

## Police Discipline; The Chief's Perspective

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### INTRODUCTION

I have been a Chief of Police for almost 20 years, leading two of the largest departments in the country. I was in management and supervision in law enforcement agencies for 10 years before becoming a Chief, including managing an internal affairs unit. The purpose of this paper is to provide a perspective about the issues of police discipline, citizen oversight, and managing a police department. I discuss the issues here in Seattle and also place them into context from a national perspective.

There is nothing more difficult or controversial than the investigation of citizen complaints and the exercising of discipline in a local law enforcement agency. The decisions made by the Chief are subject to countless rounds of review, re-review, appeal, and public discussion. There are many reasons for this scrutiny: police have immense authority, from taking people into custody to the use of physical and even deadly force; the changes in national media, wherein egregious or controversial actions by any officer in any section of the country are quickly broadcast across the country; the use of DNA evidence that has led to the release of totally innocent individuals, some of whom were convicted because of police misconduct; the serious concerns of racial profiling; and, more recently, the actions of the federal government after 9/11 that have raised concerns of diminished civil rights.

### DISCIPLINE SYSTEMS

The intricacies of police discipline systems are complex and not easily understood, even by those who utilize them. The same can be said for complaint systems involving other professions. They are covered by a myriad of laws, administrative rules, case law and arbitration decisions and, in unionized states, labor contracts. What records are available to the public to view vary in individual states. For example in Florida all internal complaints and officer personnel files are public documents; in New York, almost everything is confidential, and in Washington it is a mix. What is important is that these complexities be pushed aside so that the public can better understand the basics of the complaint system and who is accountable.

Police discipline systems are different from city to city and do not easily lend themselves to comparisons or benchmarking. What is called a citizen complaint

in one jurisdiction is called an “inquiry” in another. What is considered discipline in one jurisdiction is considered “training or corrective action” in another. Even determining workload per investigator is difficult since cases and the amount of effort needed to complete an investigation vary widely across jurisdictions (for example, in some departments, Internal Affairs investigate officer-involved traffic accidents).

In reality, the discipline system in a law enforcement agency is a small part of understanding the holistic system that exists or should exist to ensure professional and proper behavior by the police.

As Professor Sam Walker noted in the *New York Times* on July 21, 2007, commenting on how most large departments struggle with misconduct, “There’s no single fix, you need good policies on the use of force . . . a well-developed internal affairs process . . . an early intervention system . . . and an independent auditor.” Other areas that are essential to consider include:

- What is the department’s mission and values?
- What is the department’s hiring and selection process?
- What do the recruit, field training and annual retraining programs look like?
- How does the annual evaluation process work?
- How are performance evaluations used?
- What resources are available to officers to assist them with stress?
- Is there an early intervention system?
- Is the department nationally accredited ?
- Does the department have an audit and inspections procedure that includes checks and balances such as random checks of property and evidence submissions?

In every way there have been dramatic changes in SPD regarding ethics and integrity and the handling of citizen complaints since the 1999 Blue Ribbon Commission (Citizen Review Panel):

- I sent every employee a letter in August 2000 outlining my expectations regarding conduct.
- I meet with every new officer and discuss issues around racial profiling and hand them a copy of the department’s policy, which I initiated.
- A new mission statement for SPD was issued in 2002. Areas that are highlighted include professionalism and ethical policing.
- In-car video cameras were installed.
- Written warning tickets are required of all traffic stops.
- The department was nationally accredited in 2003 and re-accredited in 2006.
- There has been significant attention in supervisory and management level training on ethics.
- Testing materials for promotion devote specific attention to ethics.

- An audit and inspections section was implemented to constantly update policies and audit department procedures.
- A citizen is on the oral panel for selecting new officers.

The Seattle Police Department has more civilian oversight than any department in the United States. It is far more open and transparent than most. SPD maintains a high level of confidence from the people it serves and has a high degree of confidence from people who would feel comfortable making a complaint about an officer's conduct. We know from our most recent citizen survey (2007) that when asked if they had a serious problem with a Seattle police officer whether they would file a complaint, 82% said Yes. Of the 12% who said No, a third said it would be because they would never have a problem.

Regardless of the system for citizen complaint processing there are individuals or groups who will be dissatisfied, either with the system or the outcome. There are officers who do not believe anyone not on the line, including chiefs, should judge their actions, and there are others who believe that only review systems completely outside the department are capable of impartially evaluating police conduct.

#### CONSEQUENCES OF DISCIPLINARY DECISIONS

When discipline in the department is perceived as too harsh or for incidents considered minor, the result can be: efforts at de-policing when officers only respond to calls (Cincinnati), zero-tolerance policing where traffic citations are issued for every violation, or a vote of no confidence against the Chief (Nashville, Dallas, Little Rock, Washington, D.C., Seattle, and many more). If discipline is perceived as too lenient or soft, the result can be a variety of claims made by various groups or individuals, often resulting in news coverage discussing the lack of confidence and trust in the department (Los Angeles, Minneapolis, Prince George's County, MD, Chicago). A February 21, 2006 Los Angeles Times article headlines, "Complaints Up, Discipline Down at LAPD, Study Says." The study states that complaints rose 4% in 2005, yet only 421 personnel received discipline compared to 784 in 2004, a 46% reduction.

There are several factors taken into consideration regarding a determination on the merits of a complaint. Although the threshold for sustaining discipline may be a preponderance of the evidence (50%+), the appeal process through an arbitrator is a standard of clear and convincing. Does the evidence support the allegation and is the rule/policy clear that prohibits the actions of the employee? If these tests are not met and disciplinary action is taken, it can be overturned upon appeal.

What happens when discipline cases are overturned on appeal? Attorney Will Aitchison, nationally recognized as an expert in this area, advises that the department will have lost credibility with the public and the officer, and it will incur substantial costs for attorneys, arbitrators, court reporters, and often include back

pay and benefits for the officer (Milwaukee has paid \$2.1 million to 30 officers over an eleven year period, May 24, 2005) and it will have damaged its ability to discipline officers in like cases.

In Denver (Denver Post, February 10, 2006), nearly half the officers who appealed their discipline outside the department in the past five years received lighter punishment. The Union President stated that it was clear the punishment handed out by the department was unfair (since so many cases were reduced on appeal).

In Cincinnati in 2003/04, 15 disciplinary cases were appealed, 8 were reduced, and only 3 were upheld (correspondence from Cincinnati Police Department, July 2005). In Chicago in 2004/05, 25% of the officers (29 total) who appealed their firings on charges of drug abuse, crimes, domestic violence, etc., were reinstated. Of 56 officers in that department who were facing suspension, 22 or almost 40% had the suspension reversed or reduced (Chicago Sun Times, June 2, 2006).

In Seattle there have been ten appeals since 2001. Public Safety Civil Service heard six cases; three were upheld, one resulted in a reduction in the number of suspension days, and two were reversed. An arbitrator heard four cases on appeal; three were upheld, and one was reversed. No officer who has been fired has been returned to work.

Who is the decision maker in discipline cases in Seattle? The Municipal Code makes it very clear that it is the Chief of Police. A great deal of this process had been delegated to an Assistant Chief before I became Chief and took it back under my responsibility. This was not only as a result of the recommendation of the 1999 Blue Ribbon Commission (Citizen Review Panel) but is similar to what exists in other departments. For example, as the chief has done in Dallas (Star Telegram, July 9, 2006), I hear all serious disciplinary cases. Dallas Chief David Kunkle remarked as to his reasons, "I thought it would reduce appeals on the part of the offenders and give them a feeling that they got a chance to tell their side."

Will there always be disagreement involving discipline and what is the disagreement all about? In Salt Lake, the local paper wrote that the Civilian Review Board has "zero respect and zero authority" because in 30 cases forwarded by the CRB to the Chief during a 14-month period in which discipline was recommended, the Chief rejected that recommendation in two cases (Salt Lake Tribune, May 28, 2007).

In Minneapolis (Star Tribune, February 6, 2005), the Civilian Review Authority recommended that, in 35 cases, the Chief take action (48 individual recommendations). The Chief of Police did not sustain 84% of those recommendations.

In Seattle I received 78 cases that were recommended for discipline in 2005/06 and I disagreed in only five cases.

Therefore, what is the right answer? The key seems to be to have a system that fits the needs and desires of the overall community it serves. Seattle's hybrid system is somewhat unique, but quite frankly fulfills many of the requirements noted by those who study this subject. For example, the civilian Director is a part of the command staff and voices a point of view on policy, hiring, training, and equipment. The Director conducts community outreach and submits reports to the Mayor and Council. The Auditor is totally independent of the department and reviews all complaints, can request additional investigative steps, has access to all files and records, and submits reports to the Mayor and the Council. None of this is to say that the system should not now, after over six years, be carefully and thoughtfully reviewed and recommendations for improvement made.

#### ACCOUNTABILITY PLANS FOR SEATTLE

The following is a list of reports focused on the changes that occurred in 1999. It is clear that considerable time, attention, and engagement with the public was part of the process that went into the creation and evolution of the OPA:

- Citizen Review Panel (CRP), August 19, 1999
- SPD Accountability Action Plan, Police Chief and Mayor Schell, September 1999
- SPD 12-Point Plan to address Internal Integrity, September 1999
- Urban League Report, Review of Accountability Action Plan, October 1999
- Human Rights Commission Position Paper, December 2000
- Compilation of reports regarding Citizen Review, July 2001
- League of Women Voters "Police and Policing in Seattle" September 2002

There has been a significant amount of inaccurate information, selective use of facts, and lack of contextual reporting concerning the accountability plan.

Looking at the areas of controversy:

**The Citizen Review Panel (CRP) recommended that the Chief of Police may modify for good cause and in writing the adjudicative findings of the Director.** This is an important point since the findings are defined as sustained, not sustained, etc. For whatever reason this was not enacted into the ordinance. There is no recommendation that the Chief of Police document the reasons for the type of discipline imposed. This, again, is another important distinction that has not been made clear. The CRP report advises that the OPA make recommendations for discipline, where warranted, and develop a formal range of disciplinary actions for misconduct cases to "ensure consistency of discipline." In an explanation of the disciplinary process on the SPD website, it is noted that the decision by the Chief of Police for tentative disciplinary action includes consideration of the severity of the individual incident, past disciplinary action in

similar cases, and the officer's performance history. A very reasonable interpretation of the CRP recommendation is that OPA is but one part of a proposed disciplinary action (is the proposed discipline consistent with past similar cases and the weighing of the severity of the case at hand as compared to others?). The other part of the proposed disciplinary action is the recommendation from the officer's chain of command since they will know his/her work history, performance, etc.

The statement on our website goes on to explain that the last and a very important step is the meeting (a Loudermill hearing) with the officer in which additional facts or mitigating circumstances and the officer's response are considered. This legally mandated hearing applies to all public employees. Specifically, some of the recommendations in this hearing include asking clarifying questions (witnesses are allowed upon mutual agreement but are not generally involved), and following up on information presented by the employee that could be considered material. A final decision is then made.

The importance of this step and its independence from the OPA process cannot be stressed enough. This was noted in an arbitration decision upholding the termination of two officers. The fact that at the Loudermill hearing on an additional officer charged in that incident, after listening to the explanation and receiving advice from the officer's chain of command, I changed the finding to not sustained was heralded as an example that this is not a pro forma step and evidence that the decisions are carefully weighed and evaluated.

**What is the relationship of Chief of Police to OPA?** This is particularly troublesome since some would like to believe that it was intended that the OPA be independent from the Chief of Police. Recommendation 3 of the CRP states that the chief should have "a more direct and authoritative role in the training and internal investigation process. . ." Further, the Charter of the City of Seattle demands that the Chief of Police manage the department.

Regarding the selective determination of what the CRP recommended, it is quite clear that for whatever reasons, the Council/Mayor did not take the report recommendations carte blanche and adopt them into the ordinance. Therefore it seems highly speculative when one takes selective portions of the report and admonishes the Chief of Police for not following them, as was done in the OPARB report. The most striking example is that the CRP recommended that the OPA director subsume the duties of the IIS Auditor. The Mayor and Council decided to retain the auditor.

#### A LOOK AT OTHER SYSTEMS

The reality of the situation is that regardless of the recommendations made or changes implemented, concerns and criticism will be voiced. If history is a good teacher, particularly recent history, we have seen:

- Portland's Independent Review Panel is now being subjected to an independent review
- San Francisco's City Auditor has declared the Citizen Review Panel ineffective
- The Police Auditor and others in San Jose believe their system lacks authority
- The Salt Lake newspaper states that the Citizen Review system lacks authority and respect
- The Minneapolis system was subjected to an independent audit
- Denver has instituted a new citizen complaint process
- Chicago is in the process of changing their system
- Boston's new system is being criticized, although it only took effect this month

A majority of Americans favors the creation of civilian review boards. As Ron Weitzer notes in Public Perceptions of Police Misconduct and Reform, "This does not necessarily mean that citizens will be satisfied with a civilian review board once it is in operation. Such boards may have greater public credibility than an oversight system internal to a police department, but a board with low substantiation rates (the norm) is likely to raise public concerns. Moreover, persons with firsthand experience of such boards are often dissatisfied with both the process and the outcome."

An example of a low substantiation rate is discussed in the *New York Times*, July 29, 2007. The all civilian investigative staff of the Civilian Complaint Review Board in New York City investigated more than 350 complaints of serious slurs each year from 2002-06, fewer than 25 were substantiated in any of those years, and only 3 were substantiated in 2006, despite vigorous investigations.