HANDLING POLICE MISCONDUCT

IN AN ETHICAL WAY

by

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ABSTRACT


**Handling Police Conduct
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Police misconduct has always been a serious problem in America. Historically, reform efforts have failed due to an organizational culture that is resistant to change. Past reforms have been aimed at individual incidents, disregarding underlying organizational problems. Improving public perception has been the goal of past reforms, as opposed to improving organizational soundness.

Reform efforts need to be directed at enhancing police organizational culture. These changes will improve workplace ethos, allowing virtuous conduct to flourish. Advancing this organizational culture will encourage police officers to act in a manner consistent with the high trust we vest in this vocation.

Justice, Truthfulness and Good Loyalty have been defined by the great philosophers throughout history and should all be incorporated into the decision-making process of police leaders. Six proposals are offered to achieve the needed change in the organizational culture of police departments.

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CHAPTER 1

POLICE MISCONDUCT - AN HISTORICAL OVERVIEW

Police play an important role in the maintenance of our democratic society.  This

role compels police officers to maintain high ethical standards of conduct.  Police must

protect the rights of citizens, yet are charged with restricting the rights of suspects in the

furtherance of society's good.  Police routinely detain, search, arrest citizens, and lawfully

use physical force (including deadly force) when situations dictate.  Additionally, the

testimony of an officer weighs heavily in the deliberations made by jurors when

determining the guilt, or innocence, of a defendant in a court of law.

Maintaining public trust requires that police misconduct be dealt within an ethical

way.  Police officers are required to take an oath of office (App.1) and adhere to a code of

ethics (App.2) before entering the profession. Officers are sworn to maintain high ethical

standards and protect society as a condition of their employment.  The majority of citizens

in the United States understand the importance of police in the maintenance of public

order and enforcing laws.  Most people are willing to grant increased authority to police in

order to live in a safe  community.  Police misconduct serves to undermine this reciprocal

relationship.

The problem of police misconduct has existed since from the beginning of law

enforcement in America.  Recently, several high profile cases, locally and nationally, have

brought this topic to the forefront of academic discourse.  Reviewing the history of police

misconduct in our country affords us the opportunity to comprehend how deeply the problem is rooted.  Also, recommendations for improvement can be based on experience.

The challenges facing police reformers of today are similar to the trials faced by their predecessors. It is important to examine how we arrived in our present situation before we can navigate to an improved state.  In short, if we do not learn from our past mistakes, we are destined to repeat them.

This chapter will show past efforts directed at reducing police misconduct have failed.  Police executives have historically used the 'rotten apple' defense in an attempt to separate their departments from the wayward officer(s).  This 'rotten apple' defense has allowed police executives to shift blame away from their departments, thereby not confronting underlying systemic problems.  The 'rotten apple' defense has resulted in high rates of misconduct recidivism in many police departments.

Responses to misconduct have recurrently been 'quick fixes' aimed at tomorrow's press release, as opposed to morally sound departmental improvements.  Moral soundness needs to be the benchmark used by police leaders in deciding disciplinary decisions, not expediency or public opinion.  Police executives must engage in quality deliberation when confronting disciplinary decisions.

Throughout the history of American policing numerous commissions have been created to address misconduct.  These commissions have not been successful at reducing misconduct.  Most commissions have lacked the authority to ensure their findings were actually implemented.  In fact, as seen in New York City, as one commission ends another is created to address a new scandal.

Police reformers of the 1930s fought to remove political involvement from the police.  While this reduced corruption, it created a significant challenge for police executives.  Without political oversight, who would govern the police chief's decisions? The reformers created civil service boards to fill this abyss. Unfortunately, these boards are often untrained and undermine the maintenance of good personnel management. Police chiefs often base decisions on placating civil service, as opposed to moral soundness.

The organizational culture existing within most police departments needs to be examined.  Without curing the organizational problems, little can be improved in the handling of police misconduct.  Misconduct needs to be addressed from both a legal and an ethical frame.  Police misconduct has historically been adjudicated from only the legal frame. Little (if any) consideration is given to moral soundness.

By 'moral soundness,' I will mean an organization that is conducive to virtuous conduct. Employees in this type of organization are encouraged to act morally - here meaning the three virtues of truthfulness, justice and good loyalty. 'Moral unsoundness' by contrast, will represent an organization where virtues are not viewed as important. In this type of organization, decisions are made for expediency, conformity or convenience, as opposed to moral soundness.

This thesis argues that systemic changes are needed to address police misconduct in an ethical way.  Incorporating ethical accountability into the decision  making process will improve police agencies.  Police executives need to weigh disciplinary decisions by asking themselves two important questions; Is this legally correct? And more importantly,

is this decision ethically sound?  If the answer to both of these is affirmative, they are heading in the right direction.

This first chapter explores police misconduct since the inception of policing in America. Chapter Two examines the 'code of silence' in policing and the existing organizational culture. This chapter identifies the need for systemic changes before positive reform can occur.  The Third Chapter takes a closer look at civilian review boards and explains how these boards only placate the public, failing to address systemic problems. Chapter Four lays out a path for police leaders to follow. This path is a series of six steps aimed at improving the organizational culture. All recommendations are both legally and morally sound serving to handle police misconduct in an ethical way. These six steps serve to provide for a morally healthy work place.

## European Influence on American Policing

The roots of American policing can be traced to the English system of law enforcement.  In discussing police misconduct, we need to look at both France and England to understand the depth of this problem. Police reformers of eighteenth century France and England faced challenges similar to those modern police executives encounter. The challenges of hiring morally sound people and providing morally sound workplaces are the most obvious.

The earliest state employed police can be found in France.  Police misconduct was a serious problem dating back as far as the 17th century. The problems that occurred back in the 1600's, still confront police executives.

> Despite several attempts at reform, the Renaissance police of Paris were often said to be in a league with thieves.  By the eighteenth century the mid-management job of a police inspector had become so corruptibly profitable that it was sold for

twice the price of the head police administrator's office. And on the eve of the French Revolution, the police spent all their time off from political spying in sharing the profits of a large, illegal vice operation.[1]

During the Napoleon Restoration of the French Monarchy, corruption became less widespread in uniformed police. However, the Sûreté (detective unit) was created on the belief that "only a thief can catch a thief." This resulted in the employment of thieves as detectives. Predictably, misconduct remained a serious problem in France. The 'secret police' were responsible for many atrocities, including murder, rape and other felonies. They routinely falsely imprisoned people without justification.

In 1893, Louis Lepine became head of police administrators in France and made some improvements. He ensured that all detectives came from the uniform police. This ended the hiring of thieves as detectives, reducing some of the police corruption plaguing France. However, problems persisted in the area of enforcement of vice-related laws.(Sherman 41)

Prior to 1829, England primarily relied on citizens to protect themselves. The great separation between the classes resulted in frequent conflict on the streets. The wealthy could afford to pay for their own private security, but the same could not be said for the poor. Crime and violence were the norms on the streets of England.

From Norman times, the English position of a parish constable was to be performed by all citizens in rotation, a year at a time, in addition to one's regular occupation. As the statutory duties of the constables increased, wealthier citizens paid poorer ones to perform this onerous task in their stead. By the fifteenth century a permanent group of inept and dishonest substitutes filled the ranks of

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[1]Lawrence W. Sherman, Police Corruption-A Sociological Perspective. (Garden City, NewYork: Anchor Press, Doubleday, 1974), 41. Subsequent references to this work will be cited in the text parenthetically as, e.g. (Sherman 41)

parish constables.  More ambitious workingmen sought out the position of a high constable for even greater illicit profits. (Sherman 42)

The majority of people were poor and lived in constant fear.  It was the responsibility of all males between the ages of 16 and 60 to enforce the law as they saw fit. Population shifts due to industrialization, migration and urbanization, resulted in rioting being commonplace. When turmoil grew too great military intervention was used. The military was hated by the majority of citizens because of their brutish tactics in order maintenance.  The Crown of England realized that something needed to be done to ensure domestic tranquility without risking a *coup d'etat*.

The idea of having a civil police force to deal with domestic tranquility was the reasoning behind the English reformers.  By establishing a police force, the Crown could eradicate much public scorn and provide tranquility in the streets.  In 1829, Sir Robert Peel created the London Metropolitan Police Department.  The mission of the London Metropolitan Police was to "keep peace by peaceful means."[2]

American Policing has its roots in nineteenth century England. Our forefathers knew of the atrocities committed by corrupt French police and did not want that in our country. The English had created a system of policing which provided domestic tranquility without military intervention.  Our forefathers sought to achieve this; however, they feared the creation of a federal police force.

Early American Policing

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[2]William Geller, <u>Local Government Police Management 3rd ed.</u> (U.S.A. Municipal Management, 1991), p.3. Subsequent references to this work will be cited in text parenthetically as, e.g. (Geller 3)

Early police departments in the United States resembled their English counterparts. The quasi-military foundation of American policing can be seen in contemporary policing.  The wearing of identifiable uniforms, adherence to a formal chain of command, legally sanctioned use of force and isolation from the public are just some of the similarities between the military and police.

Despite affinities with England's police, there were profound differences. England's police were created by national reformation; this was not the case in the United States. Local, instead of federal, government created American policing.  Allowing local governments independence in creating their own police allowed for communities to have law enforcement that fit their own political needs.  "Of all the factors that have shaped police departments in the United States, local political control and authorization have been pivotal." (Geller 3)

Local control served as a breeding ground for police misconduct in the nineteenth and early twentieth centuries.  Local political control afforded police the opportunity to better serve citizens by being responsive to local needs, however, this also increased police misconduct.  In the nineteenth century the majority of police departments in the United States reflected the conditions surrounding local governments.  In many cities, the police became an important element in the corrupt political machinery. Officers were hired and promoted solely on the basis of political loyalties and payoffs.  Police departments were free from any national oversight which served to fuel the fires of misconduct.

> During the last quarter of the nineteenth century, when the big city administrator was largely the province of 'leaders of urban tribal politics, the ward bosses,' police districts in most large cities were adjuncts of the political machines and were packed with cronies of the ward bosses.  In tribute, police loyalty 'turned out the vote.' Financial corruption and inequitable, discriminatory, inefficient, and brutal policing thrived.(Geller 4)

Corruption and scandals were commonplace in many police departments in the nineteenth and early twentieth centuries. These early departments were so corrupt that even getting promoted to a higher rank, or a 'perk' assignment, required paying off superior officers.

An example of the pervasiveness of police misconduct in the nineteenth century can be seen in the city of Boston. The salary officers received was insignificant, compared to the profits derived from payoffs. Corruption was systemic, allowing the practice to continue without any form of deterrence.

> The cops are paid off. They call it the 'union wage.' The patrolman gets five dollars a month for every store on his beat that sells numbers. The plainclothesmen get the same, but they can go anywhere in Cornerville. They divide up the territory between themselves. They get on different payrolls, and they divide up the graft, but even so a plainclothesman can make more than a patrolman. The Sergeant gets ten dollars (on every store). The men in the cruising car get two-fifty each. Some men sell themselves cheap. Of course, they got a lot of territory to cover. (Sherman 109)

As early as the 1870s and 80s, reformers began seeking remedies to address police misconduct. The great abuses of police powers were attributed to the fact that local politicians were using police to achieve their own agendas. Early reformers sought to ensure that police service was judged on performance, as opposed to political loyalties.

> In 1877 Joel B. Erhardt, a Republican police commissioner and member of the fashionable Union League Club, protested to Tammany leader John Kelly an assessment on members of the police department for a Tammany Hall campaign fund. Erhardt wrote for public consumption - his letter to Kelly was published in the *Times* - and he used all the arguments about the necessity for judging policemen by the quality of service rather than their political connections.(Sherman 48)

Early reform efforts identified the dangers of strong political control over the police. Their efforts resulted in the formation of the Lexow Committee in 1894. This committee was created to measure the level of corruption within the New York Police

Department.  This investigation revealed many police officers were getting rich by

selective enforcement of  vice crimes.  The committee discovered that police misconduct

was difficult to measure, because of unwillingness of victims to come forward and

witnesses to testify honestly.  Also, all ranks throughout the department were involved in

corruption.

> The Lexow investigation of 1894, an inquiry into the New York City Police
> Department conducted under the auspices of the Republican majority in the state
> legislature which was designed to embarrass the Democratic organization in New
> York City, showed $300.00 to be the accepted figure for an appointment as a
> patrolman; promotions to higher ranks required correspondingly higher payments.
> Therefore, from the rookie's first involvement with the department he was made
> aware of the systemic and pervasive impact of political influence and bribery.
> (Sherman 48)

The Lexow Committee confirmed that officers were being payed off by selective

enforcement of vice related crimes, such as prostitution, gambling and illegal alcohol sales.

Saloons that did not pay bribes to the police soon realized that strict enforcement of the

law could cost them money. These payoffs were received by all ranks.

The Lexow Committee revealed precinct captains had set prices that houses of

prostitution had to pay.  Depending on the number of prostitutes and clients, payoffs

would vary from $25 to $500 per month. Captains would have 'bagmen' who would

collect the money. 'Bagmen' were patrolmen or detectives who collected the payments

from the businesses.  The bagmen were usually transferred with the captain to new

assignments.

The findings of the Lexow investigation resulted in the election of a reform

mayor in New York City, William Strong. Mayor Strong selected Theodore Roosevelt as

Police Commissioner to clean up this troubled department.  However, his efforts were

unsuccessful because police corruption had become too widespread.

When examining nineteenth century police reform efforts from a utilitarian viewpoint reasons for failure become obvious. Police corruption served to benefit everyone involved. The suspects did not mind paying a fee to the police to avoid prosecution. Graft money allowed criminal enterprises to flourish, making payoffs a wise business investment for criminals. The policemen receiving the money benefitted financially.

The general public was content, in that the majority of criminal activity was isolated to a small geographical area. Also, to the average citizen, knowing police were for sale, made his/her own transgressions legally forgivable. Knowing that a small deposit in the Desk Sergeant's piggy bank may erase a criminal act was another reason for citizens to be indifferent about police reform.

The police reformers of yesteryear had to overcome obstacles similar to those confronting modern reformers. An apathetic public, difficulty in gaining information and reluctance of witnesses to testify, are some of these similarities.

1920s

The ratification of the Prohibition Amendment, resulted in escalating police corruption during the 1920s. Making alcohol illegal, provided another source of revenue for corrupt officers. During this decade the reputation of the police had submerged to a low point. While this was certainly a sad time for law enforcement, it also served to facilitate positive reform.

> The closeness of the police to communities and to politicians has also led to corruption, especially in inner-cities where police have been charged with enforcing laws that have been enacted by conservative rural-dominated legislatures, but that found little support in the hurly-burly of urban life. In such places, it became the job of locally controlled police to protect illegal businesses - most notably, gambling and

prostitution from disruptions caused by other law enforcement agencies and by untidy clientele who might scare off paying customers.

This trend reached a peak during Prohibition, when official corruption became the standard operating procedure of many American police departments. By the time Prohibition ended, however, the United States was deep in the Great Depression, and a constricted job market made policing an attractive career option to well-educated people who in better times would have gone into more traditional white collar and professional work. In many cases, this new breed was repulsed by old school corruption and sought to turn policing into a respectable undertaking."[3]

This was a decade highlighted by tremendous corruption and very low public trust in American policing. However, positive changes were seen when more qualified candidates applied for positions as police officers. This resulted in improving the public's opinion of police officers. Police work was beginning to be seen as a respectable career, as opposed to "a group of thugs with badges."

1930s

The 1930s was a decade in which reform was made. The higher caliber of people entering the profession served to remove some of the political influence that had been so dominant. The leading police reformers during this decade were August Vollmer and O.W. Wilson. Their main contributions were removing local political control and shifting the police mission to law enforcement. This period of change is known as the Scientific Management period.

In his assessment, Vollmer emphasized the application of 'scientific' principles to organization deployment of personnel, criminal investigation and crime prevention. This emphasis on science and objectivity can be found in several dimensions of the reforms of the 1930s: police were selected and promoted on the

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[3]Roger G. Dunham and Geoffrey P. Albert, <u>Critical Issues in Policing 3rd ed</u>, (Prospect Heights, Illinois: Waveland Press Inc.: 1997), p.195. Subsequent references to this work will be cited in the text parenthetically as, e.g. (Dunham 195)

basis of such objective criteria as psychological tests and personnel rating schemes; and Police departments were to be evaluated on the basis of such scientific, objective measures as crime, arrests and clearance statistics.(Geller 5)

The federal government began assisting local departments. The Federal Bureau of Investigation served to help local departments by maintaining crime statistics from crime reports and supporting technical advances (i.e., radios, finger prints).

The Federal Bureau of Investigation played several roles in the diffusion of new thinking about police. Its public relations campaign disseminated a vision of policing. It administered the Uniform Crime Reports. In 1930 it created its own laboratory. And in 1935 it created the National Police Academy, where generations of police leaders would be trained. (Geller 8)

Police were now being thought of as "crime fighters" instead of "political bullies." This shift increased the level of confidence citizens had in police departments. The direction of American policing moved away from the whims of local politicians toward protecting society. "When the crime-related functions of the police were accented and political authorization was rejected, the character of U.S. Policing during the next half century was set: police aspired to be scientific crime fighters organized and administered according to objective principles." (Geller 7)

During this period of time, civil service boards were created to govern police personnel management. These boards were created to remove politicians from hiring, promoting and firing officers as a form of political pay back. Civil service resulted in restrictions being placed on police administrators in the area of personnel management.

0.W. Wilson anticipated problems with civil service reducing the autonomy of the police chief in managing his/her personnel. By having an outside board with authority over personnel selection, promotions and punishments, the police chiefs' power diminished.

He opposed the creation of civilian review boards, since police leadership should be accountable for all officer's actions. He was concerned with punishing

officers who used excessive force. As Gazell states in his excellent biographical article (1974:373), Chief Wilson was 'worried about what is sometimes called lawlessness in law enforcement.' He considered this to be a definite police management problem that should be handled internally.[4]

The removal of politics from police departments and the creation of civil service protection created a major challenge for police administrators. Reduced political involvement resulted in less corruption. However, civil service boards limited the police chiefs' power to handle internal problems. The chief was responsible for the conduct of his officers, yet lacked power to ensure their decisions were implemented.

The challenges faced in the 1930s are still with us, almost 70 years later. This system also allows police managers to deflect blame onto the civil service boards, instead of taking responsibility. Police executives need to make ethically sound decisions without concerning themselves about the whims of civil service. Since decisions made by police management need to be approved by civil service boards, police executives often base decisions on appeasing civil service boards as opposed to moral soundness.

## 1940 - 1960

During the 1940s through the 60s, most police departments continued on their mission as 'crime fighters'. Police departments viewed themselves as professional organizations that resisted outside interference. This sort of thinking was seen in the television show 'Dragnet.' The only input that most officers sought from the public was, as Jack Webb often said, "just the facts Ma'am."

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[4]Edward Thibault, Lawrence M. Lynch and R. Bruce Mcbribe, <u>Proactive Police Management 2nd ed,</u> (Englewood Cliff, New Jersey: Prentice Hall), p.16. Subsequent references to this work will be cited in the text parenthetically as, e.g. (Thibault 16) The references to Niederhoffer, Reiser, Gazell will be cited in the Bibliography.

The thinking was that since only police were experts in fighting crime, 'Why get others involved?' This attitude enhanced police isolationism from the public. "Indeed, with rare exception police defined themselves as professional organizations that should be kept out of the purview of citizens, academics, researchers and other persons with an interest in police. Police business was just that: police business." (Geller 9)

The 1960's served as a wake up call to many Americans, concerning police misconduct. The many demonstrations and riots during this decade showed police response as being brutal. Racial confrontations, Vietnam protests and the rioting in Chicago during the Democratic National Convention (1968), showed police reaction as being flawed. The public saw these fiascos in their living rooms, on their television sets. The image of police as professional crime fighters was replaced with that of 'keystone cops.'

Washington D.C. responded to the country's concern over police misconduct by forming several national commissions. These commissions sent the message to all police departments that the federal government was willing to intervene with conduct of officers within their jurisdictions. The days of local autonomy concerning police misconduct were over.

> One measure of the turmoil in U.S. cities and the controversy surrounding police practices in the 1960's and early 1970's was the proliferation of blue-ribbon commissions during that period. Five national commissions were formed to examine various aspects of police services and the criminal justice process and make recommendations for reform.

> The President's Commission on Law Enforcement and Administration of Justice, which published its report in 1967 and 1968, was influenced by urban racial turmoil. Among the outgrowths of its work were the *Safe Streets Act of 1968 and the Law Enforcement Assistance Administration,* which provided significant funding for police related programs.

*The National Advisory Commission on Civil Disorders* (popularly known as the *Kerner Commission)* was similarly inspired by the riots and other disorders in many U.S. cities in the summer of 1967. Its report examined patterns of disorder and prescribed responses by the federal government, the criminal justice system and local governments.

The National Commission on the Causes and Prevention of Violence was established after the assassinations of Martin Luther King and Robert Kennedy in 1968. Its report, *To Establish Justice, To Insure Domestic Tranquility,* was published in 1969.

The President's Commission on Campus Unrest was established following student deaths related to protests at Kent State and Jackson State universities in 1970.

The National Advisory Commission on Criminal Justice Standards and Goals issued six reports in 1973 in an attempt to develop standards and recommendations for police crime control efforts.

In addition to the work of these national commissions, the American Bar Association in 1973 published *Standards Relating to the Urban Police Function,* the end product of a lengthy standard setting effort that began in 1963.

The voluminous reports of these commissions contain insights that continue to have direct relevance to contemporary police concerns. Many of the most important recommendations in the commission reports can be seen, in retrospect, to be the seeds of important strategic, technological and operational initiatives that will command the attention of policing into the twenty-first century. (Geller 14)

The case of Frank Serpico demonstrated to the nation that misconduct was accepted behavior within the largest police department in our country, the New York City Police Department (NYPD). In this case Serpico had to go outside the department seeking justice. This case demonstrated corruption became accepted behavior within the NYPD, and almost proved fatal to a morally sound officer. In this case Serpico was set up by fellow officers and nearly killed. He had to prematurely retire from "New York's Finest" to save his own life.

As a result of the efforts of Frank Serpico, the Knapp Commission was formed to investigate the NYPD. Their findings horrified the entire nation. The corruption within

the NYPD had become so systemic that honest officers feared coming to work.  This fear

was not about the hoodlums on the streets, but stemmed of possible retaliation they may

encounter from corrupt coworkers.

> The corruption in the system was able to thrive not only because of the abuses
> of high-ranking officials, but also because the police demanded loyalty from their
> peers.  Honest officers learned to turn away if they were to survive on the force.
> They could avoid becoming involved, but they were forbidden to interfere with a
> partner's corrupt activities.  'Never hurt, another cop' was a by word of the force.  In
> one social science study of police, officers were asked whether they would perjure
> themselves to protect their partners - a question to which many respondents were so
> hostile that they refused to cooperate further with the researcher.  Of those who did
> reply, the majority affirmed that they would rather perjure themselves than expose a
> fellow officer.[5]

As a result of the Knapp Commission's findings, many policies and procedures

were changed throughout the nation. The code of silence was identified as being a major

factor influencing police misconduct.  Due to all the negative attention received during the

1960's, police departments needed to restore public trust.

## 1970 - 1980

During the 70s and 80s, most American police departments welcomed academic

researchers with open arms.  Universities conducted various studies aimed at improving

the police service.  This resulted in a renaissance of the police profession.  Many of these

studies were funded by the federal government.

TV shows and movies glamorized police work, playing an important role in the

popularity of law enforcement.  Near the end of the 80s, Community Oriented Policing

(COP) was developed.  In this style of policing, officers work with the citizens in their

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[5]Myron Perez Glazier and Perina Glazier, The Whistle Blowers, (U.S.A.: Basic
Books Inc. 1988) p.54.  Subsequent references to this work will be cited in the text
parenthetically as, e.g. (Glazier 54)

communities to solve problems.  Focus shifted from arrest and conviction to crime prevention and community involvement.  COP was seen by police executives as the program that would guarantee public support forever.  The police profession was 'on top of the world' heading into the 1990's.  Police departments had rediscovered Sir Robert Peel's mission statement, Keep peace by peaceful means.

1990- present

On March 3, 1991, Los Angeles Police officers arrested a suspect after a lengthy pursuit.  The arresting officers had to use force to arrest Rodney King.  Unfortunately for the officers involved, the arrest was videotaped.  This single car stop resulted in damaging the public's trust in police nationwide.  For months this video was played in most houses across America.  People did not care that it occurred in Los Angeles, it may as well have been in their own neighborhood.

The Rodney King beating served as a major setback to all the improvements Community Oriented Policing had made.  As a result of the subsequent riots, the relationship between the police and citizens was as low as it had been since the 60s.  The Christopher Commission was created to investigate the LAPD after the King incident.  This commission reported the majority of misconduct within the LAPD went unreported.  The code of silence within the LAPD was a powerful force at all ranks.  Another contributing factor was identified as supervisors not holding subordinates accountable.[6]

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[6]Edwin J. Defltre, Character and Cops, Ethics in Policing, 2nd ed., (Washington D.C.: The AEI Press, 1994) p.234.  Subsequent references to this work will be cited in the text parenthetically as, e.g. (Deltre 234)

A scandal even more deplorable than the Serpico case occurred in 1993. History repeated itself in New York City when both uniform and plain clothes officers were committing numerous felonies (while on duty). Officers were identified selling narcotics and committing robberies while in uniform. The Mollen Commission was created to investigate the New York City Police Department. The largest department in our country certainly had not improved in 30 years.

The New York City Police Department stands out as the quintessential illustration that past response to misconduct has not been effective.  At the conclusion of the Knapp Commission, the NYPD promised they had cleaned 'their own house.'  They vowed they put away all the 'criminals in blue,' insisting misconduct was not systemic. Police officials claimed only isolated individual officers were engaged in misconduct. Again, during in 90s during the Mollen Commission, NYPD denied any systemic problems.  The 'rogue cops' justification was used to explain this scandal

> The Mollen Commission certainly did not accept the 'rogue cops' rationalization offered by NYPD's Top Brass.  In fact, the commission's report said police departments are incompetent when dealing with misconduct. The shock is not that there are corrupt police officers, but that too often police departments are incompetent when it comes to investigating corruption.[7]

Another finding was that the misconduct was more outrageous than misconduct committed previously by police.  In the past, most corrupt officers would get paid for 'looking the other way' or 'selective enforcement of vice laws.' The Mollen Commission identified officers as active participants in criminal acts.

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[7]Stephen Gaffigan, "Police Integrity-Public Service With Honor," National Institute of Justice, p.32 (January, 1997). Subsequent references to this work will be cited in the text parenthetically as, e.g. (Gaffigan 32)

The Mollen Commission report on the NYPD suggests that there are significant differences in the nature of corruption in the 1990's. The reports suggest that a new character of police corruption exists. The pattern of 20 years ago consisted of the so-called 'minor' corruption, such as the taking of bribes for the purpose of allowing gamblers, prostitutes, and others to avoid the law and escape arrest. This was a mutually beneficial accommodation between the police officer and the criminal. Today, however, while corruption still accommodates the officer, it is different in nature. The modem corrupt officer is paid not only to turn a "blind eye" to criminal activity but to work hand-in-hand with the criminal to actively facilitate criminal activities. In New York City, the officers became drug dealers and helped to operate large drug rings.

The Mollen Commission also found corruption had achieved new levels of organization. In the past, there was tacit approval through the ranks. Today, however, the corruption includes "crews" of police officers who protect and assist each others' criminal activities. Today's corrupt officers do not simply bump into opportunities, but rather aggressively seek opportunities. Similarly, methods for evading detection have achieved new levels, including ways to receive payoffs to avoid internal investigators. (Gaffigan 85)

Integrity problems within the New York City Police Department resurfaced in a 1995 incident. In this case, an officer (James Pitti) was convicted of Felonious Assault and subsequently terminated from the NYPD. His partner (Frank Bolusi) alleged at the criminal trial that he did not see nor hear anything because he was writing in his notebook. Judge Ronald J. Aiello, of the State of New York Supreme Court, ridiculed Bolusi's astounding ignorance of the incident. Yet, Officer Bolusi was never disciplined by the NYPD , and remains on active duty.[8]

On August 9, 1997, another abhorrent scandal rocked the NYPD. An individual was arrested on assorted misdemeanor charges and transported to the 70th Precinct in Brooklyn. During the booking process, the arrestee (Mr. Abner Louima) was taken into a

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[8]Joel Berger, "See No Evil Officers Should Pay," The New York Times, (August 24, 1997) p.13(L) col 3. Subsequent references to this work will be cited in the text parenthetically as, e.g. (Berger 8/24/97, p.13(L) col 3)

restroom and savagely beaten. In this restroom, several officers shoved a stick up his anus and tried to shove it in his mouth.  Mr. Louima was seriously injured and transported to a local hospital.

The investigation of this case was hindered by the fact that only two officers came forward to give statements. Investigators assigned to this case granted departmental immunity to nearly one hundred officers.

Three weeks after city officials said they had cracked the so-called blue wall of silence in the investigation of the 70th Precinct torture case, investigators say that only two officers have provided valuable information and that they have learned virtually nothing from the scores of other officers who have been granted limited immunity from prosecution.

'It's all, I don't know,' 'I wasn't there,' a senior investigator said yesterday in describing the interviews conducted with almost 100 officers, nearly a third of those assigned to the 70th Precinct.

In the week after the August 9th attack on Abner Louima, who prosecutors say was brutalized with a stick in the bathroom of the Brooklyn station house, two officers stepped forward with information.  The accounts of Eric Turetzy and Mark Schofield contributed to the indictments of four officers. Since then, no other officers have been charged.[9]

In this case, the exact number of fellow officers who witnessed anything or had corroborative information is unknown. Investigators anticipated at least 12 additional officers coming forward.  Several additional officers working that night were suspended for obstructing the investigation.

In the case of Abner Louima, Mayor Giuliani and Commissioner Safir have taken some steps in the right direction. One hopes that the suspensions of the 70th Precinct desk sergeant and other officers who must have known that something was awry represents a new attitude toward these matters by the Mayor and his Police Department.

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[9]Dan Barry, "Little Help From Officers in Torture Case Inquiry: Only Two Officers Have Given Information," The New York Times, (September 5, 1997) A(1) col 5

These individuals should be brought up on departmental charges and if found guilty, dismissed from the force. More important, the Mayor must order the department to handle all brutality cases in the same manner, as recommended by his own commission last year. Only then will a strong message be sent. Anything less will condone the return of the Blue Wall of Silence. (Berger 8/24/97 pE 1 3)

New Orleans is infamous for having the most corrupt police department in the United States. A very low salary range, an inadequate promotional system, a lack of public trust, an inept disciplinary process and a long-standing history of corruption, are among the most common reasons given to explain New Orleans' poor showing. Chief Richard Pennington, the newest chief of New Orleans Police was recently appointed to see if he could clean up this department.

Only days after his arrival, Pennington learned that in recent years the department has behaved less like a police force than a loose confederation of gangsters terrorizing sections of the city. 'The Federal Bureau of Investigation informed the chief that it had wiretapped one of his officers, Len Davis, and he allegedly ordered the killing of Kim Groves, a 32-year-old mother of three who filed a police brutality complaint against him.

Even more chilling was that the FBI said it happened to overhear the murder plot while conducting a drug sting, later described as the biggest case of police corruption in New Orleans history. Davis's lawyer did not respond to requests for comment. But prosecutors charge that Davis and 10 other officers used their police positions to guard more than 286 pounds of cocaine that FBI agents posing as dealers had stashed in an abandoned warehouse, according to court papers. By the time the agents managed to decode Davis's street slang and police jargon, it was too late. Kim Groves was shot in the head while standing in front of her house.

Pennington barely had time to recover from that shock when a 24-year-old patrol woman named Antoinette Frank and an accomplice executed two members of a Vietnamese family who owned the restaurant Frank was robbing and also killed a fellow officer moonlighting as a security guard. Quickly convicted and sentenced to death in September, Frank was the fourth New Orleans Police Department officer charged in connection with a murder in one year and among the more than 50 cops arrested for felonies, including bank robbery and rape since 1993. Says Pennington, who visited the triple-murder scene that night, 'it was kind of mind-blowing.'[10]

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[10]Paul Keegag,"The Thinnest Blue Line, "The New York Times Magazine, (March 31, 1996) p.32 col I

Obviously, Chief Pennington has a very difficult assignment ahead of him. The challenge he faces is to change the entire organizational culture.  This includes all areas of the department, Personnel, Internal Affairs, Patrol and Detectives. The entire organizational culture needs to be overhauled before positive change occurs. To Chief Pennington's credit, he admits misconduct is systemic, not attempting to blame some 'rotten apples' (which many other chiefs have done).

## Conclusion

Misconduct has been a problem since the inception of American policing. This is a major challenge facing all modem police executives, just as it was for their predecessors. Previous methods employed to address police misconduct have failed. These reform efforts have sought to minimize incidents and organizational culpability, as opposed to addressing systemic problems.

Typically, police misconduct of yesteryear was centered around the police turning a blind eye toward vice related crimes. As seen during the Lexow Committee, cops got rich by not taking enforcement action. Recently, as seen in the cities of New Orleans, Philadelphia and New York, some police officers are actually committing felony crimes while on-duty. The need to address police misconduct from an ethical frame has never been greater.

Historically, police executives have sought to distance themselves from misconduct as a form of political survival.  Rather than addressing the true causal factors, they seek quick fixes.  Quick fixes serve as a catalyst for police misconduct, encouraging only a narrow investigative focus, as opposed to exploring systemic problems.

Many challenges are facing police executives as we head into the twenty-first century; powerful police unions, budget restrictions, an increasingly litigious-minded society and an overly zealous media are some of the contemporary concerns. The problem of misconduct is nothing new for police executives. This chapter has shown that historically, police have done a very poor job handling this challenge.

The time to effect this change is 'now,' not after the next major scandal. Ensuring high standards of ethical conduct needs to be a perpetual aspiration for all police executives. Police executives should seek to improve their departments by implementing ethical changes in the disciplinary process which will improve public service by ensuring a healthy work environment.

## Summary

Misconduct has been a chronic problem since the beginning of American policing. Police executives have consistently sought to distance themselves and their departments from the wayward employee(s). To achieve this objective, executives have failed to address underlying systemic problems within their agencies. This resulted in high rates of misconduct recidivism in many police departments across our country.

Misconduct should not be viewed as a humiliation for police departments. It is the manner in which misconduct is handled that often results in departmental shame. Police executives who handle misconduct in an ethical manner realize, this challenge is an opportunity to improve their departments.

Police misconduct has not radically changed since the nineteenth century. Many of the generalities that existed in the 1800's, are still true today:

1.  Vice enforcement is an area that attracts corruption.

2. Police response to misconduct has typically been to blame some 'rotten apples'. They have failed to address underlying systemic problems.

3. Police reformers have been hindered by an unwillingness of police executives to admit organizational problems.

4. Low income areas experience a higher percentage of police misconduct, than do affluent neighborhoods.

5. The public is apathetic toward police misconduct, until the conduct becomes outrageous.

6. Personnel practices (hiring, transfers, promotions and disciplinary process) within the agency are important factors in determining the level of misconduct.

7. There is a correlation between a lack of supervisory accountability and police misconduct.

8. Investigation into misconduct is extremely difficult due to a strong 'code of silence' that permeates all levels of the department.

CHAPTER 2

COMBATING THE CODE OF SILENCE

Across America, police provide certain basic services - protecting life and

property, preserving the peace, prevention of criminality and the apprehension of criminal

suspects. Despite these basic tenets all departments have their own individual

characteristics. The size of the agency, the organizational structure, community norms and

local demographics are some of the variables that impact police departments.

The organizational culture existing in most police departments is similar. Any

attempt to improve the disciplinary process without considering this culture would be

fruitless. This chapter will examine how this culture impacts police misconduct. Without

modifying organizational culture, positive change will be stifled. As seen in Chapter One,

historically police reformers have gallantly sought to make positive change, only to meet

failure. Many of these failures can be attributed to the existing police culture.

From the day officers join a police department, until the day they retire, they are

members of a "brotherhood." This "brotherhood" plays an important role in the way

officers see themselves and the world around them. This chapter will shed some light on

the powerful impact this "brotherhood" has in the area of police misconduct.

Misconduct is difficult to investigate due to officers' lack of honesty in testifying

about the conduct of fellow officers. This dishonesty is often viewed by executive officers

as acceptable, because "nobody wants to rat on a fellow officer." As seen in the cities of

New York and New Orleans, this sometimes even includes criminal acts. This code of silence results in police misconduct becoming accepted behavior within police departments.

Officers are educated early in their career of the importance of loyalty to fellow officers. Loyalty to their community, the oath of office and the code of ethics are not emphasized as much as is loyalty to fellow officers. By contrast, officers must be taught that loyalty, to be virtuous, needs to be directed at the proper end. When officers place loyalty to each other over the community, police misconduct flourishes. The virtues of "loyalty" and "truthfulness" need to be examined in addressing this subject. Misplaced loyalty is a major factor in continued police misconduct. Police culture allows misplaced loyalty to flourish, rationalizing it as part of the "brotherhood."

Police executives need to ensure that truthfulness is paramount within their departments. Only when a zero tolerance approach is taken towards lying, will the code of silence be reduced. Untruthfulness is incompatible with the police role, code of ethics and their oath of office. By meting out light discipline for sustained cases of untruthfulness, police executives are condoning lying.

<center>The Police Culture</center>

When a person becomes a police officer they are required to successfully complete the academy and field training program. During the academy and field training, they learn about many subjects including criminal law, defensive tactics, verbal judo and other important subjects. The most important subject learned during this training process is how to survive in the police culture. No written examinations is ever taken on this subject, however to succeed professionally this knowledge is imperative.

In the police profession this culture has a very strong influence on the behavior of officers. Physical manifestations of the culture can easily be identified. Weapons, uniforms, insignias of rank, report forms and identifiable police vehicles are some of the more common artifacts of the police culture. More difficult to identify, yet much more powerful, is the effect this culture has on individual behavior.

> The workplace culture is the sum of the beliefs and values held in common by those within the organization, serving to formally and informally communicate what is expected.[11]

These values and beliefs become indoctrinated in the minds of new officers, remaining an important factor throughout the officer's career. New officers soon fail to remember many concepts taught in the academy; however they will never lose sight of their police culture. This culture is pervasive throughout the agency, ensuring that these values are entrenched in the minds of all wearing a badge.

> The culture of a society exerts very strong influences on people, but it must be realized that there are vast differences among cultures of various societies, and what is acceptable in one may not be acceptable in another. In some societies community bathing is the custom. Such behavior is considered nonstandard in our society and is subject to legal as well as moral sanction.

> Culture largely influences job motivation and work habits. To undertake a study of any aspect of human behavior without attempting to understand the culture in which it operates is similar in effect to studying fish without realizing that fish live in water. To the extent that culture influences work habits, it is responsible for both good and bad performance.[12]

To explore  police misconduct without addressing  police culture, is not doing the subject justice. Without considering the impact this culture has on individual behavior

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[11]Wayne Bennett and Karen Hess, <u>Management and Supervision in Law Enforcement 2<sup>nd</sup> ed.,</u> (Minneapolis/St. Paul: West Publishing Company, 1996), p.308.

[12]William B. Melnicoe and Jan C. Mennig, <u>Elements of Police Supervision 2<sup>nd</sup> ed.,</u> (New York: Macmillan Publishing Company, 1978), p.53.

an accurate portrayal of misconduct can not be seen. This culture is often detrimental to the character of police officers.

People entering into the police profession are becoming part of a unique vocational subculture, "A group of specialists recognized by society, as well as by themselves, who possess an identifiable complex of common culture, values, communication devices (argot or other symbols), techniques, and appropriate behavior patterns."[13]

Police officers have developed an argot that is not comprehensible to most outsiders. Terms such as "he's in pocket", " you're getting too close to the kitchen" and "make the subject roll", may not be understood by a civilian, however in the police world they are easily understood. The first is asking if he is in possession of the narcotics. The second cautions a person that their behavior may get him/her in trouble. The last is requesting that the officer use investigative techniques to have the suspect admit his/her guilt and identify his/her partner(s).

Another form of police argot can be seen in the use of the phonetic alphabet, and the 400 or 10 codes. These are used by all officers to communicate on their radios. Since only fellow officers understand these terms, they are cryptic. This allows officers to communicate with each other in a public setting, without citizens understanding.

An important part of an officer's career occurs when they leave the training setting and become assigned to a "real squad." This is the time when the new officer learns

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[13]Edward A. Thibault, <u>Proactive Police Management 2nd ed.,</u> (Englewood Cliffs, New Jersey: Prentice Hall, 1990) p.29. Subsequent references to this work will be cited in text parenthetically as, eg. (Thibault 29)

what it really means to be 'a cop.' After graduating from the academy, and completing the field training program, the new officer is ready to learn 'how the job needs to be done.' This requires "The acquisition by initiatives of the body of esoteric knowledge and the appropriate behavior patterns before the novices are accepted by the initiated." (Thibault 31)

The police academy teaches new officers important skills needed to be successful in the furtherance of their career. Marksmanship, defensive tactics, basic investigative techniques, federal laws and state penal codes, are important subjects included in the curriculum of police academies. Acceptance of the police role is the most important item taught, although this subject does not have a formal lesson plan. "The objective of the police academy, over and above teaching basic knowledge and skills, is to instill into the recruit an acceptance of the police role model. This means an acceptance of both the formal and informal codes and discipline making up a police officer." (Thibault 31)

Throughout an officer's career it has often been shown that their behavior changes. These changes are sometimes very obvious and in other cases they may be more subtle. Usually people closest to the officer will notice the changes, well before the officer realizes that he or she has changed. Tragically, this change, if gone untreated may lead to alcoholism, multiple marriages, misconduct or suicide.

Arthur Niederhoffer, in his classical work *Behind the Shield*, shows the stages of cynicism as the police recruit moves from the idealistic role models of the police academy to the streets (1969: 104). The first stage is titled pseudo-cynicism, which is at the training school/recruit level and is an attitude that "barely conceals the idealism and commitment beneath the surface." The second stage, romantic cynicism, comes within the first five years of an officer's career. The third stage, aggressive cynicism, is evident at the ten 10-year mark where "resentment and hostility become obvious." At this stage, Niederhoffer talks about a subculture of cynicism. The end of the police officer's career is what Niederhoffer calls resigned cynicism, when an officer accepts the flaws of the system. (Thibault 31)

In examining the police subculture's influence on police misconduct, it is important to view what is valued in this culture. The police "brotherhood" does not have any jurisdictional boundaries. This brotherhood applies equally to officers working in a small 3 officer agency, or a large department with thousands of employees. "When most citizens are stopped for a traffic infraction, they expect a traffic citation. When police officers are stopped, they do not expect a traffic ticket, they expect to be let go because of professional courtesy. When professional courtesy does not occur, it is a story carried from jurisdiction to jurisdiction and can lead to a feud between police officers in two different jurisdictions."(Thibault 34)

Conformity is an essential part of this "brotherhood." To fully claim membership an officer often needs to act differently than their own personal values dictate. An officer acting consistent with his/her own personal values, outside group norms, runs the risk of being labeled as a "problem child."

An example of this would be a new officer writing a parking ticket to a restaurant owner. This owner has always allowed officers to dine in his restaurant free of charge. In the past, officers have always overlooked his parking transgressions. The new officer issued the owner a citation because he felt it was 'the right thing to do.' As a result of the citation, the owner now requires all officers to pay full price for their meals. The new officer's reputation within the 'brotherhood' has suffered a major blow.

Conformity is necessary in the accomplishing the police mission. Police responding to a tactical situation must act in unison. Handling a large scale disturbance requires all officers act as a team. If officers acted on their own accord, the police

response would be ineffective. Society requires a police response that maintains peace and

is neutral as to the issue at hand.

> There is a great deal of pressure for conformity among police officers. Reiser (1974: 158) considers peer influence to be 'one of the most profound pressures operating in police organizations.' He continues on and shows how it functions: 'It bolsters and supports the individual officer's esteem and confidence, which then allows him to tolerate higher levels of anger, hostility and abuse from external sources.' This department psychologist for the Los Angeles Police Department (LAPD) has pointed out an important factor concerning peer pressure: that it can be a positive force in the life of an individual police officer. One of the most profound statements that any police officer can make is that *he (or she) is never alone* once having become a sworn officer. On the job, the call for 'officer in trouble' will mean that officers in and outside the immediate vicinity will normally drop what they are doing and rush to that officer's aid, even from a distance. Reiser (1974: 158) stresses the cost of this group support and that is a 'loss of autonomy in the area of values and attitudes.' It seems that group values become shared while there is a great deal of rationalization created to support conformity to the police group.(Thibault 33)

This loss of autonomy can be catastrophic for both the individual officer and the

organization. Officers view themselves as isolated from the general public. Many reasons

are offered to justify police isolationism. Unique shifts, high levels of stress, the

confidential nature of investigations, and being asked to do favors, are the most common

justifications offered to explain the social isolation of police.

These justifications, if valid, would cause social isolationism in other professions

which share similar traits. Many professions require people to work unusual hours. Pilots,

casino workers, truck drivers and farmers are other occupations where unusual hours are

the norm. Additionally if the unusual hours caused social isolation, we would see this

isolation cease when the officer was transferred to day shift. But this is not the case.

Detectives and supervisors work primarily day shifts with weekends off, yet still remain

isolated from the general public.

Police work is a stressful profession. Confronting dangerous situations with potential of using deadly force creates a high level of stress. Stress is also present in the lives of flight controllers, pilots, doctors and soldiers. If this isolationism was caused by stress, we would expect to see the same behavior in these other professions.

Officers are required to maintain confidential information as part of their job. However, this is the case in many professions. Nurses, doctors, teachers, pastors, priests and counselors, are only some of the professions that require confidentiality. If this were a valid reason we would see these other professions experience a similar level of isolation from the general population.

Being asked by others to do favors is certainly not unique to law enforcement. Electricians, carpenters, restaurant owners and hotel workers are also requested to do favors for others. These reasons are invalid, only serving to legitimize the power of the police brotherhood.

> 'If I tell them that I am a cop,' they'll want to give me a hard time about some traffic ticket they got. Next will come some bull concerning police corruption and then they'll hold me personally responsible for some court letting some killer loose on the streets. What do you want me to do, spoil these parties for myself and my wife? It's really better if you stick to your own.' And stick to their own, they do. There are police bars, police picnics, and police poker parties. From these and other social activities dominated by fellow officers and their family, police officers create a feeling that each one of them is part of the *blue minority*.(Thibault 35)

Police conformity and isolation from the general public serve to perpetuate the code of silence in law enforcement. Conformity and isolation need to be reduced before progress can be made in reducing police misconduct. When officers view themselves as separated from the public, they can rationalize lying to protect other officers.

Why The Code of Silence Continues

The code of silence can be defined as police officers lying to protect other officers. As seen in Chapter One, police reformers have been hindered by this code since the beginning of American policing. The police culture which encourages conformity and isolation serves as a fertile breeding ground for the code of silence to flourish.

Maintaining organizational integrity is a major challenge facing police executives. New technologies, coupled with good old fashion police work, have served to benefit law enforcement in catching more criminals. New computer systems, scientific advances, video and electronic devices are just some of the advances in fighting crime. The one area that has greatly lagged behind is the handling of police misconduct.

The code of silence is legitimized in the police culture by the premise 'a good cop never rats on another cop.' The movie <u>Serpico</u> was based on the code of silence in action. The reality shown in this movie was that cops are willing to be blind to acts committed by fellow officers. Also, officers often willingly put their life on the line for each other, unless the other officer is a whistle blower.

The majority of law enforcement administrators will minimize the impact which this code of silence has on police misconduct. By admitting a high correlation, the administrator acknowledges deep rooted organizational problems. History has shown that most administrators deny organizational problems, until evidence is discovered by an outside investigating body.

From a utilitarian framework the code of silence benefits both officers and police executives. Officers benefits by escaping from punishment for misconduct they commits. Police executives benefit by allowing the majority of misconduct to go unreported. This

gives the perception to the citizenry that the chief is running a well disciplined department.

Present Response to the Code of Silence

The code of silence is not tangible. We can not touch, see or smell it. Like a toxic gas it injuries without any warning. This allows police executives to deny its existence, pretending to be surprised when it surfaces. Even after the code is identified, some administrators will use the 'rotten apple' excuse in attempting to minimize systemic problems.

When police misconduct surfaces, many administrators attempt to remove the department from public scorn by blaming the incident on some 'rogue cops.' Their position will be that 'certain rotten apples' acted on their own and they will be dealt with to the fullest extent of the law. This position denies the existence of any systemic code of silence, often resulting in political survival for the administrator.

> The 'rotten apple' theme is best seen as an impression management or 'normalization of deviance' technique rather than an explanation of corrupt police behavior. The initial reaction to police administrators, applying the label 'rotten apple' or 'rogue cop' to publicly expose officers, is an attempt to 'normalize' or invent plausible excuses and explanations for deviant conduct. Even those who used this technique often recognize the futility of this political rhetoric.[14]

This 'rotten apple' strategy (or excuse) has been used by law enforcement agencies for a very long time. The appeal of this is the agency is able to distance itself from the incident. The public is satisfied the guilty officer(s) is being prosecuted, and soon forgets about others who may have been involved in misconduct.

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[14]Thomas Barker and David Carter, Police Deviance 2nd ed., (Cincinnati, OH.: Anderson Publishing Company, 1990) p.46.

The current response of police administrators to police misconduct has many similarities with responses in tactical situations. Officers are trained throughout their careers to take certain steps when handling a tactical incident. The following steps are included in standard operating procedures in handling tactical situations:

1. Sterilize the critical area to as small an area as possible. This is done by establishing a secure inner perimeter.

2. Establish a command post a safe distance away from the critical area. The command post must be free from outside interference.

3. Assign a Public Information Officer to handle the media.

4. When situation turns tactical, the response will be swift and decisive.

5. When suspect is taken into custody, he/she will be transported to jail as soon as practical.

6. A press release will be issued by the Public Information Officer concerning the incident.

Concerning misconduct, administrators attempt to limit the target of the investigation to as few as possible. This is where the 'rotten apple' or 'rogue cop' excuse will be used to minimize the target. This shifts blame away from systemic problems.

Police Executives will typically assign a special investigator (s). This investigator(s) will ensure that confidentiality is maintained. The investigator(s) will brief the police executives who can then coordinate press releases through the Public Information Officer.

When the case is sustained, corrective action will be aimed at the target officer(s) only, without seeking remedies to improve the organization. Facts uncovered during the investigation will in most cases be kept from the public, citing confidentiality. At the

termination of the investigation, a press release will normally be given, placing the department in the best possible light.

To effectively deal with the code of silence, police executives need to address misconduct from a normative frame, as opposed to 'quick fixes.' Police executives must seek cures for the underlying problems, as opposed to only surface issues. Presently, administrators only deal with symptoms (individual incidents), as opposed to curing the disease (underlying organizational problem).

A weapon used to reduce the code of silence is offering of immunity from prosecution for witness officers. Police officers have qualified immunity during internal investigations. In *Garrity v. State of New Jersey, 87 S.Ct. 616 (1967),* it was held that statements given as part of an internal investigations were not voluntary and are therefore inadmissible in state criminal proceedings. The Court stated that since officers risk termination if they refuse to answer questions, these statements are coerced.

The qualified immunity afforded officers under *Garrity* (Appendix 3) does not protect officers in any civil or federal actions. The federal trial of the officers convicted in the Rodney King incident is an example of the federal system using statements given under *Garrity* to obtain a conviction.

The immunity given under *Garrity* is only for the individual officer, not other officers who are incriminated. As an example, Officer X says he witnessed Officer Y taking a bribe from a drug dealer. During the interview, Officer X confesses that he also beat the drug dealer. Under *Garrity,* Officer X's statement can be used against Y for the bribery, however it can not be used against X for the beating.

*Garrity* immunity is a very weak protection for police officers. It is often referred to as a guise used by internal affairs to negate protections of the 5th Amendment (Self Incrimination). Often, officers will complain "other citizens have the right to invoke their 5th Amendment in any criminal proceeding, but we can't." Police officers risk termination if they invoke the 5th during a *Garrity* interview. Since *Garrity* interviews can be used in federal criminal proceedings, it follows that coerced statements can be used against police officers criminally.

## Truthfulness

The code of silence is synonymous with, "lying to protect fellow officers." This makes the challenge for police executives simple: Have officers stop lying. Truthfulness is the virtue toward which reform efforts need to be directed in reducing the code of silence.

The violation of 'untruthfulness' is very difficult to prove. The investigator must prove from sources (physical evidence, other witnesses,) the officer lied. The difficulty in proving these cases against witness officers makes its use infrequent.

Since untruthfulness is difficult to prove, officers will often gamble that he/she can be deceptive and escape disciplinary action. If successful, both the witness officer and the accused employee will avoid punishment. Even in cases where advanced techniques are used, including polygraphs, officers often escape punishment when they lie.

Police unions serve to ensure the code of silence remains a major obstacle for internal investigators to battle. These unions have become very involved in the disciplinary process. In many states an officer can not be interviewed concerning misconduct unless a union representative is present. Safeguards afforded to employees include both the targeted employee and witness officers.

Unions gain influence in the disciplinary process at the bargaining table during contract negotiations, and also by exerting political clout as lobbyists. During contract talks, departments are often willing to give more influence in disciplinary matters as opposed to salary increases. Well-meaning police executives see this as being fiscally responsible, but in reality it erodes managerial responsibility. The concessions made at the bargaining table concerning the disciplinary process often result in long term detrimental effects (law suits, higher legal fees, reduction in public trust).

Political clout comes in campaign endorsements. To have the support of the local police union is a valuable asset to aspiring politicians. This results in unions seeking to enact legislation which hinders police administrators from handling misconduct. When unions are successful in changing laws, they do not have to concern themselves with contracts.

In Nevada, the "Police Officer Bill of Rights," is NRS. 453 (Appendix 4). Officers are secured certain protections during internal investigations which serve as a catalysis for the code of silence. An officer may not be interviewed until he/she receives written notice of the complaint, and is given reasonable time to have representation. This allows for officers involved to meet and review the documentation before any interviews are conducted.

Police officers cannot be ordered to take a polygraph examination until the complainant has first taken and passed one. This is extremely difficult to accomplish when the complainant is less than an upstanding citizen. People who are drug addicts or have criminal histories are poor candidates for polygraphs. Officers can not be ordered to take polygraphs unless they are targets of the investigation.

A basic tenet in our criminal justice system is "the punishment should fit the crime." This is the reason why we have felonies, gross misdemeanors and misdemeanors that serve to categorize criminal acts. The severity of the crime will determine which category it falls under.

In the case of Driving While Intoxicated, a misdemeanor crime became a felony crime because of public outrage. DWI was always a misdemeanor, until the public demanded the third conviction should be treated as a felony. The Nevada Legislature changed the penalty as a result of public demand.

The charge of Domestic Violence is another example of a law changing in response to public outcry. This law was changed in 1984, and again in 1994, mandating more severe penalties. The goal of increased penalties is to serve as a deterrent, reducing the number of offenses committed. Many other examples can be used to illustrate changes in punishment caused by public outcry.

The underlying logic is that rational people weigh the severity of the punishment and the probability of being apprehended versus the benefits derived from committing the act. An example of this can be seen in the case of speeding. A motorist knows driving at 60 mph (in a 35 mph zone) results in getting home 5 minutes earlier. If he/she gets a ticket, he/she will have to pay a substantial fine and faces an increased insurance premium. Also, weighing in the decision whether or not to speed is if the road is heavily patrolled. Hopefully, most rational people weigh the risks and the benefits, then decide to observe the speed limit. The same rationale needs to be applied to truthfulness. Since untruthfulness is difficult to prove, the punishment should be consistent and strong to serve as a deterrent.

Yet, this is not the case. Corrective actions range from extremely light to termination for sustained violations of untruthfulness. Rationalization for the wide disparity in discipline center on the circumstances in which the lie was told. Typically, if an officer lies to protect a fellow officer, without benefitting himself, the punishment will be light. When the officer alters reports, conceals evidence or conspires with others, the punishment is more severe.

Using the motorist analogy, if a person sees two motor officers sitting on a corner and continues to speed, he/she is not being rational. This is the reasoning behind visible deterrence. People will not commit a crime when detection is certain. DWI checkpoints, posted radar enforcement zones and video recorders, are commonly used to encourage people to obey traffic laws.

Truthfulness can also be fostered within a police agency. By treating all cases of untruthfulness with consistency and certainty, administrators will be sending a clear message to employees that lying is not acceptable conduct. Police executives must be consistent in dealing with untruthfulness. To minimize the importance of honesty by implying it is acceptable in some cases, sends a dangerous message to officers. A zero tolerance approach to lying needs to be the message sent to all officers.

While incidents of misconduct serve to temporally damage the reputation of the department, damage caused by 'cover-ups' is immeasurable. Police departments are judged more by their response to misconduct than by the incidents themselves. The public realizes that an agency with thousands of employees will have a certain amount of misconduct. However, when the public sees the misconduct is covered up, damage will be devastating.

When incidents of brutality, misconduct or racism occur, the chief's immediate reaction to these incidents will have a great impact on whether the incident will be repeated in the future. A chief that seems more concerned with protecting the department's image than with identifying and disciplining the wrongdoer can send the message that getting caught is a worse sin than the underlying misconduct. In contrast, a willingness to publically and thoroughly examine even the most embarrassing and damaging incident will demonstrate to both the public and the officers a serious commitment to avoiding the same mistakes in the future.[15]

To reduce the code of silence, honesty must be required of officers at all times. When punishment for this violation is minor, the implication is that the department does not hold honesty as an important virtue. This is a dangerous message to send.

The code of silence continues to flourish because executives are aiming at the wrong target. Instead of directing reform efforts at truthfulness, they have focused on public image. Police administrators have sought to minimize negative publicity, instead of seeking the truth. Police administrators need to strive for truthfulness, as opposed to encouraging officers to close  ranks.

## Loyalty vs. Truthfulness

Police Officers have a duty to be truthful at all times. The importance of this can be seen in the weight given to an officer's testimony in court. Also, in the area of public safety, citizens need to have confidence that police are being truthful. Imagine if during a natural disaster, police were telling residents to stay in their homes instead of evacuating while a tornado was heading their way. Society would not stand for this type of police action, and rightfully so.

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[15]Edwin Delattre, Character and Cops, Ethics in Policing, (Washington D.C.: The A.E.I. Press, 1994), p.234.

Loyalty, it has been shown, is highly valued in law enforcement. But the virtues of loyalty and the duty to tell the truth are paradoxical when addressing police misconduct. This paradigm is pivotal concerning the code of silence.

Addressing this paradigm requires us to explore the virtue of loyalty. When an officer has knowledge of another officer's misconduct, an internal battle begins. Should the officer give greater weight to loyalty for a fellow officer, or toward his/her duty to be truthful? Should the virtue of loyalty be superior to truthfulness? It is my argument that the duty to be truthful must outweigh personal loyalty in these situations.

Misguided loyalty serves to undermine the code of ethics officers swear to uphold. When an officer lies, he/she betrays public trust. Police executives excusing witness officers who lie to cover others, are in fact serving as a catalyst for the code of silence. This is the reason why the code of silence continues to flourish in law enforcement without serious opposition from police executives.

> Because the police subculture requires that its members be loyal and trustworthy, officers feel obligated to cover up a fellow officer's brutal acts, petty thefts, extortionate behavior, abuse of power, and other illegalities. The overriding sense of empathy and cooperation displayed in the police subculture is not restricted to highly volatile situations, but is sometimes carried over to simple courtesies extended to off-duty officers, such as not issuing another officer a traffic citation. Every officer tacitly agrees to uphold the secrecy code in order to claim solidarity rights to the unit or agency to which he belongs.[16]

When exploring the problem of misguided loyalty, we need to first look at the virtue of loyalty. Loyalty is essential in a "good community." This is especially true in police work. The difficulty of the job itself, coupled with the inherent dangers, makes

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[16]Stan K. Shernock, The Effects of Patrol Officer's Defensiveness Toward The Outside World on Their Ethical Orientation, (Criminal Justice Ethics: Summer/Fall 1990), p.25

loyalty between officers crucial. Officers are required to take enforcement action which alienates them from the public. Sometimes, the only support group an officer has is fellow cops. Loyalty is important for the officer's own self image. Most police officers think of themselves in terms of what other police officers think of them, as opposed to the general public.

Loyalty is important in the maintenance of our society. In the family unit, we see parents working many hours outside the home to provide food on the table and a roof over their family's head. They work in the house to ensure it is clean and maintained. With the time left they care for their children and facilitate outside activities (i.e., Little League, PTA, Scouting). Children realize, early in life, the importance of loyalty. If parents were not loyal to their children, they would care more about their own personal pleasures and would be less concerned about the welfare of their children.

We see the importance of loyalty to our country. We celebrate national holidays to honor the great Americans who fought and sacrificed for freedom. We stand to honor our country, reciting the Pledge of Allegiance before school begins, or the first pitch is thrown. While studying history, we see the important role of loyalty in defense of the great "Red, White and Blue."

Loyalty was essential in the development of Christianity. Children raised in religious households learn that loyalty to God will lead to eternal salvation. Jesus Christ was loyal to God and never compromised. His loyalty lead to his crucifixion, serving as the cornerstone of Christianity. Early Christians were loyal to Christ, often resulting in their own deaths.

Loyalty has an emotional basis that requires community support, as do all appropriate dispositions. Knowledge of moral principles does not guarantee loyalty,

or morally good actions in general; one needs, among other things, the right attitude. Nor do work rules and evaluation systems guarantee that an organization is a good one in which the commons will be preserved against narrow self-interest; one needs a sound corporate culture.

Corporate culture performs the crucial function of feeding emotions that affect the employees' desires and beliefs. Even where affection is lacking, rituals and symbols can help generate the kind of loyalty that causes employees to act in ways that benefit the organization; this can be true even if, owing to the difficulties of distributing compensation appropriately, there is no certainty that the employees will get paid for it. The loyal employee may further the organization's interests because it feels right to do so, or out of a conviction that it is the right thing to do, or a combination of the two. If it happens generally, then the probability of compensation for such action is increased. (This is one of those situations, crucial to certain religions, in which one's good works are rewarded if and only if one does not perform them in order to receive the reward.) Are Japanese workers relatively loyal because they believe the company will share its profits with them, or do they just want to be loyal to the company? Either motive strengthens the other.[17]

Loyalty is important in shaping our self image. When a person is being loyal, they feel a strong sense of 'righteousness.' Soldiers returning home, missionaries who have served God and dads coaching their children's soccer team, all have accomplished something that has improved their self image.

The antitheses is also true. When we do something contrary to our loyalties, we feel acute pain. We think less of ourselves, because we acted in contrast with our loyalties. The prisoner of war who gives up information after being tortured, the missionary who denies his allegiance to God to avoid arrest, or the dad who quits coaching because he's overworked at the office, all share a major blow to their self image.

In law enforcement, we can see how difficult it is for one officer to implicate another officer in misconduct. An officer who has been loyal to other officers all throughout his career, suddenly finds himself in a position where his testimony can result

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[17]Edwin M. Hartman, Organizational Ethics and The Good Life, (New York: Oxford University Press, 1996), p.173.

in a fellow officer being fired or sent to prison. The internal conflicts that are taking place

are many. Should he tell the truth and disregard his loyalty to fellow officers? By doing

this, is he serving honesty to be virtuous, or is he just protecting his own interest? If he

does lie to cover for the other officer, can the case be sustained? The best course may be

to deny any knowledge of the incident, and make others prove it. By doing this he can

salvage his own self-worth, "I'd never rat on another cop."

> Even though personal loyalty is deeply embedded in the ideology of
> organizational behavior, it tends to 'parcel out the soul' of workers by subverting
> their professional responsibility. Demands for personal loyalty tend to eschew
> employee accountability in public agencies by forcing upon them an unnatural
> relationship which the organization neither requires nor needs. If either was the case,
> one would expect it to be noted in the agency's book of rules and regulations. But
> rarely is this so. It behooves us, therefore, to investigate: (a) *how things came to be
> this way, and (*b) *why workers seem willing to endure and at times appreciate such
> a fiendish demand.* In response to these questions, we can speculate only that for
> some it may provide a more clearly defined source of guidance than the vague and
> conflicting interpretations of moral order; that for others, it may alleviate the strain
> of a haunting organizational subculture; and that for yet others, it may offer the
> opportunity to enhance their power since they may reckon that it is easier to
> manipulate the administrative outcomes by cleverly playing the organization's pool
> of personal loyalties.[18]

The role loyalty plays in both organizational and individual behavior is

paramount. For the organization, it allows the mission to be accomplished in a predictable

manner. The individual employee feels an improved sense of self worth.

> 'The core sense of loyalty' is that it is an 'obligation in every person's sense of
> being historically rooted in a set of defining familial, institutional, and national
> relationships.' Thus, 'in acting loyally, the self acts in harmony with its personal
> history. One recognizes who one is. Actions of standing by one's friends, family or

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[18]Sam S. Souryal and Brian W. Mckay, <u>Personal Loyalty to Superiors in Public
Service</u>, (Criminal Justice Ethics, Summer/ Fall, 1996) p.47. Subsequent references to this
work will be cited in the text parenthetically as eg. (Souryal 47)

nation reveal that identity. The self sees in its action precisely what history requires it to do.[19]

When an officer decides to 'break the code' and gives incriminating testimony against a fellow officer, he alienates himself from the 'brotherhood.'Other officers will not view his/her coming forward as a sign of integrity.  In most cases, he or she will be seen as 'a rat.'The loyalty that all other officers had for the whistle blower will be replaced with rancor. The whistle blower needs to find an assignment where backup is not necessary.

Police administrators may publically commend the person who breaks the code of silence in a press release, but reality is that 'top brass' disdain whistle blowers. Most administrators worked their way up from the rank of police officer. These administrators remember how they viewed 'snitches' back then, and their opinion has not changed. The whistle blower has, in fact, committed career suicide.

Police officers pride themselves for being part of a select group. Their identification within this 'culture' is very important to their own self image. Loyalty in the police culture is a cornerstone. This is the reason why breaking the code, is a very dramatic event in an officer's life.

The code of silence needs to be viewed as misplaced or corrupted loyalty. Loyalty can be very dangerous when people base wrongful moral actions (or inactions) upon it. When police officers act solely out of loyalty, they often violate the virtue of duty and their oath to the law.

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[19]Haim Marantz, <u>Loyalty and Identity: Reflections On and About a Theme in Fletcher's Loyalty,</u> (Criminal Justice Ethics: Winter/ Spring 1993) p.63.

In the organizational setting, it appears defensible to suggest that: (a) the primary obligation of workers is to the ideals of public service and (b) the values of public interest and those of private interest are basically incompatible. If these two assumptions are plausible, it should follow that the conduct of government would be fundamentally flawed were the object of workers' loyalty to a particular "person," or were loyalty to be directed toward the personal interest of any worker or group of workers. Though critics may trivialize the difference and, we dare say, the danger of replacing loyalty "to the ideal" with loyalty to "the instrument," one should consider the dire consequences of being loyal to the doctor instead of the medical science or to the judge instead of the law. Our contention is that if the primary loyalty of the employees is to be identified in personal terms, public service will lose a whole dimension of what is necessary in making it legitimate."(Souryal 45)

When an officer lies to protect another officer, they are placing loyalty to the person (instrument) superior to loyalty to the community (ideal). As public servants, these officers are violating public trust, by engaging in the code of silence.

Loyalty should never be the decisive factor for determining moral decisions. While loyalty can be a virtue, when misplaced, it becomes detrimental to public good. Decisions concerning police misconduct need to be based on a logic which is supportive of the virtues of truthfulness, good loyalty and justice.

Although courage is most often thought of in the physical sense, it is equally important in making virtuous decisions. Officers who lie to protect themselves or fellow officers, are in fact cowards. They lack the courage to do the morally right thing .... tell the truth!

## Conclusion

Law Enforcement is not the only profession with a powerful code of silence. What makes this code unique in law enforcement is the fact administrators deny its existence. This code creates serious problems in the handling of police misconduct. As shown in this chapter the code of silence is embedded in the organizational culture,

making change difficult. Police leaders can improve their departments by acknowledging the existence of the code of silence, and handling misconduct from within an ethical frame.

We have seen that police culture encourages conformity among all officers. While conformity is an asset improving operational efficiency, it also can be detrimental to the well-being of officers. When officers act contrary to their own values, succumbing to group desires, they are being self-destructive. In modifying this culture, an objective has to be establishing an atmosphere where both individuality and teamwork are valued.

Isolation from the public is the second challenge needing to be addressed. The police culture fosters an attitude that police officers are apart from, as opposed to, a part of the community. When this is the case, officers can rationalize thinking of citizens as less important than fellow officers. Another objective for leaders in improving this police culture needs to focus on reducing police isolationism.

In meeting both these objectives, leaders must set the example. Only when supervisors hold themselves accountable can they expect the same of others. Cultivating an atmosphere that rewards individual creativity and the virtues of good loyalty, truthfulness and justice, will go a long way in minimizing the corrupting influences. Community Oriented Policing (COP) is fueled by empowering the role of officers. To be successful in COP, creativity is essential. Police leaders can positively change the police culture, thereby lessening the code of silence by focusing on these responsibilities:

1. Develop a career development program for all officers. This program will encourage officers to fully utilize their God given attributes. To address police conformity, officers need to be recognized for their own initiatives. This is the cornerstone of Community Oriented Policing. Officers need to be able to satisfy their own career needs by attending training in specialized areas. Police executives need to enrich the careers of subordinate officers by career counseling. When officers are encouraged to attend training, orchestrate directed patrols and teach others, they have an increased level of job satisfaction. Officers need to be rewarded for virtuous conduct.

2.   Provide ethics training for all officers, throughout their careers. This training needs to include the virtue of loyalty. This virtue is often misunderstood, leading to misconduct going unreported.

3.   Encourage officers to participate in community functions, both on and off duty. Coaching, tutoring and participating on town boards, are only a few of activities which will reduce isolation. Officers who participate in community functions should be recognized by the department.

4.   Ensure officers know lying will not be tolerated by the administration. All sustained cases of untruthfulness should receive strong discipline. Officers need to know that dishonesty will not be accepted. By only assessing light discipline for untruthfulness, administrators are condoning the code of silence. The chief of the agency needs to take a zero tolerance approach to lying. When officers realize the department is serious about honesty, the code of silence will be greatly reduced.

5.   Officers need to be trained in the importance of truthfulness. While most officers recall  they took an oath of office before graduating from the academy, few truly understand its importance. Likewise, most officers know a code of ethics exists, however few know what it means. Classes need to be given throughout an officer's career ensuring these important documents are not forgotten. Case studies on officers who have tarnished their badges need to be included in this training. Instead of keeping past misconduct a secret, these can serve as valuable lessons for other officers. This training needs to be a part of an officer's entire career, not just a class in the training academy.

6.   Ensure that management rights are not negotiated away. Police executives should never negotiate away managerial rights and responsibilities as part of the negotiation process. By doing this they are ensuring officers realize that misconduct is a serious priority of the administrator.

7.   Hold supervisors accountable for the acts of their subordinates. Supervisors who are aware of misconduct and fail to take appropriate action need to be held accountable. Conversely, those who do this duty need to be praised and recognized.

In modern police service, leaders must do more than articulate right behavior.; they must exhibit right behavior. The leader must ensure that the agency's values and principles are articulated, and he or she should include input from the department's stakeholders. The leader then must provide follow through and ensure that the values and principles are expressed, communicated, and reinforced throughout all aspects of the department's operations, administration, and service.

The leader must reward positive behavior and move swiftly to address wrongdoings. Leaders should enlist others, internally and externally, to solve integrity concerns. The goal of every police leader should be to create an

atmosphere of a total and comprehensive "us" that includes the community, rather that an "us against them" attitude.

Leadership in a police department is not bound or defined by rank. Those in executive positions have an obligation to develop supervisors' capabilities and compel them to assume a greater role in maintaining integrity. Integrity issues should not be relinquished to a central unit or authority until all alternatives to deal with them within the smallest unit have been exhausted. In this regard, the first-line supervisor assumes a key leadership role in ensuring that employees adhere to high standards of professional behavior and ferreting out those who violate these standards.[20]

Summary

Police culture is similar throughout all police departments in America. In this culture, isolation from the public and conformity are considered an important elements. The argument has been made that isolation and conformity serve to increase police misconduct, by allowing the code of silence to flourish.

The police culture is often at odds with the law enforcement code of ethics and the oath of office, because it encourages misguided loyalty and is detrimental to the community's welfare. Positive reform must modify the existing culture by ensuring the virtues of truthfulness, justice and good loyalty. This will require a change in the manner police executives address misconduct.

Most police executives have historically blamed misconduct on 'rotten apples' as opposed to admitting systemic problems. Executives seek to minimize negative publicity for their departments, instead of seeking morally sound solutions. They deny the existence of a code of silence, because admitting it would expose systemic problems. With the code

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[20]Stephen J. Gaffigan, Police Integrity, Public Service With Honor, (Washington D.C.: The National Institute of Justice: January 1997) p.47.

of silence, executives are able to minimize negative publicity, by using the 'rotten apple' excuse. The present response to police misconduct allows the code of silence to flourish.

Reform efforts must be directed at the virtues of truthfulness and loyalty. The code of silence is, in reality, a form of misguided loyalty. For loyalty to be virtuous, it must be directed at the proper end, the community not the individual. By ensuring truthfulness is required of all officers, administrators will reduce the code of silence.

One contemporary police reform effort is discussed in Chapter Three, Citizen Review Boards. The argument will be made that these boards actually serve to address only surface problems, and are counterproductive to true reform.

One of the major stumbling blocks has been identified as 'police isolationism.' Another stumbling block is the proposed panacea for police misconduct, Citizen Review Boards. While these boards may seem innocuous at first glance, they serve to increase police isolationism. They also reduce supervisory accountability, thereby serving to cause additional damage to an already broken system.

CHAPTER 3

CITIZEN REVIEW BOARDS

Citizen involvement is an important factor in any well managed police agency. In fact, civilian input in areas such as budget management, affirmative action, media relations and other programs have been in place for many years. However, police misconduct has historically been handled with minimal (if any) citizen involvement. This chapter will examine a new trend in American policing, the formation of citizen review boards.

To better understand the impact these boards have on law enforcement, it is important to differentiate between the four categories of citizen review. Knowing these distinctions allows for a more accurate interpretation of their value as instruments of police reform.

The power and composition of citizen review boards vary greatly from jurisdiction to jurisdiction. The current trend is to reduce involvement of police leaders in the decision making process. Four general classifications are utilized in determining under what classification a citizen review board should be categorized. However, in reality, most boards are a hybrid of different classifications.

Class One Citizen Review Boards have been established in the majority of the larger cities. This type of board is dominated by civilians with little (if any) involvement of police leadership in the process. Citizens conduct their own investigations of cases and

decide upon the appropriate discipline. The size, subpoena power, appeal processes and funding vary from city to city.

In 1997, the Nevada Legislature passed Senate Bill No. 39. This allowed all counties in the state of Nevada to form citizen review boards to administer external control over police agencies. Both the Las Vegas City Council and the Clark County Commission have passed ordinances creating a Class One Citizen Review Board to oversee the complaint process of the Las Vegas Metropolitan Police Department (LVMPD). These two ordinances will establish one board since the LVMPD has jurisdiction in both the city and county. The LVMPD's Citizen Review Board is scheduled to start in January of 2000.

LVMPD's Citizen Review Board board will consist of twenty-five citizens. Five members will investigate and adjudicate each incident. This board will make recommendations to the Sheriff as to the appropriate discipline. The board will also have subpoena power. Although this is being classified as a Class One Board, it has characteristics of the other classifications. This board will consider cases which have already been investigated by the Internal Affairs Bureau. Officers will have the option to appeal any discipline administered. The board will recommend discipline to the Sheriff, although they can not impose it. This resolution was developed through a series of negotiations between diverse organizations. The Las Vegas Metropolitan Police Department, American Civil Liberties Union, National Association for the Advancement of Colored People and the Police Protective Association all participated in the creation of this resolution. The final product is a board which all parties can live with, as opposed to one that ethically deals with police misconduct.

The second classification (Class Two) has both commissioned officers and civilians involved in the process. This allows for citizen participation  without excluding the expertise of law enforcement. The Las Vegas Metropolitan Police Department has had a Class Two Citizen Review Board in place to investigate use of force complaints since 1992. Commissioned officers conduct investigations and then explain their findings to a combined panel of officers and citizens. The citizens are able to ask questions and review all reports. This board decides whether the incident is justified or not. In cases found not justified, the board recommends appropriate disciplinary action to the Sheriff.

The third classification (Class Three) is designed to serve as an appeal process for citizens who are not satisfied with the resolution of their complaint. These deal with incidents only after the police department have completed their investigations. The citizen can request the case be reconsidered, however the department may refuse. This is the weakest form of citizen review board.

The final classification, Class Four Boards, are in place in the cities of San Jose and Seattle. These boards serve as an audit process for the police department. They also conduct surveys to ensure citizens are being treated fairly. They make recommendations to the chief on how to improve the complaint process.

The differences between Class One Boards and the other three classes needs to be emphasized. While Classes Two, Three and Four Boards serve as review bodies concerning the complaint process, only Class One Boards remove this responsibility from the police. Civilian review of disciplinary decisions is healthy, however taking this function away from police leaders is dangerous for the organizational culture.

In the past twenty years, Class One Citizen Review Boards have blossomed throughout our country. The majority of these boards have been formed in response to public outrage over incidents of police misconduct. This chapter will examine these type boards and their impact on the law enforcement community.

My central argument will be that Class One Citizen Review Boards are ineffective at addressing police misconduct, since they fail to address underlying systemic organizational problems. These boards remove accountability from police management, shifting it to a citizen  panel. These citizens lack the time and expertise required to adequately investigate and adjudicate the number of complaints received.

Police misconduct is best handled through the internal processes within police agencies. Effectively addressing police misconduct requires police supervisors to be held accountable. Police departments have the necessary resources, expertise and personnel to investigate and adjudicate misconduct complaints. Class Two, Three or Four Citizen Review Boards serve to enhance internal investigative processes, not weaken them like Class One Boards. Only by confronting misconduct at an institutional level will successful strides be made.

Recent Developments

Nationally, the number of Class One Citizen Review Boards has skyrocketed.  In 1980, only 13 review boards existed in our country. By 1995, the number of review boards grew to 66 (400% increase).[21] This growth is due mainly to high profile incidents

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[21]Sandra McLaughlin and Donald Reed,"Review of Complaints of Alleged Officer Misconduct," (staff study completed for Sheriff Jerry Keller on the impact of external and internal review on the LVMPD), Office of Budget and Management, January 28, 1997, p.2. Subsequent references to this work will be cited parenthetically in the text as e.g.,

that have outraged the public. Incidents such as those including Rodney King and Mark Fuhrman have tarnished the image of police departments nationwide. The recent popularity of these boards can be attributed, in part, to the realization that existing complaint processes have been ineffective. Also, most of these boards were created when public confidence was extremely low.

These boards are portrayed as a way for citizens to take control over their police departments. Many politicians have gained office on the platform of police reform, portraying Class One Citizen Review Boards as valuable weapons in reducing police misconduct. Unfortunately, these boards are often established without considering their history.

Citizen review is both a national and international phenomenon. The majority of the big cities have adopted it, and the medium sized and small cities are increasingly adopting it, as well. As already mentioned, citizen review is almost universal in English speaking countries.

No analyst has offered a conclusive explanation for the recent spread of citizen review. The concept was first proposed in 1935, and it was implemented in a few cities in the 1940's and 1950's. The procedures New York City and Philadelphia adopted were abolished in the 1960's, however. One factor contributing to the recent growth of citizen review has been the increase in African-American political activity, resulting in the election of mayors and city counsel members who consider police misconduct a major issue. It should be noted, however, that many small cities with very small minority populations have also adopted citizen review. Opposition from police chiefs has declined significantly, as they increasingly recognize the importance of responding effectively to citizen complaints.[22]

(McLaughlin 2)

[22]Samuel Walker and Betsy Wright, <u>Citizen Review Resource Manual</u>, (Omaha, NE.: Police Executive Research Forum, 1995), p.5. Subsequent references to this work will be cited parenthetically in the text as e.g., (Walker 5)

The words "citizen review" create the impression that citizens will be in control of these proceedings. The political appeal of this title makes it very popular among elected officials. Often these boards are implemented with little examination of the past. Police misconduct is a serious problem in our country requiring sound ethical solutions, not just attractive buzz words. The time has come for police leadership to examine their department from a moral frame. This chapter will examine the Class One Citizen Review Board's impact on American policing from a moral frame of reference. To increase public confidence, agencies must seek sound moral solutions for misconduct, not just "window dressing solutions."

> The Police Review Board should never have been the central issue; Police Review Boards are only symptomatic of a much more serious matter, i.e. the loss of confidence by the public in some police forces. It is the loss of confidence which is the central issue in the controversy. (Walker 5)

Citizen involvement is very important to good policing. However, the real question is, "are Class One Boards beneficial in dealing with police misconduct?" Although seemingly contradictory, it is possible to advocate strong citizen involvement with the police and yet be opposed to Class One Citizen Review Boards. With these four separate classifications, it has become obvious why much confusion exists when discussing the merits of these boards (even among police officers).

Proponents of Class One Review Boards have successfully grouped all four classifications together. Opponents of these boards have not made distinctions clear between the levels of citizen review, enabling the "all or nothing" argument to be advanced.

> With few exceptions, the present civilian oversight boards have not come about through a logically thought-out process or through an evolution of other types of control. Almost all have sprung up abruptly and often with little planning.

Almost every board has come into existence as the aftermath of a law enforcement incident, often involving white officers and minority suspects. Whether it was the Dr. Herbert Odom incident in Chicago; the beating death of Arthur McDuffie in Dade County, Florida; the death of a black motorist in Prince George's County, Maryland; or the suicide of Michael Taylor while in police custody in Indianapolis, highly publicized and emotionally -charged incidents of alleged police misconduct have usually been the motivating factor behind the creation of civilian oversight boards in America.

'These boards are usually just a knee-jerk reaction to some racial incident.' John C. Ruckelshaus, the national Fraternal Order of Police attorney for eight years said 'Because of this, you seldom get a fair, balanced board, and so usually they end up creating more problems than they solve.'[23]

Public outrage over police misconduct has been a catalyst in the formation of the majority of these boards. These review boards are most often created after a major misconduct incident has occurred and the effected police department is in a very precarious position. They certainly cannot say change is not needed. The public is demanding quick and decisive action and the creation of review boards can mean political survival for a police chief. With this in mind, some police chiefs support these boards, not for the department's good, but as a form of political survival.

Absence of Quality

Given the environment in which most Class One Review Boards are created, it is not surprising the majority of these boards have not succeeded. They lack solid foundations needed for this difficult task. These boards are empaneled without proper attention given to their mission. Conducting misconduct investigations requires a high level of expertise. Some investigations require many man-hours to complete. Having a

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[23]Robert Snow, "Civilian Oversight: Plus or Minus, "Law and Order Magazine, December 1992, p.52.

panel of citizens who lack the necessary experience and resources responsible for

completing investigations, is foolish.

> While the intent of civilian oversight is usually to improve on the old system of internal police department internal investigation and control, a system that some citizens may  feel is biased against complainants, this is not always what occurs once a citizen review board is formed. Studies have found that civilian boards do not investigate complaints against officers as zealously as do many internal affair units. Also many boards cannot compel testimony, cannot punish, and take too lightly the withholding or distortion of evidence and testimony.

> 'Our biggest problems are that our civilians don't have the time to do in-depth investigations,' Joan Engert of the Portland, OR, Police Internal Auditing Committee said. 'Because of this, the board is not seeming to meet the public's expectation of what it should be doing.'

> An even more serious problem suffered by many boards, particularly those that conduct their own investigations, is the lack of training, experience, and insight of the investigators. ' These people haven't been in the trenches,' Leo T. Blackwell, a former police officer and now a police union attorney, said. ' They  just don't know what to look for. A police department is much better equipped at being able to identify the signs of a bad officer.'[24]

Having civilians investigate the actions of police officers can be compared with

an "armchair quarterback" officiating an NFL game. While the person sitting in the chair

may think he or she can do a better job, in reality, he or she does not even know the rules.

The players in this game would soon become frustrated and the quality of play is destined

to suffer. The same is true of police work, when  integrity takes a back seat to political

gain.

The board members lack experience and resources necessary  to complete

thorough investigations. Of the substantiated cases, many are destined to be overturned

during the appeal process because police unions are very powerful. This results in many

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[24]Thomas Barker and David Carter, Police Deviance 2nd ed., Cincinnatti OH, West Publishing Company, p.374

safeguards for police officers. In Nevada, Chapter 289 of the Nevada Revised Statutes

(Appendix 4) is commonly referred to as the 'Police Officers Bill of Rights.' Attorneys are

usually provided for the accused officer at all levels of the proceeding. An investigator

who is not fully knowledgeable of NRS 289 is at a great disadvantage.

> Investigating alleged police malpractice requires a great deal of skill. In order to be effective, the investigator ( a sergeant, an internal affair's officer or police manager ) must be specifically  trained for the task and given constant   guidance and administrative support. Since the internal investigation process must be swift, certain, fair and lawful, only the most competent employees should be trained to conduct personnel investigations. Few police departments provide any, let alone sufficient, training for those involved in personnel complaint investigations. The National Advisory Commission on Criminal Justice Standards and Goals considered this problem and recommended that:

> 'Every police agency immediately should insure that internal discipline complaint investigations are performed with the greatest possible skill. The investigative effort expended on all internal discipline complaints should be at least equal to the effort expended in the investigation of felony crimes where a suspect is known.'[25]

Investigating police misconduct is an extremely difficult process, requiring many

skills. A few of the basics needed includes knowledge of contracts, applicable laws, and

the ability to assess weight of evidence. To place any person into this position without the

skills and experience is not wise.

Swiftness is an essential element in maintaining proper discipline. In Washington,

D.C., the Citizen Complaint Review Board has 950 cases pending. Some of  these cases

are more than four years old and still have not been heard. The majority  of  internal affairs

bureaus complete the entire investigation within 30 days. (McLaughlin 6)

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[25]Harry W. More and Fred Wegener, Effective Police Supervision, (Cincinnati, OH.: Anderson Publishing Company, 1990) p.318. Subsequent references to this work will be cited parenthetically in the text as e.g. (More 318)

Most boards are not only fair and impartial, but actually tend to be easier on accused officers than internal department processes are. Professor Perez, Skyline College, said in a Chicago Tribune article, ' civilian systems find the police innocent of wrong doing most of the time . . . civilian systems have historically given the accused officer more procedural safeguards than have internal systems . . civilian review mechanisms are in fact easier on the beat cop than are internal systems.' (McLaughlin 6)

Lack of thoroughness when conducting investigations will be detrimental to the entire community. Allowing unfit officers to remain on the department is a dangerous practice. History has proven that misconduct, when not addressed early, becomes more entrenched. A basic axiom in personnel management is that misconduct grows if left undetected. Cities such as New York, New Orleans and Philadelphia, are examples of this idea in action.

Removing Managerial Accountability

Leadership requires  managers to be accountable for the actions of their subordinates. When an outside panel is given this role, supervisory responsibility diminishes. Supervisors are allowed to "hide their heads in the sand." This absence of accountability serves to erode organizational integrity. In Chapter Two it was shown how the 'code of silence' flourishes in this type of environment.

Typically, police chiefs seek to remove themselves (and their department) from the misconduct incident for reasons of political survival. The chief will insist the incident was an isolated event which does not constitute organizational problems. The targeted officers will then be prosecuted to the fullest extent of the law. By creating this separation, the chief attains a reputation of being "hard-nosed on misconduct." Many  chiefs will use the term "rotten apple" when commenting on the accused officer.

If  successful in creating this distance, the chief can actually turn misconduct into a political gain. People perceive "The chief cannot be held accountable for the actions of all his or her officers, but at least he or she takes tough action when confronted with it." This distorted public perception causes the focus to be on the individual actors, as opposed to the organization as a whole. This removal of accountability is detrimental to police reform.

Class One Citizen Review Boards allow police leaders to be less accountable to the community. As seen in Chapter One of this thesis, certain factors are typically present in departments with high levels of misconduct. An absence of supervisory accountability has been listed as one of these factors. Reducing supervisory accountability is contrary to reform efforts. By  moving the complaint process away from supervisors can blame the review board for not adjudicating cases properly, as opposed to taking responsibility.

> If alleged wrongdoing is verified, police tend to defend the reputation of their agency by characterizing the wrongdoing as an isolated phenomenon not representative of their operations. This traditional response has contributed, perhaps unwittingly, to a prevalent attitude within police departments that wrongdoing is exclusively the responsibility of the wrongdoers; that the agency itself is exempt from any responsibility for the misconduct. It follows that, while sergeants, lieutenants, captains and higher ranking officers are held to strict account for investigating wrongdoing, they are rarely held to account for having failed to prevent the misconduct in the first place or for having failed to uncover it on their own. Thus, preoccupied with defending themselves in the community, police administrators in many jurisdictions have forfeited one of the oldest and potentially most effective means for achieving conformity with legislative and administrative promulgations - the simple process of creating through traditional administrative devices an agency-wide sense of  responsibility for the prevention of misconduct.

> Accepting the responsibility for achieving conformity requires, specifically, that an administrator inoculate an administrative philosophy that holds supervisory officers responsible for the actions of their subordinates. Enough pressure should be exerted on a precinct commander, for example, to result in his viewing an overly aggressive police officer who is constantly  offending citizens as a major administrative problem, rather than - as is often the case - an extremely  valuable

employee who frequently gets in trouble. Each captain, each lieutenant, and each sergeant should be made to feel as responsible for an officer's conduct in relating to citizens as they do for assuring that an officer reports to work on time. This would make the task of controlling police conduct far more manageable than it is today. (Barker 46)

This lack of this organizational responsibility allows supervisors to 'turn the other way' when confronted with misconduct. They thereby save face with their officers for not having to perform the difficult task of disciplining their subordinates.

Only when the chief makes every manager and supervisor answerable for the misconduct of his or her subordinates can a department with serious corruption be reformed. (Barker 47)

When the chain of command is not involved in the decision making process, they cannot be held accountable. History has demonstrated that supervisory accountability is crucial when dealing with  misconduct. As seen in Chapter Two of this thesis, past reform commissions (Knapp, Mollen and Christopher) have identified increased supervisory accountability as the major ingredient needed to reduce police misconduct. But in Class One Citizen Review Boards, supervisory accountability is reduced. In an argument to support Class One Review Boards, a premise must be that supervisors do not need to be accountable for the conduct of their subordinates. Since supervisors need to be held accountable, Class One Review Boards are not consistent with a healthy work environment. Taking accountability, a vital management tool, away from police management is dancing with disaster for the future of law enforcement.

Addressing Systemic Problems

The problem of police misconduct cannot be effectively  handled on a case by case basis. Class One Citizen Review Boards treat only the symptoms, not the disease. Police misconduct needs to be confronted from a normative frame and institutionally.

Police in the cities of New York, Philadelphia, New Orleans and Los Angeles, serve as

proof that police misconduct is an institutional problem as opposed to a series of isolated

incidents. (In all of these cities, citizen review boards have been formed and reformed.)

After every major misconduct incident new boards are formed until the next scandal

surfaces.

Police reform must be aimed at examining the entire agency, not just individual

episodes of misconduct. Class One Citizen Review Boards are designed to look at

individual cases. By doing this, underlying problems do not surface.

Matza states that the major contribution of sociology to the understanding of
deviance consists of two fundamental insights: ' First, persistent deviance typically is
not a solitary enterprise; rather it best flourishes when it receives group support.
Second, deviance typically is not an individual or group innovation, rather it has a
history in particular locales.' In many police departments one finds two factors:
group support for certain deviant practices and long histories of corrupt activities.

Many patterns of police deviance, including certain forms of corruption, are
examples of what Schur terms " forms of approved deviance" in organizational
settings, i.e., deviant behavior which does not reflect unfavorably on the individual's
overall identity. These forms of "approved deviance" are supported by the group in
the sense that they are not defined as deviant and actors who engage in them run
little risk of exposure and sanction. (Barker 52)

Dealing with police misconduct requires an examination of the organizational

culture. What factors allow misconduct to go undetected in the agency? Are "whistle

blowers" punished? Is the work environment healthy, allowing citizens and employees to

report misconduct without fear of reprisal? Is ethical behavior rewarded within the

department? Is misconduct treated seriously when discovered? Are all employees being

treated fairly in disciplinary proceeding?

If we are serious about police reform, all employees need to be held accountable.

Top management, mid-level managers, supervisors and officers should all be examined. To

remove any level from the review process destroys any chance of true success. As seen in

Chapter Two of this thesis, the police culture can be detrimental to reform efforts.

> The rotten apple theory won't work any longer. Corrupt police officers are not natural born criminals, nor morally wicked men, constitutionally different from their honest colleagues. The task of corruption control is to examine the barrel, not just the apples - the organization, not just the individuals in it, because corrupt police are made, not born. (Barker 46)

Class One Citizen Review Boards are not designed to look at the whole barrel.

They are designed to make the public feel better, at least in the short term. These boards

are not the panaceas, which some would have us to believe. A process that holds all levels

of the department accountable needs to be the main objective of reform efforts.

Law enforcement needs to deal with misconduct from the top down. Individual

incidents are symptoms of larger problems within agencies that need to be addressed.

Police executives cannot wait until after an incident occurs to take action. They need to

have safeguards in place to ensure organizational integrity.

Class One Review Boards are not conducive to police reform. What is needed is

a process holding all police supervisors accountable for the actions of their officers. The

next section will examine citizen review boards from two different levels of policy

analysis, verification and social choice.[26]

## Verification

Verification analysis measures these boards by examining empirical data versus

stated objectives. In evaluating the performance of Class One Citizen Review Boards two

benchmarks will be used. Since it is alleged that traditional internal processes 'white wash'

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[26]Frank Fischer, Evaluating Public Policy, (Chicago: Nelson-Hall Publishers, 1995) p.27-155.

police misconduct, we would expect Class One Citizen Review Boards to be more harsh on officers.

Another measure would be a reduction of police misconduct in a city utilizing a Class One Citizen Review Board. This can be measured in the number of complaints filed and a reduction in the severity of the misconduct committed. If it can be proven that Class One Citizen Review Boards reduce incidents of misconduct and lessens the severity of misconduct, then they have been successful.

The City of New York has had the most experience with Class One Citizen Review Boards. In 1993 (after the Mollen Commission), the New York City Civilian Review Board was formed. This is a Class One Citizen Review Board which appears to be on its way to being dismantled. Only a very small percentage of cases are sustained by this board. In the first half of 1996, 159 substantiated cases were referred to the department, and charges were filed in only one case. In 1991, before the CCRB, the department's internal process substantiated 113 of 3,379 complaints and 50 officers were found guilty. (McLaughlin 4)

A major reason for the creation of Class One Review Boards is the assumption that internal affair bureaus coverup misconduct. However, statistics show that internal affair bureaus sustain complaints at a higher rate than review boards. The argument can be made that Class One Review Boards serve to 'whitewash' misconduct by not sustaining cases.

The cities of New York and Philadelphia had Class One Citizen Review Boards dating back over 50 years. Both these cities have been plagued by misconduct, and have had many review boards come and go. As seen in Chapter One of this thesis, the New

York City  Police Department suffered a major scandal in the 1960's which resulted in the

formation of the Knapp Commission. Officers were convicted of many felonies as a result

of corruption. Again in the 1990's, the NYPD suffered another major scandal resulting in

a new commission (Mollen) being formed. This commission discovered that the problems

within the NYPD had only escalated since the Knapp Commission.

   The Philadelphia Police Department has also been plagued with misconduct

scandals.

   This year, its six police officers pleaded guilty to framing and beating suspects
   and lying under oath and more officers under investigation. 1,400 criminal cases
   under review, civil lawsuits mounting.

   Six years ago, it was an elite narcotics squad accepting bribes from drug
   dealers.

   Four years before that, it was a bungled MOVE siege that burned to the
   ground a whole neighborhood. A year before that it was attack on citizens by
   vicious police dogs.

   That year, 1984, was also when 30 officers -- including a deputy commissioner
   -- were caught running protection rackets for brothels and illegal gambling
   machines. And three years earlier, it was a theatrical squad of officers who dressed
   as mugging victims and arrested innocent people to inflate their overtime pay in
   court.

   As a 1987 task force study put it, 'In short, the historical reputation of the
   Philadelphia Police Department has been unenviable.'

   All big-city police departments have scandals, but few seem to match
   Philadelphia's repeated swan dives into disgrace. Why?[27]

   In the cities of New York and Philadelphia, these review boards have not

reduced police misconduct, nor lessen the severity of incidents. In evaluating Class One

Review Boards from a verification frame they  have  not been successful.

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[27]Mark Fazlollah, Daniel Rubin and Mark Bowden, "Repeated Efforts at Reform
Have Gone Little Beyond Paper," Philadelphia Inquirer, p.23 November 1995, p.1.

Social Choice

When evaluating Class One Citizen Review Boards from a social choice frame, two questions need to be addressed. Do these boards provide for an equitable resolution of police misconduct? Is there another method to handle police misconduct which better serves society? Citizens must be confident that processes used to adjudicate complaints of police misconduct are ethically sound. When evaluating  Class One Citizen Review Boards from  a philosophical frame, we must view these boards from both their organizational impact and their ability to contribute to police reform. When police engage in misconduct, they damage public trust. This trust is essential if the police are to fulfill their mission. As we have described in Chapter Two of this thesis, police have a unique organizational culture. The impact these boards have on individuals within this culture (police officers), needs to be considered.

In studying the works of Aristotle, it is seen that virtue can best be described as "hitting the median" between extremes. Virtue is viewed as being of two types, moral and intellectual. Moral virtues are developed by habitually performing acts of virtue. Intellectual virtue comes from teaching, thus it requires experience to develop. Virtue is not something we are born with. Virtue is something we strive for on a continuous basis.

Aristotle taught that virtuous actions require repetition to become entrenched in a person. Any person can perform a virtuous act, however that action does not make him/her a virtuous person. To be virtuous, a person actions need to be consistently good. To attain this status requires practice.

> The virtues, on the other hand, we acquire by first having put them in action, and the same is also true of the arts. For the things which we have to learn before we can do them we learn by doing: men become builders by building houses, and

harpists by playing the harp. Similarly, we become just by the practice of just actions, self-controlled by exercising self-control, and courageous by performing acts of courage.[28]

Bringing these words into policing, we see the importance of training and leadership. A new officer cannot be expected to be a good policeman/policewoman until he/she gains experience through training and leadership. As he/she gains experience, he/she practices the virtues attributed to being 'a good cop.' The converse is also true. They may also learn how to engage in misconduct. This is why the organizational culture plays a major role in the development of an officer's career.

Hence it is no small matter whether one habit or another is inculcated in us from early childhood; on the contrary, it makes a considerable difference, or, rather, all the difference. (NE1103b22-24)

The conduct of people in an organization is dictated by the culture within the organization. When an officer learns that although profanity is a violation of departmental policy, if it is accepted at his/her command, he/she is likely to engage in this behavior. The converse is also the case.

An argument can be made that to be consistent with Aristotlean Ethics, police departments must ensure that good conduct permeates the organization. Because, if good conduct is not indoctrinated in employees, the opposite will become the norm. Having an ethically sound process for handling police misconduct is consistent with Aristotle's Nicomachean Ethics.

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[28]Aristotle translated by Martin Ostwald, <u>Nicomachean Ethics</u>, (New Jersey: Prentice Hall, 1962) Book II, (NE1103A30-1103B02). Subsequent references to this work will be cited in the text parenthetically e.g., (NE1103A30-1103B02)

Aristotle taught much concerning the subject of human behavior. We need to examine why people behave in a certain way if we are to set up a process to improve conduct within an organization. People seek to enjoy life and will avoid unnecessary pain.

Aristotle used the pain and pleasure test to explain virtue. People act in certain ways to increase pleasure and avoid pain. Virtue requires us to act in a manner which does not always give the greatest pleasure and avoid pain. Actions need to be viewed from the frame of moral soundness. A man who throws himself in the path of an oncoming train and dies can be used to illustrate this test. If the man did this act for no reason, we would say his death was the result of recklessness. If the man pulled a child off the tracks, then his death would be virtuous. While in both examples, the man suffered the same fate (death), only in the second did he do so out of virtue. One would be seen as a reckless death, while the other would be heroic.

The end result, be it pleasure or pain, cannot be the determining factor in measuring moral soundness. Aristotle realized peoples actions are based on pleasure and pain. For this reason, police departments need to have systems in place which rewards good behavior and sanctions misconduct. As seen in the history of American policing, this system has been lacking. American policing has failed to address misconduct consistent with Aristotelean ethics.

> For moral excellence is concerned with pleasure and pain; it is pleasure that makes us do base actions and pain that prevents us from doing noble actions. For that reason, as Plato says, men must be brought up from childhood to feel pleasure and pain at the proper things; for this is correct education.(NE1104b09-13)

An officer must be confident that when he/she engages in misconduct, they will be disciplined. If the department turns a 'blind eye,' the officer will be more likely to participate in misdeeds. This can be seen in all police scandals. New York, New Orleans,

Philadelphia, Los Angeles and other police departments serve as evidence that

misconduct, left unattended, will escalate.

In evaluating the social significance of Class One Review Boards, we must

determine if they are morally sound. To answer this from a philosophical position, we need

to discuss justice and equity.

> Now, in situations though, where it is necessary to speak in universal terms but impossible to do so correctly, the law takes the majority of the cases, fully realizing in what respect it misses the mark. The law itself is nonetheless correct. For the mistake lies neither in the law nor in the lawgiver, but in the nature of the case. For such is the material for which actions are made. So in a situation in which the law speaks universally, but the case at issue happens to fall outside the universal formula, it is correct to rectify the shortcoming, in other words, the omission and mistake of the lawgiver due to the generality of his statement. Such a rectification corresponds to what the lawgiver himself would have said if he were present, and what he would have enacted if he had known (of this particular case). That is why the equitable is both just and also better than the just in one sense. It is not better than the just in general, but better than the mistake due to the generality (of the law). And this is the very nature of the equitable, a rectification of law where law falls short by reason of its universality. This is also the reason why not all things are determined by law. There are some things about which it is impossible to enact a law, so a special decree is required. For where a thing is indefinite, as is, for example, the leaden rule used in Lesbian construction work. Just as a rule is not rigid, but shifts with the contour of the stone, so a decree is adapted to a given situation. Thus it is clear what the equitable is, that it is just, and better than just in one sense of the term. We see from this, too, what an equitable man is. A man is equitable who chooses and performs acts of this sort, who is no stickler for justice in a bad sense, but is satisfied with less than his share even though the law is on his side. Such a characteristic is equity; it is a kind of justice and not a characteristic different from justice. (NE1137b12-1138a03)

Equity requires that since situations are unique they must be evaluated

differently. As in the Leaden rule, decisions cannot be rigid, but must adjust to the case at

hand. Cases handled by Class One Citizen Review Boards lack individual evaluation. How

can the citizens serving on the board possess all the knowledge of the individual officers?

In addition, they will not know all the facts of each case due to lack of experience.

Cases require deliberation to render an equitable decision that is just. We need to examine all the mitigating factors to make the right decision. All disciplinary cases cannot be treated in the same manner claiming we are being just. Information such as the officer's work history, severity of the incident and prior offenses, all need to be weighed as part of the process. Thus, equity is the better 'rule', and that requires direct knowledge of each case. Class One Citizen Review Boards are not able to fill this rule because they lack the experience and time necessary to ensure equitable decisions.

The following example of a misconduct case will clarify this point:  Two officers (officer A and officer B) each receive a complaint of excessive force, for slapping a handcuffed prisoner. Both officers hit the complainant one time, each with an open hand. It would be just that both officers receive the same discipline, however, it would not be equitable.

Officer A is a ten-year veteran with five prior sustained cases this past year. Officer A slapped the complainant (a slender female) because she was arguing with him. When questioned about the incident, Officer A said "I slapped her because the bitch has a big mouth."

Officer B has just graduated from field training and has never been charged with any violations. Officer B slapped the complainant (a notorious gang member) because he attempted to bite another officer. When questioned about the incident, Officer B said "I'm very sorry, but I felt I had to do something."

An equitable decision would be to give Officer A more severe discipline than Officer B. Even though the violations are the same, the situations are not. Officer B would benefit from training, and most likely would not repeat his mistake. Officer A obviously

did not learn from his prior offenses and more severe discipline is needed to change his behavior.

> Thus we may conclude that, since it is a mark of men of practical wisdom to have deliberated well, excellence in deliberation will be correctness in assessing what is conducive to that end, concerning which practical wisdom gives a true conviction. (NE1142b33-35)

In the interest of equity, cases need to be decided by using all information possible. The police department is in the position to have all the needed information, so as to make the most equitable disciplinary decision. Class One Citizen Review Boards will not be able to render equitable decisions.

## Conclusion

This chapter examined a contemporary topic impacting law enforcement nationwide. Due to public outrage Class One Civilian Review Boards are being formed in many cities across our country. My central argument in this chapter has been that these boards hamper reform efforts. These boards move disciplinary decisions away from police leadership, shifting these decisions to a panel of citizens. These citizens lack the skill, necessary time and training to adjudicate complaints in an equitable way. Moving disciplinary decisions to an external body allows police supervisors to 'hide their heads in the sand.'

These boards are designed to address individual incidents of police misconduct, omitting any underlying systemic causes. Historically, these boards have been shown to be ineffective at reducing police misconduct. To understand this subject, this chapter began by separating the four classifications of citizen review boards.

Civilian review boards are separated into four classifications, depending upon the level of citizen involvement in the decision making process. Class Two Citizen Review Boards are designed to have the police conduct internal investigations and present their findings to a panel including both citizens and commissioned personnel. The panel considers all the facts and determines what (if any) corrective action should be taken. Their recommendation is forwarded to the police chief. This form of review allows for police and citizens to work as a team in rendering their decisions.

Class Three Citizen Review Boards serve only as a review process for citizens. After the police complete their investigation and impose discipline, the citizen  may request that the police reevaluate their finding. This is the weakest type of citizen review.

Class Four Citizen Review Boards serve as a audit process. These boards monitor the quality of dispositions and complaint processes of the police departments. When deficiencies are discovered, they report to the chief. The Board works with the chief to remedy any problems.

Class One Citizen Review Boards, unlike the other three classes, removes the police agency from the decision making process. These boards do not include any police members. Cases are reviewed and a panel of citizens determines the action to be administered. Recently, the number of these type of boards have skyrocketed. These have all been formed in response to public outrage over incidents of police misconduct.

Successful strides will only be made when police administrators, managers and supervisors are held accountable for misconduct under their command. Misconduct needs to be seen from an institutional level, as opposed to a series of individual acts. Class One

Citizen Review Boards serve to accomplish just the opposite. In dealing with individual

cases and lessening supervisor accountability, they are contrary to reform efforts.

Class One Citizen Review boards have been in existence since the 1940s. In New

York City these boards have been abolished several times, due to inefficiency. However,

after a major scandal surfaces, they are put back into place. Because of the political

popularity these boards possess, they often mean political survival for the chief or mayor.

Any positive results which comes from these boards is short lived since they fail to address

systemic problems. These boards are often viewed as quick and easy fixes, which usually

result in positive media coverage.

These boards are designed to regain public trust, as opposed to changing

organizational culture. The distinction between the four classes of citizen review are not

commonly known, thus it often becomes 'an all or nothing argument.' To regain public

trust, the organizational culture needs to become healthy, and Class One Citizen Review

Boards are not conducive to this goal.

Nationally, police unions have become very powerful. In many states (including

Nevada) police officers are protected by a bill of rights. This provides many safeguards,

including legal representation  when officers are accused of misconduct. Internal

investigators need to be extremely knowledgeable of these increased protections.

Investigators also need to be excellent interviewers, weighers of evidence and possess

other skills, which are only gained  with experience and training.

Since Class One Citizen Review Board members lack training and experience, the

quality of investigations suffer. This results in many cases being overturned during the

appeal process. The lack of time they can spend on an investigation, is another

shortcoming. In Washington, D.C., cases often take over four years before a decision is reached.

This lack of quality in investigations results in allowing dangerous officers to stay on the streets. Nationally, Class One Citizen Review Boards have been more lenient on wayward officers than traditional internal processes.

Moving the complaint investigation process to an external body results in eliminating responsibility from police leadership. Supervisors, managers and administrators can easily 'turn a blind eye' toward misconduct. As seen in Chapter Two, the 'code of silence' thrives on this behavior. When problems arise, police administrators can blame the board, as opposed to taking responsibility.

In Chapter One, we learned that all the commissions formed in the aftermath of police scandals have cited lack of supervisor accountability as a major contributing factor. All commissions also have listed the need to examine organizational problems, as opposed to the individual act of misconduct. How can any mechanism which diminishes supervisor accountability be thought of as a positive reform initiative? Also, Class One Citizen Review Boards are not designed to examine the organization. They have a limited focus. Again, How can any process that does not investigate institutional problems be beneficial for law enforcement?

The final section of this chapter is an evaluation of Class One Citizen Review Boards from a verification and social choice frame. In the verification frame, we will utilize empirical data from New York City and Philadelphia, both cities have a long history with Class One Citizen Review Boards. Two questions were presented to evaluate the success of these boards. The first question, "Are the number of sustained cases higher

using Class One Citizen Review Boards than IAB?" Secondly, "Did these boards reduce the level of reported misconduct complaints?" The answer to both these questions is "NO!"

In the social choice area, we utilized the works of Aristotle. The subject of virtuous conduct was the first area discussed. Aristotle stated that virtuous conduct is "hitting the median" and to be a person of virtue requires repeated practice. This seems to support the importance of leadership and training. Aristotle used the "pleasure versus pain test" to explain human behavior. People want to enjoy pleasure and avoid pain. The importance of organizations to have a morally sound process to recognize good conduct and sanction misconduct is consistent with Aristotle's *Nicomachean Ethics*. The subject of justice and equity mean was also discussed by Aristotle. Equity requires all facts be weighed in the adjudication of a complaint. Since, Class One Citizen Review Boards do not complete investigations in an equitable way, they are not consistent with Aristotle's *Nicomachean Ethics*.

<div style="text-align:center">Summary</div>

Thus far, in this thesis, we discussed many problems. In Chapter One, we looked at the shady history of American policing. Numerous scandals were discussed, and the fact that police misconduct is nothing a new was gleaned from this chapter. Reform strategies have not significantly changed since the 1930s. This leads to the conclusion that, what has been used in the past to address police misconduct, "just doesn't work."

In Chapter Two, we examined the organizational culture present in most police departments. This culture encourages social isolation and conformity. This culture is contradictory to both the 'code of ethics' and the 'oath of office,' police officers are

sworn to uphold. The 'code of silence' existing among police officers can be seen as a symptom of the existing culture. The argument was made that police management encourages this culture as a form of political survival.

In Chapter Three, Class One Citizen Review Boards were examined. The fact that these boards have not been successful has often been overshadowed by their political appeal. These boards are now the norm in most major cities. These boards serve to damage an already broken organizational culture, by removing supervisory accountability. These boards are certainly not a step in the right direction. In fact, they have hampered reform efforts.

In Chapter Four, we will be looking at ethical solutions. These proposed changes are not quick fixes, they are aimed at changing the organizational culture. Only by addressing the entire organization will progress be made. In this final chapter we serve to improve the organizational culture present in American policing by addressing institutional problems from an ethical way. Only then will we experience a reduction in police misconduct.

CHAPTER 4

STEPPING STONES FOR IMPROVEMENT

This thesis has identified many problems facing police leaders. In Chapter One,

we observed that misconduct is deeply rooted in American policing. In fact, it has always

challenged American law enforcement. Historically, reformers have failed in their attempts

to reduce police misconduct. The majority of initiatives were rebuffed by an organizational

culture resistant to change. Also, local politics have always influenced the level of police

misconduct.

In Chapter Two, the code of silence, so pervasive in American policing, was

examined. The existing organizational culture is playing a major role enabling the code of

silence to flourish. This unwritten code is powerful at all levels of police organizations.

Despite reform efforts, this code has only strengthened in recent years. This code often

serves to cover up or minimize institutional problems.

Police administrators must ensure that the virtues of justice, truthfulness and

good loyalty are paramount in their departments. Only by taking a 'zero tolerance' policy

against lying will the code of silence be reduced. Administrators need to ensure that the

virtues of truthfulness, duty and good loyalty are indoctrinated in the hearts of their

officers.

The existing police organizational culture needs to be changed before long term

positive improvement will occur.  Conformity and isolationism  are valued characteristics

within police organizational culture. These two qualities can be detrimental to the moral soundness of an organization. They encourage officers to lie in order to protect fellow officers out of a sense of misguided loyalty.

In Chapter Three, citizen review boards were explored. The difference among the four levels of citizen review boards is important to understand. Class Two, Three and Four Citizen Review Boards utilize both civilian and commissioned officers in the disciplinary process. Class One Citizen Review Boards are composed entirely of civilians, taking the disciplinary process away from the police. Class One Citizen Review Boards have become a popular response to police misconduct nationwide. However, my position is that these boards are dangerous for the future of American policing.

Class One Boards are established without concern for moral soundness or long term quality control. They have not been successful at reducing police misconduct. These boards remove managerial accountability and lack the expertise required to conduct internal investigations. Class One Citizen Review Boards fail to confront underlying systemic problems which are at the base of police misconduct.

In Chapter Four, we will map out a path for improvement which is based upon moral soundness. Simply put, past reform efforts have failed because they have 'aimed at the wrong target.' They have had their sights set solely on the legal frame as opposed to moral soundness. Positive long term results will occur when sights are positioned on moral soundness. This thesis not only identifies problems but also gives recommendations to improve the quality of American policing.

This path to improvement is directed at the organizational problems which have been identified in the preceding three chapters. While all 'six steps' of Chapter Four, can

be easily implemented, radical improvements will not be seen overnight. Just as the problem of police misconduct has had a long history, positive results will not be immediate. Long term positive change will occur when the organizational culture improves.

Two premises are needed to serve as maxims for police reform efforts. First, police misconduct needs to be viewed from a normative (organizational) viewpoint as opposed to a series of individual acts. The entire organization must be examined, not just the individual officer or incident. Secondly, positive change must be morally sound in order to provide long term improvement. I will use the analogy of a hiker stepping on stones while crossing a lake. Without stepping over all six stones a person will not reach the shore. All six steps are important to improve organizational culture.

Step One: Ensures all officers receive ethics training throughout their careers. All officers have taken an oath of office and swear to abide by a code of ethics. Most, however, cannot remember either. Officers need to be taught about the important role police perform in our society, the trust placed in them, and the way democracies delegate authority to police officers. This training needs to be ongoing throughout an officer's career. Only when officers understand what 'proper conduct' is, can they be held accountable. As we have seen in Chapter Three, training is essential to virtuous conduct.

Step Two: Requires leaders to be pro-active in preventing police misconduct. As observed in Chapter One certain situations have historically resulted in high levels of police misconduct. Covert assignments (Vice and Narcotic Bureaus) have been breeding grounds for large scale police scandals. In the majority of corruption scandals, suspect officer(s) had a long history of misconduct complaints which were never properly

adjudicated. Low income areas are typically the locations where the majority of misconduct incidents occur. These are only some of the predictability factors police leaders should closely monitor. (See Chapter One)

In Chapter Two it was observed that weak supervision is a factor in cases of police misconduct. When supervisors are not held accountable for the conduct of their subordinates we are dancing with disaster. Also, when safeguards are not put into place in high risks assignments (Vice, Narcotics, Intelligence), there is a high likelihood police misconduct will transpire. Special attention must be taken in low income areas ensuring all misconduct complaints are throughly investigated.

Step Three: Requires organizations to formally acknowledge virtuous conduct. Since officers should be disciplined for unethical behavior, the converse must also be the case. A process rewarding virtuous conduct needs to be established within the organization. This needs to be incorporated into the promotional process, thereby ensuring that people with a reputation for virtuous conduct are promoted into supervisory positions. This change would send a message to all officers that virtuous conduct is an important attribute of a leader.

Conduct both on and off duty should be considered for recognition. Officers who demonstrate outstanding citizenship serve to benefit their departments. Good citizenship reduces police isolationism and improves the organizational culture. In Chapter Two it was shown that isolationism is a major factor in the code of silence.

Step Four: Calls for leaders to take 'a zero tolerance policy' toward untruthfulness. By meting out light discipline when officers are caught lying, supervisors are condoning this behavior. As seen in Chapter Two of this thesis, lying is the lifeline of

the code of silence. Progress will be seen when police executives ensure that strong disciplinary action is given to liars. A lack of public trust was identified as the major reason for the increasing number of Class One Citizen Review Boards. Demanding honesty from all officers will increase public trust.

Step Five: Recommends that Chief Executive Officers (CEO) empower their Internal Affairs Bureaus (IAB). This Bureau needs to be pro-active in dealing with police misconduct. Investigators assigned to IAB need to have the support of the Chief Executive Officer (CEO). IAB should report directly to the CEO. Intermediary levels separating the CEO and IAB reduces the quality of IAB investigations. Information becomes distorted when levels separate the CEO from IAB.

In some departments IAB reports to a Deputy Chief as an intermediary level. Deputy Chiefs typically oversee several bureaus. A Deputy Chief who oversees IAB and the Detective Bureau, is put into an uncomfortable position when a complaint is filed against a detective. The Deputy Chief is torn between loyalty to the detective and the virtues of truthfulness and duty. This conflict dramatically impacts the quality of investigations. Information which needs to be kept confidential during the investigation may be leaked out, in an effort to lessen its negative impact.

A Deputy Chief is evaluated by his superiors on their ability to manage different bureaus. Since misconduct occurring within the Detective Bureau will negatively impact the Deputy Chief's evaluation and reputation, they are not a disinterested party to internal investigations. How zealous will a Deputy Chief be investigating misconduct within their own division?

The quality of IAB depends to a great extent upon the objectivity of its investigations. The CEO is in a better position to remain objective than intermediary levels. This is why IAB needs to report directly to the CEO.

It is also recommended that  IAB be responsible for all misconduct complaints, both administrative and criminal. This will increase the quality of investigations, ensure confidentiality and reduce the likelihood of coverups.

IAB needs to be open with citizens concerning misconduct investigations. Creating a citizen group, reflective of the community, which  meets with IAB on a regular basis, could improve public trust. This committee would serve as a Class Four Citizen Review Board, working with police to improve the process and open lines of communication. When citizens become involved in the process, they will have confidence in IAB.

Step Six: Suggests the use of a 'disciplinary matrix' when deciding corrective actions. This will ensure equity and improve consistency in decisions throughout the department. By the CEO setting parameters for these decisions, he or she has more control over the process. When officers know the consequences of their actions beforehand, they will be more careful to abstain from the conduct to avoid punishment. The Minneapolis Police Department began utilizing a disciplinary matrix in 1996. People need to know ethical conduct will be rewarded and the converse is also true. This is consistent with Aristotle's *Nicomachaen Ethics*, and will greatly benefit the organization.

These stepping stones will serve to empower leadership, improve organizational culture and make police departments' more responsive to their communities. It is my belief

that these steps are both legally and morally sound, and will improve the quality of American policing.

<div align="center">First Step (Ethics Training)</div>

Ethics training's importance in maintaining organizational ethical soundness can be compared to that of an exercise routine in maintaining physical fitness. A fifty year old cannot be expected to run a marathon if he has not exercised since high school. The chances of him or her finishing the race, without being in an ambulance, are almost nonexistent. If the fifty year old is an avid runner, his or her likelihood of completing the race is very probable. Maintaining a level of physical fitness is a prerequisite in meeting the challenge of completing a marathon. An officer cannot be expected to remain ethically sound if ethics training is insufficient. Ethics training is a prerequisite in maintaining an ethically sound police department.

Ethics training is the first step, because without it we are destined to fail. Typically police officers receive little, if any, training on ethics during their careers. Officers take an oath of office and agree to abide by a code of ethics, however few officers can recall the meaning of these profound documents. The important function police fulfill in our society must be imprinted in the minds of all officers. Only by learning from the mistakes of the past can we improve the future. Training must include a review of American policing with emphasis placed on misconduct scandals.

The challenge is to ensure ethics training is pragmatic for officers. This can be accomplished by discussing current situations from an ethical frame. This requires police leaders to seek contemporary issues to discuss with their people. Ideal issues can be gleaned from examining challenges facing officers in their present assignments. These

discussions can last from five minutes to several hours. The following example could be discussed with officers concerning ethical ramifications.

## A Case History

Officer Jones receives information during briefing that a black male adult had raped a lady in the alleyway behind the Sahara Hotel. The description is very limited, however detectives believe the suspect is possibly a homeless man, due to the location and time of occurrence. No other information is given at this time.

Officer Jones is a hardworking policeman and is familiar with many of the homeless people living near the Sahara. He talks to several homeless men and receives information that the suspect is presently hiding out near the railroad tracks. Officer Jones also learns a detailed description of the suspect and his moniker (street name).

Officer Jones is presently number one on the list for the Detective Bureau, and realizes that this arrest will be his ticket into becoming a detective. Rather than sharing this information with other officers he decides to keep it to himself, hoping he will make the arrest himself. Despite his best efforts he was unsuccessful in apprehending the suspect during his shift, he secures (ends his shift), hoping that he'll catch the suspect tomorrow.

The next morning in briefing, Officer Jones learns that this suspect has committed another rape. Unfortunately, last night the victim was murdered after she tried to resist. Officer Jones now fears he will be severely disciplined after all the facts are uncovered.

*Questions for squad members*

1. Should Officer Jones remain silent about the information, hoping it doesn't surface?
2. Was he being honest by withholding information about the suspect?
3. Is concealing information ever morally justified?
4. Should Officer Jones be disciplined?

5. Is it true that sharing his information would have diminished its value toward becoming a detective?

Scenarios can easily be discussed in squad briefings. The briefing room is ideal for this type of training. This setting allows for supervisors to train officers in a short amount of time in a comfortable environment.  These type of discussions serve to improve relationships among squad  members. The supervisor can also reinforce departmental values among his/her officers during this time. Realistic scenarios serve to stimulate officers into thinking about the ethical challenges they face.

Different scenarios can be given each month. Officers, supervisors and the bureau commander should be involved in selecting scenarios. This will result in current challenges  being discussed within an ethical frame. Encouraging officers to think of issues within an ethical frame is a large step in the right direction. Important topics to be included would be justice: truthfulness, moral courage, whistle-blowing, isolationism, excessive force, individual accountability and maintaining public trust. These training sessions will translate into better performance on the streets.

In addition to briefing room training, officers should attend an annual eight-hour class in ethics. This class would include a review of the oath of office, code of ethics and a discussion of the police role in our democracy. This training needs to be mandatory for all ranks. Contemporary challenges facing the department (e.g., budget cuts, diversity issues, internal scandals) should be discussed during this training. This training will serve to improve the work culture and improve service to the community. As seen in Chapter Two of this thesis, officers survive in an organizational culture that often undermines moral soundness. Training will reduce this negative undercurrent by augmenting officers' characters.

Officers need to maintain high ethical standards throughout their careers. Ethical knowledge needs to be imparted to officers on a regular basis if they are to remain morally sound. This will also serve to improve the existing organizational culture. Executives striving to improve their departments will ensure the ethical training is of high quality and continuous.

By reviewing case studies, officers will see how other officers have tarnished their badges, thus being better able to avoid similar situations. New York City Police Commissioner Howard Safir has recently begun such an initiative within his department. "An untapped resource for promoting integrity is having cops who did get into trouble recount their experiences and what they learned to other cops."[29]

Ensuring that officers receive ethics training throughout their careers will be sending a clear message, "ethical conduct is demanded from all members of this department." Ethical soundness needs to be included in decision making at all levels of the organization. By acknowledging such issues as corruption, brutality, the code of silence and accepting gratuities, officers will be knowledgeable of these challenges and better prepared to deal with them.

## Second Step (Misconduct Prevention)

Moreover, we must watch the errors which have the greatest attraction for us personally. For the natural inclination of one man differs from that of another, and we each come to recognize our own by observing the pleasure and pain produced in us (by the different extremes). We must draw ourselves away in the opposite

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[29]Stephen J. Gaffigan, Police Integrity, Public Service With Honor, U.S. Department of Justice, (quotation from NYPD Commissioner Howard Safir), January 1997, p28.

direction, for by pulling away from error we shall reach the middle, as men do when they straighten warped timber.[30]

Crime prevention is an important factor in reducing crime. Most people commit crimes because they have both the predisposition and the opportunity to act. This is the reason why citizens are told to lock their doors, walk on well lite streets and not leave their vehicles unattended while the engine is running. The same logic needs to be applied in the area of police misconduct. By reducing opportunity we are likely to have a lower level of police misconduct. The converse will also be true.

Preventative measures need to be in place to reduce misconduct. In Chapter One it was noted that throughout the history of American policing, certain factors have been present in localities where misconduct is high. Whether it be in New York, Philadelphia, New Orleans or Los Angeles, certain warning signs existed prior to major scandals. My argument is that police executives can reduce misconduct by being preventative.

Leaders can reduce misconduct by following these recommendations:

6.  Ensure thorough background checks are conducted on all police candidates. This is an important process and should never be compromised. Background investigators need to be thoroughly trained and carry manageable caseloads so they can be effective. History has shown that when background checks are not properly done, misconduct is inevitable. The infamous 'Miami River Cops' were hired due to shoddy background checks. This is an area where quality should never take a backseat to cost savings.

7.  An appeal process needs to be in place to address conflicts. This provides a mechanism allowing officers to have their case presented before an objective party. This process should not turn into 'let's make a deal,' where discipline is reduced similar to plea bargaining in a criminal case. If officers view this process as a method to reduce discipline, as opposed to an unbiased hearing, frivolous appeals will be filed.

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[30]Martin Ostwald, <u>Nicomachean Ethics</u>, New Jersey: Prentice Hall, 1962, Book II (NE1109b2-6).

8. Drug testing should be mandatory throughout the department. This testing should include pre-employment, random and reasonable suspicion. Pre-employment should take place before a position is offered to a candidate. The test must be given without prior notice to the candidate, during the background check. Random testing should occur on at least a monthly basis. Names can be randomly selected and the employee is notified they have to submit to a test. The employee should report to the testing facility within 24 hours of notification. Reasonable suspicion testing is when an employee's behavior is consistent with a person who is under the influence of a controlled substance. These tests should be given when the facts known to the investigator or supervisor would lead a prudent person to believe the employee is under the influence.

9. Ensure safeguards will exist in covert assignments (Vice, Narcotics and Intelligence). Working undercover requires an officer to act like a criminal in the furtherance of a criminal investigation. This role has a major impact on the officer, whether or not the officer is aware of it. These assignments should ensure officers are rotated at least every two years. The argument against this is that the unit will suffer due to a lack of experience. This can be remedied by allowing officers to return after a six-month assignment back in Patrol. Officers should be cleared by a psychologist prior to being transferred back into a covert assignment. These units can stagger the transfers of seasoned officers, so that a certain number remain. The minor disruption in productivity of the unit, is far outweighed by the benefit to individual officers. Allowing officers to remain in covert assignments indefinitely is detrimental to both the officers and the department.

10. Supervisory accountability is the main factor influencing police misconduct. Holding all supervisors accountable for the actions of their subordinates is essential in reducing police misconduct. Records can be maintained on the number and type of all complaints filed. These can be tracked under division, bureau, shift and squad. When a squad receives a high number of complaints, the supervisor needs to be held accountable. Computer software is available that could generate reports which produce this valuable information. Only when supervisors are held accountable can we expect misconduct to be reduced.

11. History has shown officers who engage in severe misconduct typically have a lengthy record of complaints. In the majority of these cases, past complaints were not adjudicated properly. All complaints must be adjudicated thoroughly. In cases where investigations were 'swept under the carpet,' the Investigator needs to be held accountable for his/he actions.

12. An early warning system needs to be developed alerting supervisors of officers having performance problems. This system needs to track all complaints filed against an officer and inform their chain of command after a certain number of complaints are logged. Ideally, this system will monitor entire squads, measuring the quality of

supervision. This system can be used to improve the performance of the identified officer. This system should be non-punitive, serving only to put the officer on notice.

13. An Employees Assistance Program needs to be available. This program is designed to have peer and professional counseling available to all officers. Since police work is a stressful profession, it is imperative that these resources are available. Employees utilizing this resource need to remain confidential, unless they are a threat to themselves or others.

14. Integrity tests should be conducted on a routine basis, particularly in low income areas. All these tests are conducted under a controlled environment. These tests can be as simple as having an officer respond to a found wallet call. The wallet contains a few hundred dollars in cash. After the wallet is impounded all the cash must be included. If the money is not impounded, the officer is a thief.

Other forms of these tests can be acclimated toward the most common complaints received in an area. If minorities are complaining about having their rights violated at a certain location, an integrity test can be useful. An undercover officer that is a member of the minority, can go to the location and see what type treatment he or she receives. Opponents of integrity testing argue, "it is setting up fellow officers." This is not valid, because honest officers have nothing to fear.

Integrity tests are comparable to conducting a vice sting operation. Many 'Johns' allege entrapment during their trials. Courts have held in the majority of cases this is not entrapment. These operations only allow the act to occur, they do not entice the suspect to commit the crime. The same is true of these tests, the officer is, or is not, predisposed to commit the violation. To assert integrity tests are entrapping officers is invalid. Integrity tests can be a valuable tool in combating police misconduct.

Third Step (Rewarding Virtuous Conduct)

Police leadership has a responsibility to not only monitor and address misconduct, they also must be vigilant on commending virtuous behavior. This is

consistent with Aristotle's pleasure/pain test (reference Chapter Three of this thesis). Employees need to know virtuous conduct is valued by their agency. It is very common to see an officer receive a special award for arresting an armed suspect. I will argue that virtuous conduct also needs to be commended.

As we observed in Chapter Two, police organizational culture encourages isolationism and conformity. These two qualities can be minimized by rewarding virtuous conduct. Both on and off duty conduct should be considered when acknowledging conduct. These awards can be linked directly into the promotional process. This will have the dual benefit of acknowledging virtuous conduct and promoting employees that mirror departmental values.

The following serves as an illustration of this reward system in action. Officer Smith is a seven-year officer and is assigned as a Community Oriented Policing Officer in a low income neighborhood. Through contact with residents in his area he learns of several high school students who cannot afford to go to college because of financial reasons. Smith coordinates with a large company in the area, and facilitates the youths getting weekend jobs along with scholarships to a local college. Command Officers learn of his actions from civic leaders who are impressed with Smith's initiative.

Smith should be officially recognized by his department. This award needs to become part of his personnel file which will be viewed by the promotional board. The Personnel Bureau  should include a certain percentage of the score for community involvement. If 10% of the total score were set aside for this area, Officer Smith would have an advantage in the promotional process. By identifying 'community involvement' as

part of the promotional criteria the department will reduce isolationism. Another benefit of this would be promoting officers who have a record of virtuous conduct.

Other areas of community involvement that should be recognized would include coaching, tutoring, serving on town boards and other types of volunteering. These activities are actually functions of good citizenship. My position is that good citizenship is a prerequisite to being a good officer.

Conformity is another trait highly valued in the police culture. In addressing this, officers need to be recognized for developing their own initiatives. An officer who enrolls in computer classes, Spanish classes or other subjects that will improve his or her value to the department should be recognized. The department should pay for these classes, and ensure his or her initiative is documented in their personnel file. This file is viewed by the promotional board and will improve chances of the individual being promoted.

> The emerging economy is based on knowledge, imagination, curiosity and talent. What if we could learn to tap the wonderful, rich differences among people? Wouldn't a corporation that could exploit the uniqueness of each of its 1,100 employees (or 10 or 10,000) be that phenomenally powerful? Put negatively, isn't a corporation that doesn't figure out how to use the special curiosities of its people headed for trouble?[31]

True leadership goes a long way in reducing conformity. When a leader talks with an officer about expanding his or her horizons (college classes, specialized training or temporary assignments), officers are greatly influenced. Leaders have a responsibility to look for officers who possess attributes that can improve their departments. This is one of the cornerstones of community policing. Such a policy of recognition encourages officers to fill roles that requires them to exceed normal expectations.

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[31]Tom Morris, <u>If Aristotle Ran General Motors,</u> New York: Henry Holt and Company, 1998, (quotation from Tom Peters) p186.

Police leaders must also be aware, as we learned in Chapter Two, 'whistle blowing' often serves to destroy the career of the 'whistle blower.' Any discussion of virtuous conduct would be incomplete without considering this subject. The personal trauma that the officer goes through  needs to be addressed.

Typically, during an internal investigation several personal conflicts are taking place. The targeted officer is 'under the gun,' however, he or she has support. The union, fellow officers and friends rally to assist them during this time. The investigating officer does not enjoy conducting the investigation, although  he or she is just doing their job. The most difficult position in the process is being the witness officer. He or She has to give testimony against a friend, and will be labeled as a 'snitch' by other officers. He or She does not have the support of their union or fellow officers. As seen in Chapter Two, many officers are not courageous enough and lie.

 Supervisors can guide witness officers through this period by focusing on the virtues of duty, good loyalty and truthfulness. Leaders must be supportive to officers facing this internal conflict. Witness officers need to be reassured  by superiors that telling the truth is most important. It is up to their supervisor to ensure other officers are not being disruptive in the work environment (making comments, not backing the officer up). The superior should also consider having the witness officer contact the Employee's Assistance Program during this difficult time.

Fourth Step (Zero Tolerance For Untruthfulness)

Administrators need to take a 'zero tolerance' approach to lying. This statement may seem simple enough. However it will have a major impact on the entire department. As was discussed in Chapter Two, the code of silence is synonymous with lying. To

handle misconduct in an ethical way, this mandate must be communicated to all officers -

Lying will not be tolerated.

This communication has to be more than  mere lip service, it must become

reality. A policy needs to be written in stating this fact. An example of such a policy is as

follows:

"Truthfulness is required by all members of this Department. All sustained

complaints of 'untruthfulness' will result in at least a 40-hour suspension without pay"

As shown in Chapter Two, discipline for this violation presently ranges from an

oral warning to termination. This policy would demonstrate to all officers that

administrators take this violation seriously. Having a serious punishment will serve as a

deterrent to officers who are contemplating being untruthful. This would also put the

union in the unique position of advising witness officers to be honest, as opposed to

sticking with the story.

A policy also needs to be written to inform all officers that observing misconduct

and failing to intervene and report the incident will result in disciplinary action. Again, by

mandating these activities into policy, the administration is taking a solid step in the right

direction. Such a policy might read:

"All Officers have the duty to report misconduct to their Bureau Commander

prior to securing their shift. Officers also have a duty to intervene in incidents of

misconduct and immediately notify the on-duty Lieutenant. Violation of this policy will

result in disciplinary action."

This policy will demonstrate to all officers that code of silence will not be tolerated. By addressing the virtues of truthfulness and duty, a perennial message will be sent to all employees; Lying will not be tolerated!

Changing the organizational culture will encourage officers to think about situations from an ethical frame. Good supervisors and peers will support officers who are involved in difficult situations. Officers will see that honesty is important within the organizational culture.

## Fifth Step (Empower The Internal Affairs Bureau)

An important element in any reform strategy needs to include the empowerment of the Internal Affairs Bureau (IAB). This Bureau needs to have the support and resources necessary to accomplish their mission. IABs missions may vary slightly, depending upon jurisdiction, In most agencies, however IAB is responsible for investigating and monitoring misconduct complaints.

IAB needs to report directly to the Chief Executive Officer (CEO) of the agency. Obviously, in large departments, daily operations need to be supervised by a lesser rank, but they must have the ability to report directly to the CEO. This allows for the CEO to know immediately the status of on-going internal investigations. This also reduces the chance of facts being altered, in an effort to put the best spin on cases.

IAB Investigators need to be selected by the CEO. These selections must to be based on past performance and outstanding integrity. All investigators should be at least the rank of Sergeant, due to the fact most investigations concern police officers. These investigators should be highly respected throughout the department and have experience as an investigator prior to consideration.

As mentioned in Chapter Three, to be effective in IAB, investigators must possess certain skills. IAB investigators should receive the best training available to assist them. When an IAB investigator is selected, they should be notified their conduct, both on and off duty must be above reproach. Any misconduct will result in a transfer out of IAB. Investigators who have successfully served in this assignment should be assisted in the promotional process.

IAB needs to investigate all complaints of misconduct, both administrative and criminal. Opponents to this argue, "Since as explained in Chapter Two, employees are required under Garrity to give statements to IAB investigators, criminal prosecutions will be tainted." This position is invalid, since when conducting a criminal investigation, Garrity is not given. In fact, investigators make it clear to the suspect employee what type of investigation is being conducted. The mere presence of an IAB investigator does not mean the investigation is only administrative.

When criminal cases involving employees are assigned to other bureaus, much is lost. Regular detectives tend to have a heavy caseload, which results in lengthy delays. Also the facts of the case need to go through additional levels of command, resulting in distortions. Sending investigations outside IAB results in delays, coverups and a lack of quality.

When a criminal case requires specialized expertise (e.g. Forgery, Sexual Assault, Homicide), investigators from the concerned detail can assist. However IAB needs to be responsible for the outcome. By allowing IAB to be responsible for all investigations both the quality and the integrity will be of a higher standard. This reduces the chance of a coverup.

Sixth Step (Disciplinary Matrix)

The most subjective phase of the disciplinary process is the decision, 'What is the proper penalty?' This step examines the process utilized in deciding appropriate corrective action. The present system utilized when making these decisions is a consideration of several factors. The most common considerations are the severity of the complaint, the prior history of the concerned employee and whether the violation was due to a lack of training. In 1996, the Minneapolis Police Department implemented a disciplinary matrix to be used when making disciplinary decisions. The use of a disciplinary matrix has outstanding benefits for law enforcement and is consistent with Aristotle's *Nicomachean Ethics.*

This current process lacks any formalized procedure. In reality, for most supervisors it is on-the-job training. This step will advocate the use of a disciplinary matrix in making these decisions. Supervisors can be educated on proper utilization of this matrix with minimal training. The matrix also includes a supervisory check list, ensuring all factors are reviewed.

This matrix is designed to ensure corrective actions are equitable and consistent throughout the department. One of the most common complaints about the discipline process is 'It's not a matter of what you did, it's a matter of who you work for.' In large departments it is very difficult for top administrators to be knowledgeable of all misconduct complaints. With this fact in mind, ensuring corrective actions are equitable is extremely difficult. This responsibility is typically delegated down to a Sergeant or Lieutenant. This results in a wide variance of discipline imposed under similar circumstances, depending upon the Bureau making the decision.

Many factors are important to consider while making these decisions. As we learned in Chapter Three, equity requires us to weigh the facts of the particular case during the deliberation process. This matrix requires the supervisor to examine all the mitigating circumstances concerning the particular case. By using 'weighting factors' the supervisor will be able to determine appropriate discipline (within the range) to reach an equitable decision.

This matrix is not designed to remove supervisory discretion from the disciplinary process. It is best described as a method for grouping similar offenses into a range of corrective actions. The supervisor must weigh other factors (weighting factors), and arrive at an appropriate decision. Utilizing this matrix will also increase consistency in disciplinary decisions throughout police departments. The use of this matrix will also serve to ensure supervisors are conducting quality deliberations when facing these difficult decisions.

When making decisions concerning discipline a certain amount of subjectivity is involved. This is a factor in many cases being modified or completely overturned during the Appeal Process. An example of this would be a veteran officer who receives a sustained complaint for using profanity while interviewing an elderly lady during a traffic stop. His Sergeant, who is a good friend, believes the discipline should be an oral warning. His Lieutenant believes the officer should be suspended. Both (Sergeant and Lieutenant) can present strong arguments supporting their position. Either decision may be the correct one in this situation; typically a compromise would be reached. Using this matrix will allow these decisions to be more objective.

In using this matrix, supervisors will still have a range of disciplinary actions (within the category) to select from. By completing the checklist, supervisors will be able to make better quality decisions. The supervisor will document his/her decision in a report which explains their deliberation. This report will serve as an excellent training tool and facilitates the appeal process.

Making disciplinary decisions is a difficult process. Using this matrix will establish a formalized process which ensures all-important factors are considered before a final decision is made. While this process will not make these decisions effortless, it will provide a road-map for supervisors to follow, thus reducing much confusion.

Since the goal of this matrix is to improve the organizational culture, honesty and communication are essential during this change process. To best implement this matrix, all department employees need to be trained on the matrix. Employees should be given the reasons for this change (equity in disciplinary decisions, consistency) and the importance of it. Having informed employees will result in less opposition during the change process. Nothing contained in this matrix should be kept a secret In fact, openness is essential.

This matrix also provides a deterrent benefit. When officers know the range of discipline beforehand, they will be less likely to engage in the violation. In Step Four, we used the same logic concerning 'untruthfulness.' Officers need to know that an action (misconduct) will result in certain consequences (discipline).

### Bureau Commander's Role Using the Disciplinary Matrix

After an internal investigation is completed, a notification is sent to the employee's bureau commander. The bureau commander will review the completed

Investigative Report and meet with the investigator. A decision will than be made by the bureau commander as to which 'Category' the sustained violation falls under.

The category in which a violation is placed will dictate which range of corrective action the employee will receive. The bureau commander will document his or her classification in a report which will be included in the complaint package. Copies of this package are given to the employee and their supervisor.

The decision as to which category is selected must be objective. The bureau commander needs to focus solely on the facts of the investigation during this process. Factors such as the personnel history of the employee, number of prior violations, and commendations are weighing factors which should not be considered during this phase.

The following are definitions of each category, followed by examples of justifications. These justifications are not all inclusive and can overlap between categories.

## Category "A" Violation

Category "A" violations will result in either an oral or written reprimand.

1. The incident resulted in minor injury or damage to property.

2. The incident was the result of a lack of training, as opposed to an intentional disregard of policy or law.

3. The incident happened so quickly, the employee had no time to seek advice.

## Category "B" Violation

Category "B" violations will result in discipline stronger than a written, not to exceed a suspension of more than 40 hours.

1.  The incident resulted in moderate injury or damage to property.

2.  The employee had time to seek advice before acting (time was not a factor).

3.  The act was not the result of a lack of training.

4.  The act was an intentional disregard of policy or law.

## Category "C" Violation

Category "C" violations will result in a suspension over 40 hours, but not to exceed 120 hours.

1.  The incident resulted in serious injury or damage to property.

2.  The employee's actions violated the code of ethics, oath of office or department values.

3.  The employee's actions jeopardized the status of a criminal investigation.

4.  The act was a deliberate violation of policy or law.

## Category "D" Violation

Category "D" violations will result in suspensions over 120 hours, demotion, termination or criminal charges.

1.  The employee committed a criminal act.

2.  The conduct was so outrageous that attempts to correct performance would be fruitless.

3.  The employee's actions violated the code of ethics, oath of office or department values.

4.  The act was a deliberate violation of policy or law.

5.  The employee's actions jeopardized the status of a criminal investigation.

6.  The conduct demonstrated a lack of integrity.

Consistency and wisdom in the bureau commander's decision as to which category to use is imperative to the success of this matrix. Communicating with the investigator and thoroughly reviewing the case file is crucial. After a decision concerning the category is reached, the employee's personnel file must be researched. In cases where the employee had a previous sustained complaint for the same violation, the category may be moved up.

An example would be if a decision were made to categorize an excessive force complaint as an "A" and the officer's file contains a previous force complaint which occurred 6 months before, the category could be changed to a "B" for the new complaint. The reason for not reviewing the file until after a decision has been made is to increase objectivity. This change must also be documented on the report submitted by the bureau commander.

<p align="center">Supervisor's Role Using Disciplinary Matrix</p>

When a supervisor receives a complaint package from his/her bureau commander, he or she must review the matrix to determine the appropriate range of corrective action. Based upon which classification the violation is assigned, the supervisor now has a range of actions to take. This decision requires the supervisor to weigh many factors.

Weighing factors are additional points that need to be considered when determining equitable discipline, excluding the violation itself. Where the bureau commander based his or her decision on the act itself, the supervisor focuses primarily on the actor (employee). Again, it is important that these decisions remain objective.

The following are examples of negative weighing factors. These will increase the

level of discipline (within the range):

1. Employee has a poor work history, substantiated by negative evaluations and critical incidents.

2. Employee is not remorseful about the incident.

3. Employee refuses to take responsibility, instead makes excuses.

4. Employee is not receptive toward training.

The following are examples of positive weighing factors. These would justify

minimal discipline (within the range):

1. Employee has good work history. Substantiated by positive evaluations and commendable actions.

2. Employee takes responsibility and is remorseful.

3. Employee is receptive toward training.

To assist supervisors in this process a checklist is provided. This checklist needs

to be completed by supervisors and will be included in the complaint package. This

checklist would include these below steps:

1. Utilize matrix to determine range of corrective action

2. Review Investigative Report

3. Reviewed employee's personnel file

4. Interview employee concerning incident

5. List all positive and negative weighing factors

6. Make a determination concerning appropriate discipline

7. Attain approval from intermediate level of supervision and inform employee

8. Completes all reports, ensuring weighing factors are given to justify discipline

9. Serves discipline on employee, ensuring a copy of complaint package is given to employee

10. Advises employee of appeal process

When the supervisor determines the weighing factors, it is essential that he or she documents their decision in a report which will be included in the complaint package. This report, coupled with the bureau commander's, will serve to justify why a certain corrective action was taken. The employee can review the decision  making process and will better understand why the action was taken.

While this matrix is certainly not offered as being a panacea, it is a major step in the right direction!

## Conclusion

This final chapter focused on positive steps which can be taken to improve police organizations. These improvements are aimed at an organizational culture, in dire need of reform.  This culture plays a pivotal role influencing the level of misconduct within the organization. By improving this culture we will make positive reform in the disciplinary process and improve quality of police service. As cautioned in the beginning of this chapter, "positive change will not occur overnight.' While all six of these steps impact police misconduct, they will also serve to improve the entire organization.

The first three steps serve as global organizational changes. Step One calls for ethics training to be continuous throughout all officers' careers. Step Two requires leaders to be preventive in reducing misconduct. This step is compared to crime prevention, in that limiting the opportunity will reduce misconduct. Step Three is simply for the department to recognize virtuous conduct. This recognition includes acts both on and off

duty. This will show officers that being a good citizen is an essential element in being a good officer.

The last three steps focus on police misconduct. Step Four is for leaders to take a 'zero tolerance' toward lying. Officers caught lying need to be strongly disciplined. Two policy recommendations are included to memorialize this paradigm shift. This step will weaken the code of silence and improve organizational culture. Step Five is to ensure the Internal Affairs Bureau (IAB) has support from the Chief Executive Officer (CEO). IAB needs to report directly to the CEO. They also must be responsible for all misconduct complaints both criminal and administrative. This will improve quality and reduce the chances of a coverup.

Step Six calls for the use of a disciplinary matrix when deciding corrective actions. This matrix will allow the CEO to establish ranges of corrective actions for all violations into four categories.  When a complaint is sustained, the employee's bureau commander decides which category is most appropriate. This decision is based on reviewing the complaint file, interviewing the Investigator and focusing on the act itself. After his/her decision, a report is included in the complaint package and it is sent down to the employee's supervisor. This report will document how the bureau commander arrived at his or her decisions as to which category is appropriate.

The supervisor will use weighing factors to determine the discipline to be meted out. These weighing factors will focus on the actor, as opposed to the act. Things such as work history, attitude of employee and experience, are examples of weighing factors. After the supervisor completes his/her deliberation they will complete a report, listing all the weighing factors used in their decision. This report will also be included in the

complaint package. This matrix will serve to make discipline more equitable and consistent throughout the department.

Since, at the present time there is no formalized process used when making disciplinary decisions, the matrix will provide additional benefits. Supervisors will have a checklist to use, which will serve as a road map when making these difficult decisions. With the bureau commander and supervisor's reports in the complaint package the employee should realize the decision was equitable. These reports will also be valuable during any appeal process. This matrix will also serve as a deterrent to employees by knowing the penalties assigned to certain violations.

## Summary

Cities will have no respite from evil, my dear Glaucon, nor will the human race, I think, unless philosophers rule as kings in the cities, or those whom we now call kings and rulers genuinely and adequately study philosophy, until, that is, political power and philosophy coalesce, and the various natures of those who now pursue one to the exclusion of the other are forcibly debarred from doing so.[32]

While the first three chapters of this thesis brought up many challenges, Chapter Four serves to lay out a path for improvement. By examining challenges from a normative frame, we have utilized philosophy to reveal this path. The obstacles we encountered during this journey were  cleverly disguised as being formidable. In reality, they were simple.

In Chapter One we explored the history of American policing. Due to corrupt local politicians desiring to increase power, the early years of policing in America were riddled  with misconduct. Policing was reflective of the corrupt local political machinery of

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[32]Tom Morris, If Aristotle Ran General Motors, New York: Henry Holt and Company, 1998, (Socrates, according to Plato), p175.

the day. Despite the best efforts of police reformers little progress was made until the 1930s.

During the 1930s (Scientific Management Period) much of the political involvement was removed. Police became thought of as 'crime fighters' instead of 'political bullies.' Replacing political oversight was the creation of civil service boards. These boards are still in existence today.

From 1940 through the 1960s, the police were not open to the public. The thinking was that since the police were the only experts on fighting crime, citizen involvement was not necessary. During this period, despite much police misconduct, the police were a 'closed society.'

Beginning in the 1960s the media played a large part in exposing police misconduct. Numerous acts of unrestrained police misconduct were broadcasted on television sets across the country. Incidents liked the Democratic National Convention in 1968, racial confrontations and Vietnam protests showed police response as being greatly flawed. The public was realizing that police misconduct was a serious problem. The movie based on Frank Serpico, showed that the largest police department in the United States had systemic corruption and a very powerful code of silence.

In the 1970s and 80s, the police welcomed community involvement. The image of the police greatly improved during these decades, in large part due to the television and movie industries. Programs such as D.A.R.E and Neighborhood Watch were created during this period. In the 80s, Community Oriented Policing (COP) began. COP is a partnership between the police and citizens living in the community to work together to

solve problems. With COP, public trust reached an all time high. The subject of police misconduct was not seen as a serious problem during this period of time.

On March 3, 1991, the video taped arrest of Rodney King resulted in destroying much of the public trust nationwide. During the 90s , police misconduct has been at the forefront of much academic discourse. Numerous police scandals surfaced nationwide. The code of silence is still alive and strong in American policing.

In Chapter Two the code of silence was examined. This code may be best described as officers lying to protect fellow officers engaged in misconduct. We noted that the police organizational culture serves to perpetuate this code. Isolationism and conformity are highly valued in this culture. Both of these traits serve as a catalyst to the spread of the code.

The organizational culture encourages isolationism, conformity and misguided loyalty. It is contrary to the code of ethics and oath of office, which all officers swear to uphold. Before the code of silence can be reduced, the organizational culture needs to be modified. As explained in Chapter Two, if departments ensure the virtues of truth, duty and good loyalty are paramount in their agencies, positive change will result.

Police Executives often use the 'rotten apple' idea to minimize police misconduct. This is detrimental to the agency because it serves to hide the underlying systemic problems. The code of silence conceals the existence of wide spread organizational problems. For this reason, executives have been hesitant to admit its existence, or minimize its negative impact.

Since the code of silence is synonymous with lying, reform efforts need to be directed at the virtue of truthfulness. Meting out light discipline to officers who are caught lying is condoning untruthfulness.

In Chapter Three citizen review boards were examined. Citizen review boards are differentiated into four classifications, depending upon the extent of citizen control. Class two, three and four Citizen Review Boards, include both citizen and commissioned officers. These boards are design to improve the quality of complaint processes, by having citizens and officers work together or solutions.

Class One Citizen Review Boards are composed entirely of citizens. These boards have skyrocketed across America during the past decade. Most of these boards have been established in response to public outrage over an act of police misconduct. These boards remove  police leadership from the disciplinary process, and are designed to investigate individual acts, not organizational ills. Removing police management from these important decisions is dangerous.

Class One Citizen Review Boards have been ineffective in reducing the level or severity of police misconduct. New York City and Philadelphia both have a long history with Class One Citizen Review Boards. They were created and terminated due to their ineffectiveness. New boards are created in both these cities after a new scandal surfaces.

Class One Citizen Review Boards do not have the time, resources or expertise to conduct these investigations. Historically, they have not reduced misconduct. They are more lenient on suspect officers than traditional Internal Affairs Bureaus. Class One Citizen Review Boards are dangerous because they look only at individual incidents and

they remove management responsibility. These boards are not consistent with Aristotle's *Nicomachean Ethics*, since they lack the expertise to adjudicate complaints equitably.

In Chapter Four, six steps are laid out to improve police departments. These steps are aimed at advancing the organizational culture. It is believed that by improving this organizational culture, quality of police service will improve. These steps are not highly technical, nor do they create a great fiscal burden. All that is required is a commitment from leadership to deal with police misconduct in an ethical way.

Step One is to provide ethics training to all officers throughout their careers. The majority of this training consists of discussing challenges facing officers from an ethical frame. Having officers talking about the ethical challenges they face will pay dividends, improving the organizational culture. Mandatory annual ethics training will ensure officers are knowledgeable of the important role they play in our society.

Step Two is for leaders to ensure they are practicing misconduct prevention. This is the same logic behind crime prevention. By removing the most common opportunities for police misconduct, we will reduce misconduct. Several generalities have been noted in the majority of police scandals: Problem employees who have not been addressed, weak supervision and officers serving in lengthy assignments in covert assignments are only some of the most common elements in most scandals. Leaders must learn from the mistakes of others. Ensuring all misconduct complaints are properly adjudicated, holding supervisors accountable and rotating officers from covert assignments, will reduce the likelihood for misconduct.

In Step Three we recognize officers who consistently exhibit virtuous conduct. This is consistent with Aristotle's Pleasure Pain Test (explained in Chapter Three). People

prefer to engage in behavior which brings pleasure. Conduct, both on and off duty, needs to be considered. Officers need to realize being a good citizen is an essential element in being a good officer. This also needs to be incorporated into the promotional process.

Step Four calls for a 'zero tolerance approach' when it comes to untruthfulness. As we learned throughout this thesis, the code of silence is synonymous with lying. Two policies are recommended for leaders wanting to reduce the code of silence. Officers caught lying need to receive strong discipline. Also, witness officers have a duty to intervene and report misconduct, or face discipline. The virtues of justice, truthfulness and good loyalty must be the goal of all officers.

Step Five is the empowerment of the Internal Affairs Bureau (IAB). Investigators assigned to IAB need to report directly to the Chief Executive Officer (CEO). They need to be people of high integrity, with proven investigative skills. IAB should investigate all police misconduct complaints, both administrative and criminal. This will increase the quality of these investigations and reduce the chance of coverups. IAB also needs to work with a citizens committee to ensure good communications. This will assist in maintaining a high level of public trust.

The final recommendation, Step Six advises police leaders to utilize a disciplinary matrix when making disciplinary decisions. This matrix will formalize this process, providing a checklist for supervisors to follow. Utilizing this matrix will result in these difficult decisions being equitable. This will serve to make this process more objective, also making discipline more consistent.

This matrix will also provide a deterrent value. Officers knowing the range of discipline for violations will be less likely to engage in misconduct. This matrix is

consistent with Aristotle's view of equity. By allowing weighing factors we are evaluating all the facts of a case.

Besides being legally and morally sound, this matrix is very simple to implement. The following is offered to illustrate its simplicity. The matrix, like the other five steps, does not require a large expense nor is it highly technical. A commitment to do 'the right thing' is all that is needed.

| DISCIPLINARY MATRIX | | | | |
|---|---|---|---|---|
| VIOLATION | CLASS | | | |
| | A | B | C | D |
| 2/108.03 Harmony and Cooperation Within the Department | | | | |
| 2/108.04 Voiding Citations | | | | |
| 1/301.05 Neglect of Duty | | | | |
| 1/301.06 Incompetence | | | | |
| 2/108.03 Harmony and Cooperation Within the Department | | | | |
| 2/108.04 Voiding Citations | | | | |
| 2/110.02 Constitutional Requirements During Criminal Investigations | | | | |
| 2/114.00 Political Activities Policy | | | | |
| 2/120.00 Affirmative Action/equal Employment Opportunity Plan | | | | |
| Civil Service Rules | | | | |
| 510 Standards of Conduct | | | | |
| 620 Attendance | | | | |
| 670 Sick Leave | | | | |
| 960 Unsatisfactory Service | | | | |
| 965 Mental or Physical Disability | | | | |
| 970 Misconduct | | | | |
| 975 Abandonment of Post | | | | |
| Regulations | | | | |
| 4/100.00 Conformity to Rules and Regulations | | | | |
| 4/100.01 Violation of Rules and Regulations | | | | |
| 4/101.01 Disorderly Conduct | | | | |
| 4/101.02 Consorting with Persons of Ill Repute | | | | |
| 4/101.03 Fraternization Prohibited | | | | |
| 4/101.04 Accepting Gifts from Suspects | | | | |

| DISCIPLINARY MATRIX | | | | |
|---|---|---|---|---|
| VIOLATION | CLASS | | | |
| | A | B | C | D |
| 4/101.05  Soliciting Special Privileges | | | | |
| 4/101.06  Neighborhood Disputes/Personal Arrests | | | | |
| 4/101.09  Incurring Debts Within the Department | | | | |
| 4/101.10  Acting as Bailor | | | | |
| 4/101.11  Interfering with Lawful Private Business | | | | |
| 4/101.12  Seeking Personal Preferment Through Outside Influence | | | | |
| 4/101.13  Membership in Unions | | | | |
| 4/101.14  Refusal to Testify | | | | |
| 4/101.16  Release of Employee Information | | | | |
| 4/101.18  Cheating on Employment/promotional Exams | | | | |
| 4/102.02  Specific Duties | | | | |
| 4/102.03  Performance of Duty | | | | |
| 4/102.05  Protection of Crime Scenes | | | | |
| 4/102.06  Giving Assistance to Suspects | | | | |
| 4/102.08  Work Attendance | | | | |
| 4/102.09  Reporting for Duty | | | | |
| 4/102.10  Being Available While on Duty | | | | |
| 4/102.11  Neglect of Duty | | | | |
| 4/102.12  Courtesy | | | | |
| 4/102.13  Detention Facility Security | | | | |
| 4/102.14  Care of Prisoners | | | | |
| 4/102.15  Interviewing In-custody Prisoners | | | | |
| 4/103.01  Conduct on Department Premises | | | | |
| 4/103.02  Reading Newspapers on Duty | | | | |
| 4/103.03  Smoking on Duty | | | | |
| 4/103.04  Gambling on Duty | | | | |
| 4/103.05  Shopping on Duty | | | | |
| 4/103.06  Loitering | | | | |
| 4/103.07  Sickness, Malingering | | | | |
| 4/103.08  Sleeping on Duty | | | | |
| 4/103.09  Use of Alcohol | | | | |
| 4/103.11  Use of Narcotics and Controlled Substances | | | | |
| 4/103.12  Display of Weapon | | | | |
| 4/103.14  Public Statements about Controversial Subjects | | | | |
| 4/103.15  Interviews with Non-department Persons | | | | |

| DISCIPLINARY MATRIX | | | | |
|---|:-:|:-:|:-:|:-:|
| VIOLATION | CLASS | | | |
| | A | B | C | D |
| 4/103.16   Political Activities | | | | |
| 4/103.17   Public Statements about Private Businesses, Citizens or Organizations | | | | |
| 4/103.18   Traffic Arrests by Off Duty Officers | | | | |
| 4/103.19   Giving Testimonials, Seeking Publicity | | | | |
| 4/103.20   Subversive Acts Against the Department | | | | |
| 4/103.22   Unauthorized Weapons and Ammunition | | | | |
| 4/104.01   Reporting Disobedience | | | | |
| 4/104.04   Obedience | | | | |
| 4/104.05   Criticism of Official Acts | | | | |
| 4/104.06   Criticism of Lawful Orders | | | | |
| 4/104.08   Maintaining Manuals | | | | |
| 4/104.09   Keeping Informed on Police Matters | | | | |
| 4/105.03   False Report | | | | |
| 4/105.04   False Information in Reports | | | | |
| 4/105.05   Withholding Evidence | | | | |
| 4/105.06   Duty to Report All Crimes, Vice, Incidents and Hazards | | | | |
| 4/105.07   Completing Official Reports | | | | |
| 4/105.08   Police Business Confidential | | | | |
| 4/105.09   Removal of Official Records | | | | |
| 4/105.10   Secret Witness Reference in Reports | | | | |
| 4/106.01   Conduct Concerning Officers of Other Jurisdictions | | | | |
| 4/106.02   Aiding and Protecting Fellow Officers | | | | |
| 4/106.03   Supporting Fellow Officers | | | | |
| 4/106.04   Interfering with Other Officers | | | | |
| 4/106.06   Protection of Identities of Complainants and Sources of Information | | | | |
| 4/106.07   Protection of Identity of Undercover Operatives | | | | |
| 4/106.08   Forum "Judge" Shopping | | | | |
| 4/107.01   Personal Appearance | | | | |
| 4/108.01   Court Attendance and Conduct | | | | |
| 4/108.02   Court Cases | | | | |
| 4/108.03   Recommending Attorneys or Bondsmen | | | | |
| 4/108.04   Testifying for Defendant | | | | |
| 4/108.05   Truthfulness Required at All Times | | | | |
| 4/108.06   Assisting in Civil Cases to Be in Line of Duty | | | | |

| DISCIPLINARY MATRIX | | | | |
|---|---|---|---|---|
| VIOLATION | CLASS | | | |
| | A | B | C | D |
| 4/108.07  Testifying in Civil Cases to Be under Subpoena | | | | |
| 4/108.08  Instituting Civil Action | | | | |
| 4/108.09  Seeking or Accepting Compensation for Damages | | | | |
| 4/108.10  Use of Position in Civil Cases Where Personally Involved | | | | |
| 4/108.12  Defense Attorney Contacts | | | | |
| 4/109.01  Operation of Department Vehicles | | | | |
| 4/109.02  Operation and Occupancy of Vehicle by Unauthorized Person | | | | |
| 4/109.03  Use of Department Vehicle to Move Another | | | | |
| 4/109.07  Unauthorized Use Department Property, Facilities or Address | | | | |
| 4/109.08  Misappropriation of Property | | | | |
| 4/109.09  Use of Privately Owned Vehicles on Police Business | | | | |
| 4/109.10  Care of Property and Equipment | | | | |
| 4/110.01  Maintaining Communications (Vehicle Stops) | | | | |
| 4/110.02  Improper Communications | | | | |
| 4/110.03  Radio Communications in Field Operations | | | | |
| 4/110.05  Release of 9-1-1 Telephone Number and Address Information | | | | |
| 5/101.24  Harassment and/or Discrimination; Prevention and Complaint Process | | | | |
| 5/101.52  Criminal Violations by Employees | | | | |
| 5/101.53  Domestic Abuse and DUI Violations by Employees | | | | |
| 5/103.01  Soliciting or Accepting Donations | | | | |
| 5/103.28  Reporting Damage to Department Property and Equipment | | | | |
| 5/103.29  Reporting Department Vehicle Accidents | | | | |
| 5/105.08  Signing in Loco Parentis | | | | |
| 5/105.18  Dissemination of Criminal History Information (CHI) | | | | |
| 5/105.22  Release of Investigative Reports | | | | |
| 5/107.01  Sign Language Interpreters for Handicapped Persons | | | | |
| 5/107.10  Traffic Enforcement | | | | |
| 5/107.17  Stranded Motorist Assistance | | | | |
| 5/108.06  In-Service Training Program | | | | |
| 5/108.14  Firearms Training | | | | |
| 5/108.16  Defensive Tactics | | | | |
| 5/108.18  Driver's Training | | | | |
| 5/109.01  Use of Force | | | | |
| 5/110.26  Department Drug Testing Program | | | | |

| DISCIPLINARY MATRIX | | | | |
|---|---|---|---|---|
| VIOLATION | CLASS | | | |
| | A | B | C | D |
| 5/110.28    Accident Review Board | | | | |
| 5/200.02    Searches and Pat Downs of Persons | | | | |
| 5/200.04    Motor Vehicle Searches | | | | |
| 5/201.10    Executing Warrants of Arrest | | | | |
| 5/201.14    Arrest Without a Warrant for Domestic Violence | | | | |
| 5/201.15    Orders for Protection (Restraining Orders) | | | | |
| 5/201.20    Warrantless Entry into Private Premises | | | | |
| 5/202.01    Transporting Prisoners | | | | |
| 5/202.02    Arrest Procedures and Declaration of Arrest | | | | |
| 5/202.04    Misdemeanor Citation And/or Arrest | | | | |
| 5/202.08    Arrests Ex-felon Failure to Register/Ex-felon Failure Change Address | | | | |
| 5/202.17    In-custody Low Risk Misdemeanor Incidents | | | | |
| 5/202.20    Disposition of Arrested Subject's Vehicle | | | | |
| 5/202.21    Drawing of Blood/obtaining Urine from Arrestees | | | | |
| 5/203.02    Photographing/fingerprinting of Juveniles | | | | |
| 5/203.06    Juvenile Citations and Reports | | | | |
| 5/203.08    Juvenile Traffic Citations | | | | |
| 5/203.10    Release of Juvenile Information | | | | |
| 5/203.12    Juvenile Bookings | | | | |
| 5/204.04    Taking or Making Crime Reports | | | | |
| 5/204.06    Vehicle Impounds, Releases, and Theft Reports | | | | |
| 5/204.20    Missing Persons | | | | |
| 5/205.01    Booking and Custody Processing of Prisoners | | | | |
| 5/205.20    Prisoner Release | | | | |
| 5/207.08    Department Take-home Vehicles | | | | |
| 5/208.02    Authorized Firearms & Associated Equipment | | | | |
| 5/208.04    Low Lethality Shotguns | | | | |
| 5/208.22    Use of the Department Armory | | | | |
| 5/208.24    Special Weapons and Munitions | | | | |
| 5/208.26    Use of Optional Rifles on Duty | | | | |
| 5/208.28    Use of Optional Shotguns on Duty | | | | |
| 5/209.14    Voice Radio Communications | | | | |
| 5/210.01    Preliminary Field Narcotic Test for Controlled Substances | | | | |
| 5/210.02    Impounding and Disposing of Recovered/found Bicycles | | | | |

| DISCIPLINARY MATRIX | | | | |
|---|---|---|---|---|
| VIOLATION | CLASS | | | |
| | A | B | C | D |
| 5/210.04  Booking Evidence and Property | | | | |
| 5/210.05  Impounding and Disposing of Evidence at Resident Officer Locations | | | | |
| 5/210.08  Impounding and Disposing of Found or Safekeeping Property | | | | |
| 5/210.09  Impounding and Releasing Money | | | | |
| 5/210.10  Impounding and Releasing of Handguns | | | | |
| 5/210.12  Handling of Confiscated License Plates and Drivers' Licenses | | | | |
| 5/211.06  Tactical Operations Plans | | | | |
| 5/213.05  Emergency Mobilization Plan | | | | |
| 5/213.06  Major Incident Plan | | | | |
| 5/213.08  Detention Facility Hostage Plan | | | | |
| 5/213.10  Department Hostage Plan/barricaded Subject Plan | | | | |
| 6/002.00  Use of Force | | | | |
| 6/004.00  Transporting Prisoners | | | | |
| 6/006.00  Arrest Procedures and Declaration of Arrest | | | | |
| 6/010.00  Crime Scene Investigations | | | | |
| 6/012.00  Code "3" Driving | | | | |
| 6/014.00  Vehicular Pursuit | | | | |