4 Must a complainant make a statement and is he required to sign such statement?
     - 3.5.5 Is the complainant required to submit to a polygraph examination?

3.6 Is the citizen warned in any manner against making a false report or complaint to the police?
3.6.1 Is notice of such warning documented?
3.6.2 If it is determined that the citizen made a false report or complaint, are charges preferred against the citizen?

V. INVESTIGATION OF MISCONDUCT

1. *Assignment and Time Restraint*—Determine the division of labor and time requirements for the completion of investigation.
   1.1 How is investigatory responsibility for complaints of misconduct assigned?
      1.1.1 What types of investigations are handled by internal affairs?
      1.1.2 What types of investigations are handled by the accused officer's supervisor or commanding officer?
   1.2 Is the assigned investigator required to initiate the investigation within a certain time from data received?
   1.3 Is there a time requirement for completion of the investigation?
      1.3.1 How is such time requirement controlled?
      1.3.2 Are interim reports required?
2. *Investigation Relating to the Officer*
   2.1 Is there a set point in time after the accusation has been made, where the officer is notified that he is being investigated?
   2.2 When the accused officer is called upon to make a statement:
      2.2.1 Is he advised of his rights?
      2.2.2 Is he permitted to have an attorney present?
      2.2.3 Is he given a copy of the citizen's allegation?
      2.2.4 Is he permitted to read the witnesses' statements?
3. *Use of Polygraph*—Determine the extent to which the polygraph is used as an investigatory tool.
   3.1 To what extent is the polygraph used on an officer during an internal investigation?
   3.2 If the polygraph is used, is the polygraph operator from an outside firm or in-house?
   3.3 What are the consequences of an officer refusing to take the polygraph?
4. *Criminal Prosecution*—Determine the management policy and practice of handling internal investigations once it becomes evident that the alleged misconduct may result in criminal prosecution.
   4.1 If it appears that the case may result in criminal charges and criminal prosecution, is the internal investigation suspended or is it brought to a final conclusion?
   4.2 In these circumstances, does the department coordinate its investigatory efforts with the district attorney's office?
   4.3 Who determines if a case is to be referred for criminal prosecution?

VI. DISPOSITION OF CASES

1. *Determination of Findings*—This section deals with the methods by which a finding of guilt or innocence is officially recorded and reviewed:
   1.1 What are the possible findings?
   1.2 Who makes the first recommendation of finding?
   1.3 Who approves or has the authority to offer the first recommendation?
   1.4 List all individuals who review the findings.
   1.5 Who has final authority to review and approve or disapprove the finding?
2. *Determination of Sanction*—This section deals with the method, procedure, and review of sanction to be applied for the alleged misconduct.
   2.1 What are the possible sanctions?
   2.2 Who makes the first recommendation for sanctions?
   2.3 Who approves or has the authority to alter the first recommendation of sanction?
   2.4 List all individuals who review the sanction recommended.
   2.5 Who makes the final determination of sanction to be applied for the alleged offense?
   2.6 Are prior infractions of the accused taken into consideration in determining the sanction to be applied for an act of misconduct?
3. *Notification to Officer*—This section deals with the methods and procedures of notifying the accused officer of the results of the investigation and subsequent disciplinary action.

3.1 How is the officer notified?
  3.1.1 Verbally
  3.1.2 In writing
  3.1.3 Specification of charges in sustained cases
  3.1.4 Other
3.2 Is such notification automatic or must the officer initiate an inquiry to determine the results of the case?

4. *Notification to Citizen*—Determine how the citizen is notified of the results of his complaint and the extent to which he is informed of the department's actions in disciplining the accused officer.
  4.1 How is the citizen notified?
    4.1.1 In writing
    4.1.2 Personal conversation
  4.2 If notification is in writing, is a standard format or form letter used?
  4.3 Is the citizen informed of the degree to which the officer will be punished?
  4.4 If the citizen is dissatisfied with the department's disposition can the citizen appeal to a higher authority?
    4.4.1 Is notification of such right to appeal automatic or must the citizen indicate dissatisfaction with the department's findings, or specifically request information respecting methods of appealing to a higher authority?
5. *Notification to the Department Generally*—Determine the method and procedure utilized to inform other members in the police agency of the action taken in disciplinary cases.
  5.1 Does the police agency notify other members of the department of the action taken in a particular case?
  5.2 If so, how is this accomplished?
    5.2.1 By posting personnel order
    5.2.2 By general announcement in role call.

VII. APPEAL PROCESS

1. *Internal Appeal Process*—Identify the procedure for internal appeals.
  1.1 Is this process codified in written directives?
  1.2 Is the written directive describing the process distributed to everyone in the department?

  1.3 Is the appeal process as established followed in practice?
  1.4 Identify any incongruencies between written procedure and practice.
2. *External Appeal Process*—Identify the methods by which an officer may appeal outside the department. External appeals would include civil service commissions, board of fire and police commissioners, mayor or city manager, or to the courts.
  2.1 Is the external appeal process codified in written directives?
  2.2 Is the written directive describing the process distributed to everyone in the department?
  2.3 Is the appeal process as established followed in practice?
  2.4 Identify any incongruencies between the external appeal process as written and practiced.

VIII. INTERNAL DISCIPLINARY BOARD

1. *Identify each Board or Group in the Department Created to Deal with Disciplinary Matters* (i.e., any agency group established to hear disciplinary cases in the first instance or matters of appeal including, but not limited to, disciplinary boards, appeal boards, firearms boards, accident review boards, and safety boards.
  1.1 What is the authority for the creation of such a Board?
  1.2 What is the composition of the Board, and who is authorized to determine its composition (i.e., Does the accused have any influence as to the Board's composition?)
    1.2.1 Number of members
    1.2.2 Rank
    1.2.3 Qualification
    1.2.4 Basis for selection
    1.2.5 Tenure of the Board.
2. *Major Tasks of each Board*—Determine the responsibility of each Board within the police agency.
  2.1 Investigatory
  2.2 Determination of guilt or innocence
3. *Procedures at Hearing*
  3.1 How and when is the Board assembled?
  3.2 Who *may* attend the hearing?
    - Press
    - Public

CONTINUED

4 OF 5

3.3 Who *must* attend the hearing?
- The accused officer
- Officer's supervisor
- Complainant
- Witnesses

3.4 May the accused officer be represented by an attorney?
- 3.4.1 Does the employee organization pay attorney fees?
- 3.4.2 Is the employee organization attorney generally retained for such cases?
- 3.4.3 Is there a particular attorney frequently utilized by police employees in disciplinary cases?

3.5 What attorney or lay person represents the police agency?
- 3.5.1 Legal advisor
- 3.5.2 City or county attorney
- 3.5.3 Other

3.6 Are formal rules of evidence followed during the hearing?

Legal Analysis of Department — Part I
Legal Research

1. Chief's Authority to Manage Department
2. Chief's Authority to Discipline Officers
3. Supervisor's or Commander's Authority to Discipline
4. Inspections
5. Minor Infractions
6. Rules of Conduct
   a) Analyze all rules for legality
   b) List following rules as to whether department has these rules:
      (1) off-duty employment
      (2) operation of police vehicle
      (3) hairstyles, mustaches and beards
      (4) courtesy to public
      (5) physical force
      (6) use of firearms
      (7) late for duty
      (8) moral conduct
      (9) insubordination
      (10) personal debts
      (11) criticism of department
      (12) use of alcohol off duty
      (13) gratuities
      (14) residency.
7. Internal Affairs Division Authority
8. Filing and Handling Complaints
   a) Internal
   b) External
9. Investigations, Reports, Findings
   a) Supervisor's
   b) I.A.D.
10. Officer's Rights
    a) Disciplinary action
    b) Employment contract
11. Probationary Officers
12. Emergency Suspension and Relief from Duty
13. Criminal Charges Anticipated or Pending
14. Punishments
15. Internal Decision Process (Recommendations, Review, Decisions, Hearings)
16. External Decision Process (Recommendations, Review, Decisions, Hearings)
17. Publication of Disciplinary Actions
18. Expungement of Disciplinary Records
19. Diagram of Disciplinary System—Internal and External

Legal Analysis of Department — Part II
Interviews

I. LEGAL ADVISOR

1. Role in Disciplinary Rules and Procedures
   1.1 Recommendations for new rules and modifications in existing rules

1.2 Drafting of rules
1.3 Review of rules
2. Role in Legal Advice on Particular Cases
2.1 Consultations about particular cases
2.2 Other involvement on particular cases
3. Training on Disciplinary Rules and Procedures
3.1 Recruit training
3.2 Other training.
4. Misconduct
4.1 What types occur most frequently?
4.2 What are the most serious misconduct problems in the department?
4.3 How can misconduct be prevented?
5. Recommendations

II. ATTORNEY WHO HANDLES DISCIPLINARY CASES

1. Authority
1.1 Under what authority does attorney handle disciplinary cases?
1.2 What other types of cases does attorney handle and for whom?
2. Role in Disciplinary Rules and Procedures
2.1 Recommendations for new rules and modifications of existing rules
2.2 Drafting of rules
2.3 Review of rules.
3. Role in Disciplinary Cases
3.1 Evaluating facts prior to allegation
3.2 Consulting about investigation
3.3 Formulating allegation
3.4 Preparing case (Is case delayed if there is a pending civil case or criminal case?)
3.5 Presenting case
3.5.1 Witnesses
3.5.2 Prior record of officer
3.6 Appeals
4. Preparation for Police Cases
4.1 Training
4.2 Development of expertise about police work

5. Role with Police Department in Other Areas
5.1 Representing officers or department in civil suits
5.2 Legal advice on police matters
5.3 Representing government in criminal cases
5.4 Training of police.
6. Frequency of Representation in Discipline Cases
6.1 How many cases?
6.2 Over what time period?
6.3 Has there been an increase in number of cases?
6.4 If so, why?
7. Results in Discipline Cases
7.1 How often are allegations sustained?
7.2 If not sustained, why?
7.3 How often are recommendations for punishment upheld?
7.4 If not upheld, why?
7.5 Has there been a change in results within past year (or other period)?
7.6 If so, why?
8. Length of Hearing
8.1 What is usual time period?
8.2 What was period of longest hearing (type of case)?
8.3 What was period of shortest hearing (type of case)?
8.4 Has there been a difference in usual period within past year (or other period)?
8.5 If so, why?
9. Comparison with Other Public Employee Discipline Cases
9.1 Does attorney who handles police cases also handle other cases?
9.2 Comparison of number of police and other cases
9.3 Comparison of type of police and other cases
9.4 Comparison of preparation of police and other cases
9.5 Comparison of presentation of police and other cases
9.6 Comparison of results of police and other cases.
10. Types of Cases Handled
10.1 What are the types?
10.2 Have types of misconduct changed within past year (or other period)?
10.3 If so, why?
11. Comments on Hearing Board
11.1 Does board permit adequate presentation?

11.2 Are board decisions arbitrary?
11.3 Are board decisions consistent?
12. Misconduct
12.1 What types of misconduct occur most frequently?
12.2 What are most serious misconduct problems in department?
12.3 How can misconduct be prevented?
13. Recommendations for Improvements
13.1 Investigation of misconduct
13.2 Testimony of witnesses
13.3 Hearing process.

III. CIVIL SERVICE COMMISSIONER OR MEMBER OF BOARD OUTSIDE OF DEPARTMENT WHO HEARS CASES OF POLICE OFFICER MISCONDUCT.

1. Authority
1.1 What is source of authority, statute, ordinance, rule, etc.? (obtain copy)
1.2 What types of cases does board hear?
1.2.1 Police and other public employee cases
1.2.2 Only police cases (What types of cases?)
2. Appointment or Election of Board Members
2.1 Who appoints or elects members?
2.2 What is the term of appointment or election?
2.3 In fact, how long do members serve?
2.4 How many members of board?
3. Composition of Board
3.1 Occupation of members
3.2 Sex of members
3.3 Race of members
3.4 Length of prior service.
4. Preparation for Service on Board
4.1 Training
4.2 Development of expertise about police work (and about other public employment if board hears cases involving other public employees).
5. Involvement with Case Prior to Hearing of Case
5.1 Are members given information about case before hearing?

5.2 If so, what information and by whom?
6. Assistance during Hearing
6.1 Do members have legal counsel during hearing?
6.2 Do members have legal counsel during deliberation or in formulating decision?
7. Frequency of Hearing Police Cases
7.1 How many during past year?
7.2 Is this number more than during year before (or another period)?
7.3 If so, why?
7.4 How many cases of police misconduct are presently pending?
8. Types of Cases Heard
8.1 What types of misconduct were alleged?
8.2 Have types of allegations changed within past year (or another period)?
8.3 If so, why?
9. Length of Hearing
9.1 What is usual time period?
9.2 What was period of longest hearing (type of case)?
9.3 What was period of shortest hearing (type of case)?
9.4 Has there been a difference in usual time period within past year (or other period)?
9.5 If so, why?
10. Representation of Department and Officer
10.1 Who presents case for department?
10.2 Who presents case for officer?
11. Presentation of Cases
11.1 Procedures
11.2 Witnesses
11.3 Is background and prior misconduct of officer considered by board?
12. Results of Hearings
12.1 How frequently does board sustain the recommendation by department?
12.2 How frequently does board agree with punishment suggested by department?
12.3 If board disagrees with department,
12.3.1 What is basis for disagreement (i.e., Is there a pattern developing?)
12.3.2 What does board hold?

13. Appeals from Board Decisions
    13.1 By department
        13.1.1 How frequently has department appealed?
        13.1.2 What types of cases are appealed?
        13.1.3 What have been results?
    13.2 By officer
        13.2.1 How frequently have officers appealed?
        13.2.2 What types of cases are appealed?
        13.2.3 What have been results of appeals?
14. Time for Adjudication
    14.1 What is usual time between occurrence of misconduct and hearing before board?
    14.2 What is usual time between hearing before board and decision by board?
15. Comparison with Other Public Employee Misconduct Cases if Board also Hears Such Cases
    15.1 Compare number of cases
    15.2 Compare presentation of cases
    15.3 Compare types of cases
    15.4 Compare results of cases.
16. Communication between Board and Police Department
    16.1 After a case is heard and decision is rendered, does board discuss case with police department?
    16.2 If no such discussion occurs, should it occur?
    16.3 Does such discussion occur in other cases with other departments?
    16.4 Are cases reviewed with anyone else?
17. Misconduct
    17.1 What types of misconduct occur most frequently?
    17.2 What are most serious misconduct problems in department?
    17.3 How can misconduct be prevented?
18. Recommendations for Improvements
    18.1 In allegations of misconduct
    18.2 In presentation of cases.

IV. CITY MANAGER, MAYOR, CITY PERSONNEL DIRECTOR

1. Role in Disciplinary Rules (and procedures)

    1.1 Recommendations for new rules and modifications in existing rules
    1.2 Drafting rules
    1.3 Review of rules.
2. Comparison between Police Rules and Procedures and Those Applicable to Other Agencies
3. Role in Disciplinary Cases
    3.1 Police cases
    3.2 Other agency cases.
4. Comparison between Police and Other Agency Cases
    4.1 Frequency
    4.2 Investigation
    4.3 Seriousness
    4.4 Presentation at hearing, time period of hearing
    4.5 Sustaining or reversing by board.
5. Communication with Police
    5.1 Frequency
    5.2 Comparison of communication with other agencies.
6. Preparation for Working with Police
    6.1 Training
    6.2 Development of expertise about police work (compare with other agencies).
7. Changes in Discipline Cases
    7.1 Have changes occurred within past year (or other period)?
    7.2 If so, why?
8. Misconduct
    8.1 What types occur most frequently?
    8.2 What are most serious misconduct problems in department?
    8.3 How can misconduct be prevented?
9. Recommendations for Improvements

V. COMMUNITY GROUPS (Legal Aid, Public Defense, ACLU, Human Relations, Minority Organizations)

1. Misconduct
    1.1 What types of misconduct affect the community?
    1.2 What causes such misconduct?
    1.3 How can misconduct be prevented?

2. Complaints of Misconduct
   - 2.1 How can victim or others file a complaint?
   - 2.2 Are complaints filed?
   - 2.3 What happens after complaints are filed?
     - 2.3.1 Are they investigated?
     - 2.3.2 What is input of complainant?
     - 2.3.3 Is complainant notified of disposition?
     - 2.3.4 Are dispositions fair?
   - 2.4 Are complaints discouraged?
   - 2.5 If so, how?
3. Investigations of Misconduct
   - 3.1 Are investigations handled properly?
   - 3.2 Recommendations for improvements.
4. Hearing of Cases
   - 4.1 Are hearings fair?
   - 4.2 Recommendations for improvements.
5. Comparison between Police and Other Agencies
   - 5.1 Availability for service
   - 5.2 Treatment of community
   - 5.3 Availability to discuss problems.
6. Other Dealings with Police
   - 6.1 Calls for service
   - 6.2 Civil cases
   - 6.3 Criminal cases
   - 6.4 Availability to discuss problems.
7. Recommendations for Improvements

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(1- 2) __
(3- 6) __
(7) _

(8) _

Attitudinal Questionnaire

INTRODUCTION

This first question seeks information about the definition of discipline. Please check the one response which best describes what the term discipline means to you based on your overall experience in this department.

1. The term "discipline" can best be defined as:
   - ____ behavior according to police standards of conduct
   - ____ an attitude which causes officers to obey police standards of conduct
   - ____ training or counseling to improve police officer performance
   - ____ punishment for officer misconduct
   - ____ other, please specify _____

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SECTION I.

This section asks for information about rules and regulations governing officer conduct in your department. We would like your attitude or attitudes about how these rules and regulations are written and enforced. Questions two (2) and three (3) seek information about all rules and regulations. Questions four (4) and five (5) address specific rules and regulations for which we would like your opinion.

(9) —

2. Overall, I feel that department rules and regulations governing officer conduct, as written, are fair and reasonable.

_____ Strongly Agree
_____ Agree
_____ Uncertain
_____ Disagree
_____ Strongly Disagree

(10) —

3. Overall, I feel that department rules and regulations governing officer conduct are enforced fairly and reasonably.

_____ Strongly Agree
_____ Agree
_____ Uncertain
_____ Disagree
_____ Strongly Disagree

INSTRUCTION FOR QUESTIONS (4) and (5): Questions four (4) and five (5) are presented as two charts of rules and regulations. Please give your reaction to each of these rules and regulations and to any others which you feel should be included by following these two steps:

a) First, give your reaction for each rule by checking responses in the section marked "YOUR RESPONSE."

b) Second, ONLY for those rules which you checked DISAGREE or STRONGLY DISAGREE, cite the reason for each reaction in the section marked "YOUR COMMENTS." Do this by checking the ONE comment which best fits your opinion. If you do not find a reason that fits, fill in your own comment in the space marked "OTHER."

CHART I

FOR COMPUTER USE ONLY DO NOT MARK Column		I FEEL THAT THE FOLLOWING RULES, AS WRITTEN ARE FAIR AND REASONABLE:	YOUR RESPONSE: Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree	I DO NOT FEEL THESE RULES, AS WRITTEN ARE FAIR AND REASONABLE BECAUSE: YOUR COMMENTS: It is none of the department's business	Must be revised to be consistent with modern employment practices	It interferes with my ability to do good police work	It places undue restrictions on my personal rights	It is not stated so that I can understand it	It is too broad to be properly enforced	My department does not have this rule	Other
(11-12) — —	1.	Off-Duty Employment													
(13-14) — —	2.	Operation of Police Vehicle													
(15-16) — —	3.	Hairstyles, Mustaches & Beards													
(17-18) — —	4.	Courtesy to Public													
(19-20) — —	5.	Physical Force													
(21-22) — —	6.	Use of Firearms													
(23-24) — —	7.	Late for Duty													
(25-26) — —	8.	Moral Conduct													
(27-28) — —	9.	Insubordination													
(29-30) — —	10.	Personal Debts													
(31-32) — —	11.	Criticism of Department													
(33-34) — —	12.	Use of Alcohol Off Duty													
(35-36) — —	13.	Gratuities													
(37-38) — —	14.	Residency													
(39-40) — —	15.	Other _____													

THE SAME INSTRUCTIONS as were used for CHART 1 apply for Question 5 set forth below:

CHART 2

FOR COMPUTER USE ONLY DO NOT MARK Column	5. I FEEL THAT THE FOLLOWING RULES ARE ENFORCED FAIRLY AND REASONABLY:	YOUR RESPONSE: Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree	This rule is not accepted by patrol officers	Supervisors are not consistent in enforcing this rule	Superior officers do not follow this rule	This rule was never explained to me by my supervisor	Punishment for violating this rule is too severe	My department does not have this rule	Other	Other	Other	YOUR COMMENTS: I DO NOT FEEL THESE RULES ARE ENFORCED FAIRLY AND REASONABLY BECAUSE:
(41-42) __ __	1. Off-Duty Employment															
(43-44) __ __	2. Operation of Police Vehicle															
(45-46) __ __	3. Hairstyles, Mustaches and Beards															
(47-48) __ __	4. Courtesy to Public															
(49-50) __ __	5. Physical Force															
(51-52) __ __	6. Use of Firearms															
(53-54) __ __	7. Late for Duty															
(55-56) __ __	8. Moral Conduct															
(57-58) __ __	9. Insubordination															
(59-60) __ __	10. Personal Debts															
(61-62) __ __	11. Criticism of Department															
(63-64) __ __	12. Use of Alcohol Off Duty															
(65-66) __ __	13. Gratuities															
(67-68) __ __	14. Residency															
(69-70) __ __	15. Other _____															

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Column (1- 4) ____

(5) _

SECTION II.

This section asks for information about written directives in your department including any or all of the following: RULES AND REGULATIONS, STANDARD OPERATING PROCEDURES, GENERAL ORDERS, WRITTEN TRAINING BULLETINS, ETC. Each of the following questions asks for your attitude or attitudes about written directives. Please check only one response for each question.

(6) _

6. Written directives in this department generally are stated so that I can understand them.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

(7) _

7. My present supervisor is consistent in enforcing written directives.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

(8) _

8. My present supervisor does a good job when explaining new or revised written directives.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

(9) _

9. Officers feel free to suggest new or revised written directives to superiors.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

SECTION II. Continued –

(10) _ 10. Officers should be held to a higher standard of conduct than civilian employees in the police department.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

(11) _ 11. Officers should be held to a higher standard of conduct than the public at large.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

(12) _ 12. Citizens in this community expect officers to be held to a higher standard of conduct than the public at large.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

(13) _ 13. At least once a year, supervisors inspect my copies of written directives to make sure they are up-to-date and complete.

_____ Definitely Yes _____ Yes
_____ Uncertain _____ No
_____ Definitely No

(14) _ 14. My recruit training gave me a working knowledge of written directives.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

(15) _ 15. The rule on "conduct unbecoming an officer" should be included in written directives.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

SECTION II. Continued –

(16) _ 16. Written directives are stated so that I have a good understanding of what is expected of me.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

(17) _ 17. When new or revised written directives are issued, my present supervisor explains them to me satisfactorily.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

SECTION III.

This section asks for information concerning the disciplinary system in your department. Please check only one response for each question.

(18) _ 18. I have a good understanding of my right to appeal disciplinary actions outside of this department.

_____ Definitely Yes _____ Yes
_____ Uncertain _____ No
_____ Definitely No

(19) _ 19. I have a good understanding of the procedures that are used by this department to record citizen complaints of misconduct.

_____ Definitely Yes _____ Yes
_____ Uncertain _____ No
_____ Definitely No

(20) _ 20. All citizen complaints, regardless of how minor, are recorded in this department.

_____ Definitely Yes _____ Yes
_____ Uncertain _____ No
_____ Definitely No

SECTION III. Continued –

(21) _ 21. All citizen complaints, regardless of how minor, should be recorded.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

(22) _ 22. I have a good understanding of the procedures that are used by this department to investigate citizen complaints of misconduct.

_____ Definitely Yes _____ Yes
_____ Uncertain _____ No
_____ Definitely No

(23) _ 23. All citizen complaints, regardless of how minor, are investigated in this department.

_____ Definitely Yes _____ Yes
_____ Uncertain _____ No
_____ Definitely No

(24) _ 24. All citizen complaints, regardless of how minor, should be investigated.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

(25) _ 25. Immediate supervisors should be responsible for investigating most complaints of misconduct.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

(26) _ 26. My present supervisor is fair in determining facts regarding misconduct.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

SECTION III. Continued –

(27) _ 27. My present supervisor does not show favoritism in determining facts regarding misconduct.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

(28) _ 28. My present supervisor uses counseling and retraining to deal with misconduct.

_____ Definitely Yes _____ Yes
_____ Uncertain _____ No
_____ Definitely No

(29) _ 29. The chief of police usually follows staff recommendations before taking disciplinary action for misconduct.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

(30) _ 30. The chief of police should give greater authority to commanders for taking disciplinary action.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

(31) _ 31. I have a good understanding of the responsibilities of this department's unit for internal investigations.

_____ Definitely Yes _____ Yes
_____ Uncertain _____ No
_____ Definitely No

(32) _ 32. The unit for internal investigations should be responsible for investigating all complaints of misconduct.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

SECTION III. Continued –

(33) _ 33. I have a good understanding of the process that is used for internal review of disciplinary actions.

_____ Definitely Yes _____ Yes
_____ Uncertain _____ No
_____ Definitely No

(34) _ 34. I feel that an officer can get a "fair shake" through the internal review process.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

(35) _ 35. I feel that the internal review process works consistently for officers of any rank charged with misconduct.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

(36) _ 36. An officer who is the subject of alleged misconduct should have the right to be judged by a group that includes his fellow officers.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

(37) _ 37. This department should have a standardized list of minimum to maximum punishments for most acts of misconduct.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

(38) _ 38. I have a good understanding of the appeal procedures outside this department that are used to review disciplinary decisions.

_____ Definitely Yes _____ Yes
_____ Uncertain _____ No
_____ Definitely No

SECTION III. Continued –

(39) _ 39. I feel that an officer can get a "fair shake" through the appeal procedures outside this department.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

(40) _ 40. I feel that appeal procedures outside this department give an officer a fairer review than do internal procedures.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

(41) _ 41. I feel that disciplinary actions are reviewed fairly through department disciplinary procedures.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

(42) _ 42. I feel that local government officials review department disciplinary actions fairly.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

(43) _ 43. I feel that local government officials do not show favoritism in reviewing department disciplinary actions.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

(44) _ 44. I feel that internal disciplinary decisions are made within a reasonable length of time.

_____ Strongly Agree _____ Agree
_____ Uncertain _____ Disagree
_____ Strongly Disagree

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SECTION IV.

This section asks for information about your personal background, department history, and attitudes toward your job. Please respond as accurately as possible. Unless stated otherwise, please check one response for each question.

(45) _ 45. How many years have you been an officer with this department?

_____ (1) less than one year
_____ (2) 1-3 years
_____ (3) 3-5 years
_____ (4) 5-12 years
_____ (5) over 12 years
_____ (6) other, please specify _____

(46) _ 46. Sex: ____ Male ____ Female

(47) _ 47. Race:

_____ (1) Black
_____ (2) Oriental
_____ (3) Latin American
_____ (4) White
_____ (5) Other, please specify _____

(48) _ 48. What is the highest level of formal education you have completed?

_____ (1) High School Diploma or GED
_____ (2) At least 45 hours of college credits
_____ (3) Associates Degree
_____ (4) At least 90 hours of college credits
_____ (5) Bachelor's Degree
_____ (6) Some college
_____ (7) Other, please specify _____

SECTION IV. Continued –

(49) _ 49. What is your present rank?

_____ (1) Command level (Lieutenant and above)
_____ (2) Supervisor (Uniformed and Non-Uniformed)
_____ (3) Officer
_____ (4) Other, please specify _____

(50) _ 50. Which of the following best describes your present assignment with this department?

_____ (1) Field Operations
_____ (2) Investigative
_____ (3) Administrative
_____ (4) Other, please specify _____

(51) _ 51. Has a formal complaint or any other disciplinary action ever been taken against you while you have been with this department?

_____ Yes _____ No _____ Don't know

(52) _ 52. Has a formal complaint or any other disciplinary action ever been sustained against you while you have been with this department?

_____ Yes _____ No _____ Don't know

(53-59) _ 53. Have you ever received any of the following disciplinary actions for complaints of misconduct (check all those that apply)?

_____ (1) Formal oral reprimand
_____ (2) Written reprimand
_____ (3) Working days off in lieu of suspension
_____ (4) Suspension
_____ (5) Demotion
_____ (6) Dismissal and reinstatement
_____ (7) None
_____ (8) Other, please specify _____

SECTION IV. Continued –

(60) _ 54. Have you formally suggested any revised or new written directives in the past year?

_____ Yes _____ No

(61) _ 55. Have you appealed a disciplinary decision through the appeal procedures outside of this department?

_____ Yes _____ No

(62) _ 62. How satisfied are you with your present assignment in this department?

_____ (1) Very dissatisfied
_____ (2) Somewhat dissatisfied
_____ (3) Neither satisfied nor dissatisfied
_____ (4) Fairly satisfied
_____ (5) Very satisfied

(63) _ 63. Overall, how satisfied are you at this time with your career in this department?

_____ (1) Very dissatisfied
_____ (2) Somewhat dissatisfied
_____ (3) Neither satisfied nor dissatisfied
_____ (4) Fairly satisfied
_____ (5) Very satisfied

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Table of Cases

Index

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