

Police Misconduct: Recommendations for Agency Wide Mitigation Strategies

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Abstract

Statement of Problem

Police officers are granted power of control over citizens not enjoyed by any other group of people within our society. Because police officers normally operate in environments where their actions are hidden from view, an accurate accounting of unethical behavior is difficult to determine (Schmallegger, 2009). Misconduct by officers harms the fragile relationship between the police and the public through a general loss of the public's trust. Misconduct can also significantly harm citizens both physically and legally, through such events as injuries resulting from the use of excessive force or unwarranted arrest (Fitch, 2011). Although it is widely accepted that a small percentage of police officers are responsible for the vast majority of misconduct issues, the sheer number of unsupervised contacts between officers and citizens creates almost unlimited opportunity for unethical behavior.

This paper will specifically examine color of law misconduct, where officers misuse their position of authority for personal or departmental gains. There are strategies that agencies can take to help mitigate the likelihood of this occurring, and therefore it is important that administrators educate themselves and train their officers in effective techniques to combat misconduct.

Method of Approach

Research for this paper will rely on secondary data obtained from current scholarly journals containing data relating to police conduct and management, applicable criminal justice text books and statistics on police misconduct as well as internet based sources such as government agencies and other organizations related to the study and management of criminal justice organizations.

Recommendations expressed in this paper will be based on prior research conducted within police organizations, as well as a theoretical analysis into the causes of officer misconduct.

Findings

Because misconduct is often a learned behavior and found to be increasingly progressive, criminal justice organizations cannot afford to ignore even small behavioral problems. There are resources available for law enforcement administrators to obtain the tools necessary to prevent and combat officer misconduct. Dedication to high ethical standards and accountability must be accompanied by organizational leaders using sound tactics, such as effective policies, procedures, supervision and training programs..

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Section I. Introduction

Statement of the Problem

Police officers are entrusted with the authority to legally exercise control over others in order to maintain the peace and enforce society's laws. At times, some officers forget that their authority comes from the communities they serve and when they lose sight of their pledge to uphold the laws, misconduct can occur. History has revealed that without first establishing procedures to control the conduct of police officers, granting them authority to control the actions of citizens can lead to serious problems. Police administrators already understand that officers under their command have many opportunities for unethical behavior what they may not understand is that they have the ability, no matter the size of their department, to take steps to minimize the chances that any of their officers will respond negatively to temptation.

Misconduct by any officer harms the fragile relationship between the police and the public through a general loss of the public's trust. Since the vast majority of new recruits do not enter the field of law enforcement with the intention of committing crimes and/or violating department policy, police administrators have a responsibility to establish procedures to curtail unethical behavior from the start. Although misconduct can take on many forms, this paper will address color of law misconduct, defined as the abuse of the authority granted by a law enforcement agency, such as the use of excessive force.

Due to the often secretive nature of policing, not all officer citizen contacts or their outcomes are documented within an agency or known to the public. Research provides the best available insight into the scope of citizen police contacts in the US. A study conducted by Eith and Durose, (2011) for the Bureau of Justice Statistics (BJS) indicated that in 2008 there were approximately 40 million documented face to face contacts between police officers and citizens

over the age of 16 in the United States (US). With a majority of the over 750 thousand fulltime officers in the US (Reaves, 2011), having numerous contacts with citizens every day, the opportunity for misconduct is enormous. Eith and Durose (2007) report that approximately 10 percent of surveyed individuals indicated that they felt the officer behaved inappropriately during their contact, 1.4 percent indicated the use or threat of the use of force during the contact, and 74 percent of those who reported the use of force felt it was excessive.

Purpose of the Research

The search for solutions to police misconduct in the US has been an undertaking of many and concerns are apparent going as far back as the founding fathers. James Madison warned of the dangers surrounding providing authority to men to control the population while obligating them to control themselves (Harrison, 1999). Keeping this sentiment in mind, the purpose of this paper will be to first provide its readers with a working definition of police misconduct, establish an understanding of the issues surrounding it, as well as a discussion of theoretical causes of officer misconduct, specifically as it relates to color of law misconduct. Armed with this understanding, this paper will present recommendations for law enforcement administrators, representing any size agency, on procedures and methods of control to prevent or alleviate misconduct among this governmental force.

Method of Approach

Research for this paper will rely on secondary data obtained from current scholarly journals containing data relating to police conduct and management, applicable criminal justice text books, research studies and statistics on police misconduct, as well as internet based sources such as government agencies and other organizations related to the study and management of criminal justice organizations. Recommendations expressed in this paper will be based on prior

research conducted within police organizations, as well as a theoretical analysis into the causes of officer misconduct.

Limitations and Assumptions

Limitations on implementing recommendations of this paper may be based on individual differences within law enforcement organizations relating to current mitigation efforts such as policies, tracking systems, supervisory capabilities and size. It is understood that not every agency will have the ability nor find the need to develop or implement every aspect contained in this paper.

Specific Contribution

This paper will provide administrators of law enforcement agencies with the reasoning behind and clear guidelines for the implementation of procedures to prevent and mitigate ethical misconduct among its officers. This paper also may be used by criminal justice academics, by providing them with relevant resources in the study of police misconduct.

Section II. Review of Literature

The following literature review is divided into four sections. The first section will address the scope of police officer's contacts with citizens, followed by a general review of the level of police misconduct. The third section discusses the socialization of officers into the police organization and finally, there will be a review of several types of police misconduct.

Police Citizen Contact

To effectively cover the issue of police misconduct in the United States (US), there must first be an attempt to put the scope and scale of police involvement with citizens into perspective. Police officers and citizens have contact in many ways, often ways that are not reported and are unknown to anyone other than the officers and the citizens themselves.

According to the U. S. Census Bureau (2011) in the ten years between the 2000 and 2010 census, the U. S. population exceeded the 300 million mark. In 2011, the U.S. Department of Justice (DOJ), Bureau of Justice Statistics (BJS), published a report by Eith and Durose (2011) indicating that of U.S. citizens 16 years of age and older, in 2008, approximately 16.9 percent had face- to-face contact with the police, down from 19 percent in 2005 and 21 percent in 2001. Those numbers translate to approximately 40 million direct contacts between state or local police officers and citizens in 2008 (Eith & Durose, 2011). According to a report by Reaves (2011), published by the BJS and based on 2008 figures, there are approximately 251 full-time, sworn law enforcement officers per 100 thousand US citizens. Although the percentage of citizens who have direct contact with the police is relatively low, the numbers of contacts, and in turn, the

opportunities for officer misconduct are quite high.

Eith and Durose (2011) reports, of the estimated 40 million contacts nationwide between local law enforcement officers and the citizens they serve, over 44 percent were a result of a traffic situation, such as a traffic stop or accident, 21 percent, was citizens reporting problems to the police. Of those reporting face-to-face contact with the police, approximately 25 percent indicate that they had more than one contact. Other major findings about citizen contacts with the police nationwide were that males were more likely than females, whites were more likely than any other race, and youth between 18 and 24 years of age were the most likely to have contact with the police (Eith & Durose, 2011). In a similar study relating to police citizen contacts in the city of Chicago, Skogan (2005) reports that 20 percent of the population reported police initiated contact through traffic stops or being approached on the street and 50 percent of the population reported initiating contact for such things as reporting a crime, providing information on crime or about a neighborhood problem. In the Chicago study, race made little difference for citizen initiated contact with the police, but for police initiated contacts, blacks and Latinos had a significantly higher chance of police contact (Skogan, 2005).

Level of Police Misconduct

Research within the criminal justice field pertaining to general trends on the scope of officer misconduct posit that a few problem officers are responsible for the majority of citizen complaints and issues within police organizations. Hughs and Andre (2007) relate that a common research conclusion about the scope of police misconduct indicates that approximately 10 percent of police officers are responsible for nearly 90 percent of the problems in criminal justice

organizations. Similarly, DeCrescenzo (2005), reports that according to research, only about two percent of all police officers are responsible for 50 percent of all citizen complaints.

The integrity of a police officer is the ability to resist the temptation to abuse authority granted by a law enforcement agency. Officers who lose sight of their commitment to the community they serve and violate department policy or criminal statute are said to have committed police misconduct. Police misconduct can vary in size, such as the number of officers that are involved or the number of occurrences of violations, as well as varying in seriousness, such as the nature of the violation.

Misconduct among officers has been an issue since the early days of policing in America. Because the nature of policing includes authority over citizens which is predominantly distributed based on individual officer discretion, often in situations with no supervision, officers are faced with constant opportunities for misconduct (Schmallegger, 2009). Although most police officers work in an atmosphere where they make a majority of their enforcement decisions alone and without input or review from a supervisor, a majority of officers conduct themselves ethically and feel strongly about their responsibility to their community.

The frequency of police misconduct is difficult to determine with any degree of accuracy, since historically a high percentage of police work has been done outside the view of others. Son and Rome (2004) indicate there is a general lack of consensus among researchers, criminal justice administrators or citizens regarding the prevalence of police misconduct. Numerous studies to determine the frequency of police misconduct have been undertaken, such as citizen and officer surveys, the examination of department records and the prevalence of civil suits.

One method used in an attempt to estimate the level of police misconduct is through citizen surveys. A complicating factor with surveys is determining whether that person's feedback had

been affected by outside influences and if it provided an accurate gauge of overall levels of misconduct. Miller and Davis (2007) used a series of interviews to determine what factors influenced the public's overall opinion of police misconduct. They concluded that public opinion was substantially affected by three factors: media coverage of police misconduct, community factors such as ethnic/racial and geographical location and both personal experience and those of friends or family members. Taking these factors into consideration, the results of a 1991 Gallup Poll, conducted shortly after the Rodney King beating, found 68 percent of respondents believed such incidents of police abuse of power occurred either somewhat or very frequently in US police agencies. Further, 33 percent of respondents felt similar behavior occurred in their own neighborhoods (Son & Rome, 2004). A national study conducted in 1999 by the Bureau of Justice Statistics (BJS) questioned subjects who had face-to-face contact with the police and determined that less than one percent of respondents felt that officers used or threatened to use excessive force. The same study also found that 10 percent felt the officer did not behave properly, six percent believed that the contact that they had with the officer was not initiated legally and that African Americans were two to three times more likely to say the officer behaved inappropriately. The same BJS study taken in 2008 indicated that 89.7 percent of persons reporting direct contact with police indicated that they felt the officer acted appropriately. Of those that reported direct contact, 1.4 percent reported the use of or threat of the use of force against them, and 74.3 percent, or about 417,000 indicated they felt the force was excessive, down from 83 percent in 2005 (Eith & Durose, 2011). The 2008 BJS report further states that males more than females, blacks more than any other race and individuals between 16 and 29 years of age were more likely to experience force during a police contact in

2008 (Eith & Durose, 2011).

Information gathered from officers themselves has also been presented in an attempt to estimate the frequency of police misconduct. Much like citizens' opinions though, individual officer's opinions of what constitutes misconduct will vary from one officer to the next. Son and Rome (2004) provides, as an example, a study that concluded nearly 40 percent of officers from a particular metropolitan department had previously used excessive force, when based on individual officer's estimates of excessive use of force by coworkers. Observations by researchers in another study found that only three percent of suspects were victimized by an excessive amount of force (Son & Rome, 2004). Hughes and Andre (2007) reported on a survey done in the state of Washington where law enforcement agencies were surveyed on the type of officer complaints they received. Results from this survey indicated that departments were seeing some complaints involving abuse of authority, but in appropriate verbal conduct towards citizens was found to be the most prevalent of complaints facing officers. A nationwide research study, The Measurement of Police Integrity, sponsored by the National Institute of Justice (NIJ), is intended to determine levels of integrity among officers relating to issues of corruption within their departments resulted in mixed levels of acceptance, adding to the complication and difficulty evaluating misconduct from within (Klockars, Ivkovich, Harver, & Haberfeld, 2000). Klockars et al., (2000) further found that levels of acceptance of corruption, in other words the point at which an officer would no longer stand silently by and accept corruption, as well as what degree of discipline that was thought to be acceptable for various unethical behavior varied greatly from department to department.

Although relying merely on the number of civil lawsuits filed every year against police officer will not provide a clear picture of the level of officer misconduct, the last 50 years has shown a dramatic upward trend in civil lawsuits. Kappeler (2006) indicates that since the 1960s there has been a dramatic increase in the filing of civil lawsuits against the police as well as a dramatic increase in the number of cases being successfully litigated. In the last 30 years, Kappeler (2006) indicates that the number of law suits filed against the police has tripled, to nearly 30,000 annually.

It is apparent that there are no simple answers when attempting to determine the scope and frequency of officer misconduct. There are multiple factors affecting the accuracy of each and every method of study.

Socialization into an Organization

Most new police officers do not start out intending to violate department policy and commit crimes they are individuals intending on making a positive difference in their community. Feedback from new officers is often that their position brings them great personal satisfaction and self-worth (Fitch, 2011). One may question then how an individual, desiring to affect their community in a positive way, can become involved in misconduct or criminal behavior that they would never have considered before.

Many believe that the process of socializing new officers into a police agency exposes them to the organizational norms and culture, which they will have to adopt in order to survive. Therefore, if the police organization supports, condones or ignores misconduct, the new officer's socialization may provide him or her with the inclination to participate in misconduct (Armacost,

2004) Departments that tolerate or even condone “hard-nosed” tactics contribute to the establishment of a culture of acceptance. In the U.S. Supreme Court case *International Brotherhood of Teamsters v. United States*, the Court discussed allegations that “pattern of practice” violations existed when “police misconduct is the agency’s standard operating procedure in regular rather than unusual practice” (Ferrell, 2003). Jacobi (2000) presents several extreme examples where the officer’s use of excessive force was accepted and sometimes rewarded by department officials. The first was an officer who shot an unarmed man numerous times following a call of a domestic, then four years later fired 24 rounds at another unarmed man then planted a gun on him after determining it was not the fugitive for whom he was looking. This officer received no departmental sanctions for either incident but was given a position as a field training officer because he handled stressful situations so well (Jacobi, 2000). Another example recounts incidents from a single metropolitan police department, where over a 10 year period numerous officers were known to have been conducting systematic torture during interrogations, including electric shocks and beatings. Most officers involved in the torture received no department sanctions and some were actually promoted (Jacobi, 2000).

Not only do officers seek acceptance in their department by conforming to established norms, but they may also seek to improve their position through advancement. Another way departments may contribute to misconduct is the way in which they reward or promote their officers. Departments often base evaluations of officer performance on quantitative measures, meaning that officers need to keep their number of arrests and citations up. As positive performance reviews are often attached to promotions, officers may be motivated to do whatever they can to succeed (Armacost, 2004). The trouble with limiting evaluation solely on numbers is, for example, an officer will get credit for an arrest even if the charges are later dropped, but will

get no credit for defusing a situation without need for arrest (Armacost, 2004).

Types of Police Misconduct

Noble Cause Corruption

Noble cause corruption is illegal and or unethical behavior by officers, done for good ends. Noble cause corruption, according to Martinelli (2009), occurs when an officer believes his or her actions, even though they violate department policy and or criminal statute, are justified because they are done to achieve law enforcement goals. This type of misconduct supports the theory of the ends justifying the means. What distinguishes this type of unethical behavior from other officer misconduct is that the officer believes what he or she is doing is for the betterment of the community not of themselves. Harrison (1999) asserted in his article on noble cause corruption that “A good end cannot justify a means in a context that makes it wrong and evil. Violations of civil liberties and laws, violation of oaths of office, and abuses of authority and power—all betrayals of public trust—are wrong and cannot be justified by any end.”

There are many categories of officers using the justification of a noble cause to prove a case. Two examples are fabricating or planting probative evidence and lying on the stand about the facts in the case in order to obtain a conviction, when the officer “just knows” the subject is guilty, but just can’t find a legal method of obtaining evidence. Another form of noble cause corruption includes illegally obtaining confessions through threats, deception or making false promises using this same justification (Pollock, 2005).

Color of Law Misconduct

The U.S. Department of Justice (USDOJ) (n.d.) defines color of law misconduct, as simply misconduct or unethical behavior, as an illegal act committed by a person using the

power granted to him or her by a governmental agency. Color of law misconduct can be wide ranging and vary from seemingly inconsequential situations such as acceptance of a free meal while in uniform, to the more serious act of acceptance of bribes, or using excessive force against a suspect when effecting an arrest. In its most severe form, color of law misconduct can include police officers using their position and authority to directly participate in criminal activities, known as corruption. This paper will expand greatly on color of law misconduct, to demonstrate how misconduct has historically been a persistent problem for the police, examine some of the repercussions misconduct brings upon individual officers and departments and ways of reducing and eliminating officer misconduct.

Many people believe that police misconduct is a direct result of the culture of a department. Armacost (2004) posits that police officers are not independent agents but they operate within the constraints of an often powerful organizational culture that significantly influences their judgment and conduct. This influence is said to “train” the officers to behave according to organizational norms, (Armacost, 2004). These cultural norms are not always positive, as continued acceptance of unethical behavior of officers by supervisors and administration develops a negative influence on officers.

Excessive Use of Force

Many would agree that an unwarranted or excessive personal attack by a police officer is among the most heinous forms of misconduct. Excessive force has broad meaning, as the use of force by an officer varies greatly with every situation, and opinions of what is reasonable vary greatly among civilians and police alike. Officers may use force against a citizen for many reasons. Although many times officers are called upon to use legally justifiable force in order to arrest a resistant suspect or to return order to a situation out of control, officers may also use

illegal unjustifiable excessive force out of anger or frustration, to prove they are tough enough to do the job, teach a lesson or are just looking to fit in with their peers (Armacost, 2004).

There are numerous dramatic examples of officers using excessive force on citizens and there are many more that are never related to the public. Since many consider it to be one of the worst forms of police misconduct, incidents of police brutality receive intense media attention. There are two examples of excessive use of force that were highly publicized. The first example was the 1991 beating of Rodney King, a drunk driver that led Los Angeles Police and California Highway Patrol Officers on a high speed chase. The chase ended with the severe beating of King by the officers, captured on video camera by a citizen (Jacobi, 2000). The Rodney King incident resulted in an investigation by the Christopher Commission, an independent panel tasked with examining the use of force among Los Angeles Police Department (LAPD) officers. The second example was the shooting of Amadou Diallo, a young immigrant, by officers of the New York Police Department. Officers fired 41 times at the unarmed Diallo, striking him 19 times as he stood in the vestibule of his apartment in the Bronx. The shooting was the result of a mistaken identity and called the use of force philosophy into question (Jacobi, 2000).

To determine what is considered excessive, there must be an understanding of what amount of force officers are able to use legally. The United States Department of Justice (USDOJ) in the report *Principals for Promoting Police Integrity* specifies when police officers are legally allowed to use force and how much is reasonable. The USDOJ report indicates that “when officers are confronted with a situation where control is required to affect an arrest or protect the public safety, officers should attempt to achieve control through advice, warnings and persuasion. Where such verbal persuasion has not been effective, is not feasible, or would appear to be ineffective, an officer may use force that is reasonably necessary.” The report continues,

“Police officers should use only an amount of force that is reasonably necessary to effectively bring an incident under control, while protecting the lives of the officers and others” (U.S. Department of Justice [USDOJ], 2001, p. 4). According to the Federal Bureau of Investigation (FBI) a color of law violation pertaining to excessive use of force has occurred when it can be shown that the officer’s force was willfully unreasonable or excessive (Federal Bureau of Investigation [FBI], n.d.).

To clarify a key aspect of the USDOJ description of appropriate use of force, one must understand how reasonableness is gauged. According to Kappeler (2001), the United States Supreme Court case of *Tennessee v. Garner* (1985) is the definitive guide on police use of deadly force. *Garner* resulted in the balancing test used in many use of force cases, stating “the courts must balance the nature of the intrusion on the individual’s Fourth Amendment rights against the government’s interests alleged to justify the intrusion” (*Tennessee v. Garner*, 1985). In other words, the force an officer uses to accomplish his or her task must be objectively reasonable based on all of the circumstances of the case known to the officer at that moment. *Garner* also provided that deadly force can only be used when the officer believes the suspect poses an imminent threat of serious physical harm for either the police or others (Kappeler, 2006). Justice Rehnquist further defines the method of evaluating reasonableness of force in *Graham v. Connor* (1989) by indicating “The Fourth Amendment "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often

forced to make split-second decisions about the amount of force necessary in a particular situation” (Graham v. Connor, 1989).

As with other forms of misconduct, the amount of excessive force used by police officers is difficult to determine. Some researchers believe that what is known to the public, such as what appears in the public media, is merely the tip of the iceberg while others contend that restraint is the default setting among most officers when one considers the number of incidents where force could be used and is not (McEwen, 1996). Overall, McEwen (1996) reports that research has shown a psychological correlation between behavior in society, where citizens are provoked to physical assaults, and incidents in law enforcement where officers respond with excessive zeal to situations presenting real or imagined aggression.

Repercussions of Police Misconduct

When an incident of officer misconduct becomes public knowledge or goes beyond the level that can be addressed internally by a law enforcement organization, there are civil and criminal actions available to address the situation.

Civil Ramifications

Current remedies for color of law police misconduct began with the Civil Rights Act of 1871. Also known as the Ku Klux Klan Act (Worrall, 2001), the United States Congress enacted this Civil Rights Act in order to deal with ongoing conspiracies between the police and members of the Ku Klux Klan (KKK). Law enforcement officers working together with members of the KKK used their authority to violate constitutionally guaranteed rights of newly freed slaves following the ratification of the Thirteenth Amendment (Kappeler, 2006). The act, which was later codified as 42 United States Code (U.S.C.) Section 1983, was intended to provide recourse

for citizens who had their constitutionally protected rights violated by public authorities (Kappeler, 2006). The act was seldom used following its enactment, until nearly 90 years later when the United States Supreme Court decided the 1961 landmark case *Monroe v. Pape* (Worrall, 2001). *Monroe* stemmed from a case alleging 13 officers from the Chicago Police department broke into Monroe's residence without a warrant, ransacked the house and held Monroe in custody for 10 hours without charges (*Monroe v. Pape*, 1961).

42 United States Code (U.S.C.) § 1983 Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress... (Title 42 Public Health and Welfare, 2010).

Every day police officers perform duties or fail to perform duties that expose them and their departments to civil liability. This section of the paper will examine several areas that police officers, their supervisors and municipalities may find themselves facing civil litigation.

Police Officers- Civil Liability

To be held civilly liable under Section 1983 for constitutional violations an officer must be acting "under the color of law" (Kappeler, 2006). In 1988 the Supreme Court in *West v. Atkins* drew out the concept of color of law misconduct as it pertains to Section 1983 actions (Kappeler, 2006). In reporting the decision of the Court in *West v. Atkins* (1988) Justice Blackman indicated that the traditional indication of acting under color of law requires that the defendant in a § 1983 action have exercised some level of power possessed by virtue of state law and made possible only because "the wrongdoer is clothed with the authority of state law" (*West v. Atkins*, 1988).

According to Kappeler (2006) there are two ways officers can be exposed to civil litigation. The first is in state court when the plaintiff claims an officer violated state tort law by negligently or intentionally failing to perform their duty (Kappeler, 2006). For example, an officer neglecting to perform his or her duty by failing to arrest a drunk driver with whom they had contact, allowing that person to again drive and getting into an accident, resulting in the injury or death of another. The second is by a plaintiff bringing suit in federal court claiming an officer violated their constitutional or federally protected rights (Kappeler, 2006). An example of this would be the intentional use of excessive force when taking a suspect into custody, resulting in injury or death.

Officers, not just supervisors, can also find themselves culpable in use of force cases, for failure to intervene, even if they personally did not participate in a situation where unreasonable force is claimed. In *Fundiller v. Cooper City* (2000) the Eleventh Circuit Court of Appeals ruled that any officer who is present at a scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force can be held liable for his or her inaction. The previously stated cases are all federal rulings, but in Wisconsin police officers can be held civilly liable for certain violations as well. For example, under Wisconsin's State Statute, the denial of right to counsel, §946.75

Whoever, while holding another person in custody and if that person requests a named attorney, denies that other person the right to consult and be advised by an attorney at law at personal expense, whether or not such person is charged with a crime... (Denial of right of counsel, 1977).

is considered a class A misdemeanor, but is also a constitutional right. Under Article I Declaration of Rights, Section 7 Rights of accused of the Wisconsin Constitution, the accused in a criminal proceeding has the right to be heard by himself and counsel (Barish, 2009).

Police Supervisors'- Civil Liability

Research indicates that cases relating to failure to train and failure to supervise are the two most common civil actions taken against department administrators (Ross, 2000). Although supervisors do not have to participate in an incident involving the violation of a person's constitutional rights to be liable, the courts understand the difficulties of police work and require a high level of negligence to be liable. The US Supreme Court case *Rizzo v. Goode* (1976), was labeled as the touchstone for supervisor liability cases. In *Rizzo* the plaintiffs included Philadelphia city leaders along with police department supervisors in their suit claiming illegal and unconstitutional treatment of citizens by the police. The Plaintiffs claimed these city leaders and supervisors provided express authorizations or encouragement of the police misconduct as well as failing to act in a manner that would prohibit it from occurring again (Worrall, 2001).

Following a review of testimony from the trial, the Supreme Court ruled "As the facts developed, there was no affirmative link between the occurrence of the various incidents of police misconduct and the adoption of any plan or policy by petitioners express or otherwise -- showing their authorization or approval of such misconduct" (*Rizzo v. Goode*, 1976). Worrall (2001) stressed that an affirmative link should not be considered a culpability standard in and of itself, but that it is a link between violations of a citizen's constitutionally protected right and the supervisor. Courts have found supervisors liable if they have acted "recklessly or with deliberate indifference to the plaintiff's rights, or the supervisor's conduct "knowingly, willfully, or at least recklessly caused the alleged deprivation" (Worrall, 2001).

Courts have also ruled that supervisors may be liable even for their inaction. In the United States Court of Appeals case *Ripson v. Alles* (1994) the court ruled that in order be found

culpable, "The supervisor must know about the conduct and facilitate it, approve it, condone it, or turn a blind eye for fear of what [he] might see". (Ripson v. Alles, 1994).

Municipalities- Civil Liability

Municipalities have been subject to Section 1983 liability since 1978. Prior to that time municipalities were not considered "persons" under the meaning of Section 1983 (Kappeler, 2006). This all changed with the United States Supreme Court case of *Monell v. Department of Social Services* (1978) where the Court ruled that Congress did intend for municipalities and other local government agencies to be included among those to whom Section 1983 litigation applies (Kappeler, 2006).

In Section 1983 cases where the plaintiff claims the municipality, or in other words the governing body having control over the law enforcement agency, is liable for the actions of its officers, the Supreme Court has provided decisions in two landmark cases. Worrall (2001) cites *City of Canton v. Harris* (1989) and *Board of the County Commissioners of Bryan County v. Brown* (1997) as stating standards for proving these types of failure to train claims.

The *City of Canton* case stems from an incident where Harris was arrested and brought to the jail and upon arrival had an apparent medical condition. The jailers did not seek medical attention for Harris, who was later taken to the hospital by family members. The Court determined that the policy of the department was not unconstitutional so the Court then had to determine what amount of liability the municipality had when the constitutional policy was administered unconstitutionally because of a failure to train issue (Worrall, 2001). The Court ruled that "the focus must be on adequacy of the training program in relation to the tasks the particular officers must perform. That a particular officer may be unsatisfactorily trained will not alone suffice to

fasten liability on the city, for the officer's shortcomings may have resulted from factors other than a faulty training program”, “it may be, for example, that an otherwise sound program has occasionally been negligently administered” (City of Canton, Ohio v. Harris, 1989). The justification for such a high standard of proof was “to adopt lesser standards of fault and causation would open municipalities to unprecedented liability under § 1983” (City of Canton, Ohio v. Harris, 1989). The Supreme Court recognized the danger in setting a low level of proof for such cases as it would allow every department’s training program to be second guessed by every court, creating a flood of civil liability cases.

In *Brown*, the Supreme Court ruled on a claim of inadequate hiring. The facts of the case were that Reserve Deputy Burns was involved in the arrest of Brown, resulting in injuries to Brown, following a high speed chase. Brown claimed Burns used excessive force during her arrest and that Bryan County was liable because it overlooked Burns’ two previous misdemeanor convictions for assault and battery during the hiring process (Worrall, 2001). The Court ruled that unless there was evidence to show that the sheriff’s disregard for Burns’ criminal history could in some way show a deliberate indifference to the plaintiff’s constitutional rights, the department was not liable because of this single hiring incident (Board of the County Commissioners of Bryan County, Oklahoma v. Brown, 1997). Specifically, the court ruled that “there was insufficient evidence on which a jury could base a finding that Sheriff Moore's decision to hire Burns reflected conscious disregard of an obvious risk that a use of excessive force would follow (Board of the County Commissioners of Bryan County, Oklahoma v. Brown, 1997). The Court ruled that the plaintiff must prove a causal link between the hiring of an employee and the constitutional violation. The Court also indicated that a single instance of inadequate hiring procedure does not prove deliberate indifference (Worrall, 2001).

These two Supreme Court cases show the Court's feelings towards municipal liability stemming from officer behavior. The Court has set the bar high for the plaintiff's burden of proving a connection between the policies and practice of the department and the unconstitutional actions of its officer. The Court also recognizes that a low burden of proof would cause every policy and practice which creates harm to be actionable under section 1983.

Although some estimates are that only about 4 to 8 percent of civil cases result in judgments against the police (Kappler, 2006), civil litigation can prove to be expensive for municipalities that are required to battle flagrant violations of citizen's civil rights. Rodney King was awarded \$3.8 million by the City of Los Angeles after it had paid out \$70 million following the Rampart Division scandal, the survivors at Ruby Ridge in 1995 were awarded \$4 million dollars, and the parents of Amadou Diallo were awarded \$3 million dollars by the City of New York (Kappler, 2006).

Consent Decrees and Memos of Understandings

Not only can the federal court intervene in the actions of law enforcement organizations, the U.S. Department of Justice can investigate, as well as bring civil action against police organizations. In 1994 the United States Congress passed the Violent Control and Law Enforcement Act, which provides the federal government the authority to intervene, through the use and threat of a civil law suit, in certain police misconduct cases by addressing and providing relief from a "pattern of practice" existing within the organization. Since 1994 there have been 22 separate consent decrees or memorandums of understandings between the USDOJ and police organizations (Ross & Parke, 2009). Consent decrees require judicial oversight and usually consist of such mandates as revisions to or additions to policies or procedures, the establishment of an officer data information management or early intervention system, an information reporting

system, additional officer training or retraining, or an internal investigation system (Ross & Parke, 2009). According to Ross and Parke (2009) a memorandum of understanding is more conciliatory in nature and does not involve judicial monitoring, like the consent decree, but usually requires police organizations to adopt strategies to provide for more supervision and accountability as well as provide more transparency in their individual programs.

Criminal Liability of Misconduct

Jacobi (2000) proffered that “the very breadth of police officers’ discretionary power to use violence suggests a powerful need for accountability. The failure to hold police accountable perverts the rule of law, makes citizens distrustful of authority, and encourages further lawlessness by police officers.” Even though most agree that the need for accountability is of utmost importance, Jacobi (2000) indicates that because they police themselves the police have not been treated equally by state criminal law.

Because of perceived shortcomings in the law, as well as the criminal justice system, there are those who believe that criminal prosecution of officers who have committed illegal acts should be the last option. Armacost (2004) gives several reasons why some feel criminal prosecution is not a good option. Armacost (2004) proffers that the criminal standards define the absolute minimum of socially-acceptable conduct, which does not adequately reflect the high standard of behavior expected of officers. Also, because of the procedural advantage enjoyed by the accused in our system of justice, the idea that most people feel the police are “just trying to do their job” to maintain that thin blue line between order and chaos, and the fact that most people will believe the officer’s word before an accused criminal, the justice system rarely brings criminal prosecution against police officers (Armacost, 2004). Also, the fact that all the actors in

the criminal justice system rely on each other to do their part to keep the system moving, Armacost (2004) posits that the police and the courts desire to maintain a working relation so prosecuting officers would be detrimental to maintaining this harmony. Jacobi (2000) adds that because of a strong bond of officer loyalty, investigation and prosecution of officer misconduct cases are difficult.

Federal Criminal Actions

Two sections within Title 18 of the United States Code (U.S.C.) the Federal Civil Rights Statutes provide avenues for criminal prosecution of police officers who have been involved in certain illegal activities. The first is Section 241, Conspiracy Against Rights statute.

This statute makes it unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any person of any state, territory or district in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States (Federal Bureau Of Investigation [FBI], n.d., p. 1).

Section 241 continues by stating that punishment for violations varies from fine or imprisonment of up to ten years, or both, and if death results, imprisonment of any term of years, or for life or may be sentenced to death (FBI, n.d.). The second section of Title 18 that may be applied specifically to government officials is Section 242 titled Deprivation of Rights Under Color of Law (FBI, n.d.). This statute makes it a crime for any person...

acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any person those rights, privileges, or immunities secured or protected by the Constitution and laws of the U.S.

This law further prohibits

a person acting under color of law, statute, ordinance, regulation or custom to willfully subject or cause to be subjected any person to different punishments, pains, or penalties, than those prescribed for punishment of citizens on account of such person being an alien

or by reason of his/her color or race (FBI, n.d., p. 1-2).

Acts under "color of any law" include acts not only done by federal, state, or local officials within the bounds or limits of their lawful authority, but also acts done without and beyond the bounds of their lawful authority provided that, in order for unlawful acts of any official to be done under "color of any law," the unlawful acts must be done while such official is purporting or pretending to act in the performance of his/her official duties...(FBI, n.d., P. 1-2). Section 242 continues by stating that punishment for violations varies from fine or imprisonment of up to ten years, or both, and if death results, imprisonment of any term of years, or for life or may be sentenced to death (FBI, n.d.).

Federal criminal prosecution of police misconduct cases are handled through the United States Department of Justice (USDOJ) Civil Rights Division, Criminal Section. This agency has been prosecuting criminal civil rights cases since the post Civil War reconstruction era. Most of its prosecutions involved murders of minorities and civil rights workers in the south. More recently, congress has on several occasions broadened the criminal sections scope to encompass interference by force with such rights as employment, housing and public facilities, violent conduct against religious property and later interference with providers of reproductive health (U. S. Department of Justice [USDOJ], 2000). One of the areas of focus for the criminal section is the prosecution of official misconduct, as discussed above in sections 241 and 242 of Title 18 of the U.S.C. (USDOJ, n.d.). Specifically relating to violations by police officers, complaints are received by the USDOJ from citizens and officers alike. If an investigation is warranted, it is referred to an investigative arm of the government, usually the FBI. Prosecutions of the cases are usually done jointly by the USDOJ and the US Attorney's Office, but at times may be handled by state or local prosecutors, as well (USDOJ, n.d.). The federal prosecution is not limited to

cases not formerly addressed in state courts. The United States Supreme Court ruled that because the federal government is a separate sovereign from the state, prosecution of the same incident following a state conviction does not constitute a violation of the double jeopardy clause (USDOJ, n.d.).

As stated above, prosecuting an officer for criminal violation of a federal statute is difficult. Jacobi (2000) gives an example of those prosecutorial difficulties, as seen in a 1945 United States Supreme Court case of *Screws v. United States* (1945). Sheriff Screws and several of his deputies arrested a black man on a charge of theft and, while in their custody, they beat him to death. Screws was charged and convicted under Section 242, the deprivation of civil rights under color of law. The case was won on appeal and was then heard by the United States Supreme Court. The Supreme Court ruled that in order to convict Screws a jury must find the specific “purpose to deprive the victim of a constitutional right”, indicating that general bad intent was not enough (Jacobi, 2000). This specific intent to deprive a person of federal civil rights, established in *Screws*, has made the federal aspect of prosecuting police misconduct cases much more difficult (Jacobi, 2000).

State Criminal Actions

Duty and loyalty tend to have an impact on the investigation and prosecution in situations of police misconduct. Jacobi (2000) posits that conflicts between duty and loyalty often emerge when complaints of officer misconduct must be investigated and prosecuted locally. Since investigations of misconduct are usually conducted by internal affairs divisions of larger departments, officers are in reality investigating their own. Since prosecutors in most cases only pursue cases of officer misconduct referred to them by the police department, many believe, the

department is able to effectively screen its officers from criminal prosecution (Jacobi, 2000).

Historically, local police departments have not been effective in pursuing prosecution of officers involved in misconduct. Because of this, Congress created what is now Section 242 of the United States Code (U.S.C.) to provide a body of law more likely to be employed to prosecute police for acts of misconduct (Jacobi, 2000).

State of Wisconsin

In Wisconsin, police misconduct can be prosecuted according to what the particular act would be if committed by a civilian. For example if an officer uses unnecessary or excessive force against a person, he or she could be charged with battery, or if death resulted, homicide. Other state charges that could be brought against an officer found to have committed crimes earlier discussed include perjury, a Class A felony, and assisting or permitting escape, a Class H felony (Misconduct in public office, 1977). There is also a Wisconsin statute, titled Misconduct in Public Office, which addresses a variety of issues relating to responsibilities of persons granted authority by a government office. Violations of Misconduct in public office is a Class I felony. This statute covers failure or refusal to perform mandatory, nondiscretionary duties of the office, committing an act which the officer knows is in excess of the officer's lawful authority, exercising a discretionary power in a manner inconsistent with the duties of that office with the intent to obtain a dishonest advantage, or lastly, "under the color of the officer's employment intentionally solicits or accepts for the performance of any duty anything of value that the officer knows is greater or less than is fixed by law" (Misconduct in public office, 1977 p.484).

Special prosecutors from the Wisconsin Department of Justice (WDJ), at the request of a district attorney, may assist local departments and prosecutors with investigating and prosecuting

police misconduct cases. Requests are made when such prosecutors need assistance or are unable to act (Wisconsin Department of Justice [WIDJ], n.d.).

Section III. Theoretical Framework

Theorists have attempted to explain deviant or unethical behavior within individuals and groups such as police officers and police organizations. One such theory by Robert Akers called the social learning theory supports the earlier discussion concerning socialization as a common cause of unethical behavior among officers.

Social Learning Theory of Crime (Akers)

In his social learning theory, Akers (1994), building on Sutherland's Differential Association Theory, discusses the learning process for both conforming and deviant behavior. Since the process of learning to conform to socially acceptable behavior and socially deviant behavior is the same, Akers (1994) argues that influences on an individual, such as associations with persons dedicated to criminal behavior, dictate the probability of deviant or conforming behavior. Akers (1994) goes on to state that the probability of a person engaging in deviant behavior, versus conforming to acceptable behavior, increases when he or she differentially associates with other people who engage in deviant behavior and project definitions favorable to deviant behavior. Differential association, as described by Akers (1994), is the process where through association with another person or a group a subject is exposed to other's norms and values. Definitions, as explained by Akers (2001), refers to attitudes a person attaches to a certain behavior, whether good or bad, right or wrong, under the circumstances.

Engaging in deviant behavior would have no benefit unless there was some positive outcome or benefit for the person. Akers (1994) proffers that the likelihood of a person continuing to engage in a particular behavior is based on past, current and potential future rewards or punishments for that person's behavior. In other words, if the person anticipates

future benefits for a behavior, based on former and current benefits received, the probability is high the activity will continue. Akers (2001) continues, the higher the value of the reinforcement the greater the probability the action will reoccur.

Theoretical Application of Social Learning Theory to Police Misconduct through Socialization

Differential association in Akers' Social Learning Theory aptly describes the process officers experience as they are socialized and trained to become members of a law enforcement agency. Socialization of officers starts early as officers move through the process of a police academy and field training. Police academy and officer field training requirements vary nationwide, often by state and individual department. A Bureau of Justice Statistics (BJS) reporting on 1999 statistics of local police departments noted classroom academy training times averaged 613 hours (Reaves, 2010). The academy training provides officers the opportunity to learn the basic knowledge, skills and techniques required to operate in any law enforcement agency. Schmalleger (2009) indicates that police academies train officers in a variety of general subjects, such as human relations, report writing, criminal law, investigative techniques and communication. Gaines & Kappeler (2008) indicate that the police academy is the initial point of the socialization process of new officers, not only teaching official material, but also the unofficial rules and boundaries. Also, Gaines & Kappeler (2008) reports that clipping the cord connecting the new officer to the civilian world during the academy is an important part of his or her orientation and socialization process that will provide the officer with the fundamentals to successfully negotiate a career in police work. After completing the academy, officers generally proceed to their department's field training program which teaches them specific department

policies, procedures, boundaries, norms and values needed to succeed in that individual agency. Gaines & Kappeler (2008) indicate that field training provides a department with the opportunity to train concepts not feasible in the class room as well as testing the officer's ability to apply what he or she learned in the academy in a real world situation. Field training provides an opportunity for new officers to be socialized and oriented to that particular law enforcement agency. According to the BJS report on 1999 statistics from local police organizations, the average department field training program is 309 hours (Reaves, 2010).

As indicated earlier, police officers tend to separate themselves from the general public, Gaines and Kappeler (2008), and as stated by Armacost (2004), officers do not operate independently, but within the constraints of an often powerful organizational culture that significantly influences their judgment and conduct. In turn, new recruits are often forced to accept the norms and values of the group if they want to survive in the organization, supporting Akers' (2001) claim that social learning occurs in those groups that are the major source of the person's reinforcement.

Since a majority of police officers in every department operate ethically (DeCrescenzo, 2005) and as department wide officers are exposed to the same academy and field training, it can be assumed that most socialization into policing is not deviant or unethical. This premise is supported by social learning (Akers, 2006) indicating that the same learning process is involved in the learning of both conforming and deviant behavior, the difference in the direction taken towards deviance or conformity lies in the balance of influence on a person's behavior. Individual officer factors such as personal beliefs, as well as whether deviant behavior is either ignored or condoned by the administration or its supervisors, playing a role in the amount or scale of deviant versus conforming norms and values the officer will be exposed to during

socialization. In other words, the definitions of certain behaviors held by individuals in control of daily operations, training and socialization of officers will determine the norms and values officers are exposed to and have to operate under in order to function in that organization. Beyond the organizational support of certain norms and values, the officers themselves have to accept the norms and values presented. Without the ability of the officer to accept the values and norms of the organization, he or she cannot effectively participate in its operation.

According to the Social Learning Theory (Akers, 2001), the probability that an officer will imitate the observed behaviors of others is directly related to the observed consequences of such action. In other words, if an officer observes a certain behavior resulting in positive reinforcement and acceptance, the more probable that officer is to imitate that observed behavior. Going back to the earlier reference of the number of hours a new officer is exposed to direct supervision of another more experienced officer in a field training program provides a clear picture of the degree of constant and immediate reinforcement received for every situation during initial training and socialization. Beyond initial training though, the organization must continue to support officer behavior if it is expected to continue. A one way police organization support behavior, good or bad, is through their method of accountability.

Policing has traditionally counted on officers making traffic stops, issuing citations and making arrests in order to show that they are being productive and making their communities safe. Accountability through numbers is the simplest way for administrators and politicians to show that they are doing a good job and are deserving of their jobs and continued funding (Martinelli, 2006). This method too is a simple and seemingly an effective way to evaluate the performance of officers. This pressure to provide impressive numbers so administrators and politicians can provide the community the feeling of safety also results in positive reinforcement

to motivate officers who are encouraged to maintain or increase productivity, sometimes at any cost (Martinelli, 2006).

Fitch (2011) indicates that most police officers deep down are really good, hard working people, with high moral values who only want to do a good job and make their community a better place to live and work. These attributes, according to Fitch (2011), provide officers with a strong sense of personal satisfaction and thus most officers are unwilling or unable to engage in unethical behavior, unless they can rationalize the need for such behavior in their own mind.

Not only is positive reinforcement an important factor in determining if an officer will imitate an observed behavior, but as stated previously, for an officer to engage in deviant behavior, according to Akers (2001), officers must neutralize their opinion of the deviant behavior by modifying their definition of that behavior. Looking at deviant behavior situationally as “ok” because somehow it was justified, necessary, excusable or not too bad, allows a person to neutralize his or her definition about a behavior previously considered deviant (Akers, 2001).

Police officers are able to use the method described in the Social Learning Theory to justify or excuse behavior they formerly would not have condoned as reasonable. In their theory on techniques of neutralization, Sykes and Matza proffer that individuals involved in unethical or illegal behavior can rationalize their actions by convincing themselves that they had no criminal intent or they had justification (Conklin, 2010). Neutralization is made possible, according to Sykes and Matza, through a process where the dominant value system or those values accepted by the general population, contradicts new values established by an alternative social group which places pressure on members to conform. In other words, rationalization removes the constraints of the dominant value system (Conklin, 2010).

Sykes and Matza relate five techniques of neutralization, which can also be attributed to misconduct within a police organization. The first technique is a denial of responsibility where an individual can claim the unethical behavior was caused by forces beyond his or her control. For example, an officer can justify his or her unethical or illegal behavior by stating they are only satisfying the demanding requirements of the police organization. The second is where an individual denies any injury, stating that nobody was hurt by his or her behavior so the behavior was acceptable. An example relating to unethical policing would be where an officer accepts a free meal or tickets to a show and rationalizing it by saying the action didn't hurt anyone so how can it be wrong. The third technique, denial of a victim is when the action is justified because there is no adverse outcome for anyone because of his or her actions. An example of this technique as related to unethical policing could be an instance where an officer justifies falsifying evidence against a citizen, that officer feels is victimizing others such as a drug dealer or a prostitute, in order to enforce the law. The fourth technique is what Sykes and Matza call condemning the condemners. This is a process where the officer claims that the unethical behavior was motivated by the actions of others, in other words they made me do it. For example, an officer could state that he or she physically abused a prisoner in order to obtain a confession because the department placed pressure on him or her to solve the case. Lastly, Sykes and Matza claim that appealing to a higher loyalty provides an individual to transfer the blame or justify his or her actions because of the demands of a group. The officer may say that he or she accepted the bribe because his or her peers expect that behavior in order to survive in the group. (Conklin, 2010).

IV. Recommendations and Conclusions

Based on the examination of Aker's theory on social learning as one of the dominant causes of police misconduct, there are numerous ways for police administrators to mitigate unethical behavior. This paper will now examine several techniques to assist police agencies in prevention and mitigation of misconduct resulting from negative organizational socialization.

Organizational Prevention and Mitigation Tactics

Police chiefs, sheriffs and other organizational managers have the responsibility to manage their departments in the best and most effective manner possible; in order to provide high quality service to their communities. The following points represent important organizational factors as well as specific techniques that should be considered in order to provide quality service to citizens while reducing the opportunity for misconduct.

Establishing Effective Policies and Procedures

The International Association of Chiefs of Police (IACP) has been long considered the leading source for law enforcement policy development. According to the IACP, it had been working cooperatively with the US Justice Department's Bureau of Justice Assistance since 1987 to develop and provide law enforcement agencies with quality and effective departmental policies (International Association of Chiefs of Police [IACP], 2011). The IACP hold that the purpose of departmental policies should be to guide officer's behavior in a way that at all time reflects the ethical standards consistent with the rules of the organization (International Association of Chiefs of Police [IACP], n.d.). Similarly, Kinnaird (2006) indicates that the

purpose of department policies and procedures are to reduce the possibility of officer misconduct and are central to any effort put forward by an organization to control officer behavior.

If the premise is, as adapted from Aker's social learning theory of crime, that new recruits learn a new set of norms and values needed to survive and operate within an organization, then department administrators must establish and strive to provide support for positive and ethical norms and values. Further, in order to establish these ethical and effective methods of operation an organization must provide its employees with directions and guidelines dictating exactly what is expected of each officer. These desired methods of operation need to be spelled out in the official policies and procedures of an agency.

In order to better understand the importance of a department's policies and procedures, a clear definition is essential. Kinnaird (2006, p.202-203) posits that a policy is "a definite course or method of action to guide and determine present and future decisions or a guide to decision making under a given set of circumstances within the framework of corporate objectives, goals and management philosophies. Further, a procedure is "a particular or consistent way of doing something".

In their guide for developing and implementing a policy and procedure manual, the IACP enumerates guidelines for the process (Orrick, 2008). According to the IACP, a department's policy and procedure manual should be comprehensive in that it provides officers with guidance for all aspects of the organization. It is also very important that the policies and procedures described in the manual be consistent with the values and philosophies of the department, as well as all legal requirements. The IACP guidelines also recommend that staff from all levels of the organization should be involved in the development of the manual, as well as its annual review.

Of course, all employees need to be adequately trained on the contents of the manual, as well as provided timely updates on changes (Orrick, 2008).

Since every law enforcement agency is different and will have its own individual needs for policies and procedures, it would be difficult and well beyond the scope of this paper to attempt to recommend a comprehensive list of specific policies and procedures suitable for every agency. Administrators must be aware of the availability of resources that can provide guidance in creating and updating policies and procedures.

Addressing officer conduct, the IACP (1998) provides a Model Policy on Standards of Conduct, presented in a way that makes them easily adaptable to individual organizations, addressing a wide variety of concerns. Some of the policies and procedures addressed by the IACP (1998) in their model policy relating to the issue of use of force include a requirement that officers obey the law, department regulations as well as lawful orders. For example, although it is acknowledged that there is a need to maintain physical control in certain situations, a department's policy should require officers to adhere to the official use of force policy and shall observe the civil rights and protect the health and welfare of citizens under their control (IACP, 1998). Organizations adopting these types of policies are making a statement about how their officers are expected to conduct themselves as well as holding officers accountable for their actions.

Officer Training

Officer training is as much an important component of any organization's efforts to mitigate misconduct as anything else. Training bridges the gap between the guidance of a written policy and the desired method of task completion; in other words, the officer will know what to do (International Association of Chiefs of Police [IACP], 2001). Kinnaird (2006) stressed the

importance of training and the relevance of current training. While training officers in relevant techniques such as firearms and arrest tactics, it is also important to maintain officer safety and reduce the chance of its misapplication through training on ethics as well as departmental policies and procedures.

Referred to as the social revolution aspect of training, Kinnaird (2006), stresses the importance of staying current with changes in policies, procedures, laws, ethics and social trends. Comprehending the true scope and meaning of a policy or procedure as well as the implications of a violation should not be left to chance. Assuming that an officer has read the policy or procedure and understands its true and full meaning could lead to misunderstandings, confusion and possibly its violation. As stated earlier, officers must be provided with a clear set of guidelines so they understand exactly what is expected of them, and what will happen if they do not perform in an approved manner.

A national study published by the NIJ, measuring police attitudes towards misconduct, addresses the question of training to reduce occurrences of unethical behavior by officers. On track with police scholars, officers themselves recognize the importance of quality and relevant training to deter misconduct (Weisburd, Greenspan, Hamilton, & Williams, 2000).

Ethical training is thought to be the most important piece of any department's plan to maintain officer integrity and prevent misconduct. Ethics training will provide officers with the tools they need to resist temptations, whether from fellow officers or the general public, and the encouragement to maintain a high standard of conduct.

Besides the fact that most departments don't conduct ethical training at any level, the Ethics Training Subcommittee of the International Association of Chiefs of Police (IACP) contends that there is nothing more detrimental to a department or an officer's career than news

of misconduct or unethical behavior (International Association of Chiefs of Police [IACP], n.d.). Along with ethical training, other topics such as cultural diversity and communication skills can also aid officers in maintaining a high level of ethical conduct (US Department of Justice [USDOJ], 2001).

The most public form of department wide ethics is the adoption of the “Law Enforcement Code of Ethics”, which is an oath each officer takes to uphold the integrity of the office. This code provides the “corner-stone” for the department’s ethical training. Department administration should be committed to conducting continual ethical training at every level of the agency, starting in recruit training and throughout the field training program (IACP, n.d.). The field training officer (FTO) should reinforce the general topics of police ethics the new officer learned in recruit training and teach them to apply it to the specifics of the job (IACP, n.d.). The training cannot end there, as it must adapt to change and continue to be taught at annual officer in-service trainings throughout each officer’s career. Supervisors and administrators are responsible for setting the tone of the department; they must take the lead in understanding and following the ethical standards of the department and profession (IACP, n.d.).

Behavior and Performance Tracking

Officer misconduct can start off small, sometimes with seemingly inconsequential actions, but if unaddressed by the organization, this behavior may grow into greater unethical or even criminal behavior. Another aspect of socialization is the inaction taken by the organization to correct an issue. If an inappropriate action is not corrected, in other words accepted or ignored by the organization, the officer’s behavior is reinforced and may be seen as acceptable. When other officers observe the unwillingness or inability of the organization to address an issue, they too learn that the behavior is acceptable and may decide to participate. Take for example officers

accepting free meals from a local café. Although it is against department policy to accept gratuities, the business like having the officers around and may not consider it a bribe when it is not a common occurrence. If unaddressed the active may grow into a situation where officers expect free meals wherever they go, and may extend beyond meals to other goods from other businesses. This is a simple example of how something incent and small can grow into a much larger and more serious problem. Because some departments have large numbers of officers, they need an efficient and effective way to track officer performance and behavior so patterns in unwanted behavior can be addressed.

In 1981 the US Commission on Civil Rights announced a recommendation that every police department should implement some type of computer-based officer behavior tracking system with the purpose of identifying problem officers (Walker, Alpert & Kenney, 2001). The inability to track problem officers can have detrimental effects on a department, as well as the community it serves. A worst case scenario occurred in Los Angeles in the late 1990s and early 2000 when a lack of leadership and the inability or even unwillingness to track and address unethical behavior resulted in federal court intervention.

In a 2001 consent decree, the legal action brought upon the City of Los Angeles and the Los Angeles Police Department (LAPD) by the United States Attorney General Janet Reno in US District Court, alleged an overall pattern or practice of unconstitutional or unlawful conduct by officers which was made possible by the department's failure to implement proper management practices and procedures (*United States of America v. City of Los Angeles, Board of Public Commissioners, and the Los Angeles Police Department*, 2001).

The first point in the court document was the requirement to implement a computerized performance and behavioral tracking system, sometimes called an early intervention system (EI).

Among the information that the system is required to track, the court order indicated any and all use of lethal or non-lethal force reports, all written complaints, all commendations and awards, all arrest reports, citations, performance evaluations, training history and action taken by supervisors (*United States of America v. City of Los Angeles, Board of Public Commissioners, and the Los Angeles Police Department, 2001*) Along with creating an in-depth data base that provides a clear picture of the officer, the court order required the implementation of a protocol for the system's use. The purpose included the supervision and auditing of specific officers, supervisors and managers in order to detect employees that may be engaging in "at risk behavior" (*United States of America v. City of Los Angeles, Board of Public Commissioners, and the Los Angeles Police Department, 2001*).

Early Intervention (EI) systems are a performance based data analysis system used for the early identification of potential problems with individual officer's behavior. When implemented properly and used in conjunction with other management programs, EI can also help criminal justice organizations be more accountable to the community for its officers' conduct. EI systems are intended to be counseling and re-training in order to correct officer behavior prior to it becoming a problem so it should not be considered part of the department's formal disciplinary program (Walker, Osnick Milligan, & Berke, 2006). There are three distinct phases to EI systems: selection, intervention and post-intervention monitoring (Hughes, 2007).

The selection phase of an EI system comprises a distinct set of officer indicators the data collection system is programmed to track and at what point the system will trigger an interdiction. Organizations must decide, based on departmental values and goals, what indicators the EI system will track (Hughes, 2007). Common tracking indicators may include use of force reports, citizen complaints, disciplinary actions, officer evaluations, officer performance

statistics, officer commendations and the use of sick and family leave (Walker, 2003).

Depending on how serious the organization feels each indicator is, there needs to be a set trigger point where the system will indicate the need for an intervention (Hughes, 2007). The effectiveness of the system depends on the quality and quantity of the data put into the system (Walker et al., 2006).

The second phase of an EI system is interdiction, which is the process of counseling and/or re-training that the organization deems appropriate for that particular officer and situation. Walker et al. (2006) indicates that counseling may consist of a formal or informal meeting with a supervisor to discuss the officer's needed behavior or procedure change, a referral to a Chaplain, counselor or psychologist. The interdiction may also include re-training on a particular skill or procedure, or even a reassignment to another department (Walker et al., 2006).

The final phase in an EI system is the post-intervention monitoring. An aspect of the EI system most often overlooked, the organization must continue to closely monitor the officer's behavior following the intervention to make sure the measures taken to correct the situation have been effective. Often this monitoring consists of the first line supervisor paying extra attention to the officer's performance, while other programs require more participation and a signing off by the administration to assure compliance (Walker, 2003).

EI systems have proven to be an effective proactive measure to help organizations mitigate officer misconduct. Hughes (2007) indicates that the use of EI systems has been endorsed by the U.S. Civil Rights Commission, the International Association of Chiefs of Police, and the U.S. Justice Department, as well as private consultants. Walker (2003) indicates that in real world implementation of EI systems, departments reported The EI system made positive contributions to the supervisors' accountability through their ability to identify behavior in

officers not consistent with department policies, as well as the departments' ability to intervene before misconduct occurs and officers become a liability to the department or themselves.

Supervision

The IACP contends that it is imperative that first line supervisors understand their responsibility for the development and maintenance of a strong ethical climate within their organization. The supervisor that would rather be popular among the troops and may turn a blind eye and disregards misbehavior by subordinates is counterproductive to a department committed to maintaining an ethical program (IACP, 2001). Martinelli (2006) labels this type of behavior supervisory cowardice and contends that it reinforces and contributes to tolerance of unethical conduct. Martinelli (2006) continues by stating that "a supervisory philosophy of discipline based on due process, fairness and equity combined with intelligent, informed and comprehensive decision making is the best for the department, employees and community".

Supervisors are the mode by which administrators enforce their organizational values and are the most important aspect of any department's misconduct mitigation strategy. Without the watchful eye and the policy enforcement authority of a supervisor, officers would have little concern for rule violations. While establishing departmental values thorough quality policies and procedures as well as providing thorough training is important, a method of enforcement is imperative.

It has been said that police misconduct needs the support of supervisors. Frank Serpico, in his testimony to the Knapp Commission in New York City stated that "corruption cannot exist unless it is at least tolerated at higher levels in the department" (Newburn, 1999, p. 30). A key aspect of any proactive strategy against police misconduct, according to Newburn (1999), must include instilling a sense of responsibility among the supervisory staff. All other mitigation

attempts will be less than successful if the department does not have adequate supervision to enforce policy and procedures. The Mollen Commission, in its findings of corruption in NYPD, indicated the need to reinvent the enforcement of command accountability (Newburn, 1999).

Officers themselves believe that an effective first line supervisor is important in an organization striving to maintain a high ethical level. Weisburd et al., (2000) indicates that in their nationwide survey of police officers, 90 percent of respondents believed that a quality first line supervisor was an effective means of reducing or eliminating misconduct among officers. Officers in the survey stated that because first line supervisors often serve as role models for subordinate officers, supervisors that maintain a good working relationship based on fair and ethical treatment of officers promote the same behavior among field personnel.

Because of the high degree of discretion exercised by officers every day, police supervisors have a unique challenge not experienced in many other professions. This fact makes the responsibility of the first line supervisor particularly important for the tasks of leading, managing and monitoring officer conduct (Schafer & Martinelli, 2008). Training and support from administration is also important as the influence of supervisors may be inconsistent due to individual leadership strengths and reputation with the officers (Schafer & Martinelli, 2008).

Conclusion

As the research has shown the diversity, scope and scale of police misconduct can vary greatly, but there are proactive measures law enforcement agencies can take to minimize or eliminate opportunity. Being that officer behavior is learned, organizations have the ability to establish and project strong ethical values among its officers and hold them accountable for their actions. Organizational tolerance and supervisory cowardice of officer misconduct must be

avoided, and agencies must be proactive in their planning of techniques to deliver ethical service to the community.

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