

TEN CONSIDERATIONS FOR INTERNAL AFFAIRS INVESTIGATIONS

Whether your department receives one complaint a month or one hundred, the internal affairs function continues to be one of the most important functions for checking the integrity and professionalism of the department. Police departments are increasingly being scrutinized on how they police their own. Citizens sometimes express frustration over the process and there are renewed calls with the legislature to have independent boards investigate police department. How can law enforcement do a better job investigating its own? What follows is some practical how-to guidance on the Internal Affairs process.

1. Don't think like a cop. This is not a call for service and you are not doing an offense report.

Many of the following considerations have to do with perspective. Get the right perspective when you are investigating an internal affairs matter. What is the goal? Are you trying to arrest a suspect? No. This is not a call for service and it is really very different from investigating a criminal case. Internal Affairs investigators and police executives are there to protect the integrity of the police department. This is a greater purpose that supersedes the needs of any one individual. It is about being able to look the citizenry in the eye and say, "We want you to trust us. And because we want you to trust us, we are going to do our best to make sure that we maintain the integrity of the police department by thoroughly investigating our own when misconduct is alleged."

2. Get the right perspective (criminal v. administrative).

Administrative cases, in other words, Internal Affairs cases, and criminal cases are quite different. What do you do with a criminal case? You investigate and you present it to the DA to see if the facts meet the elements of an offense. What about an administrative case? You investigate but you do so with a broader perspective in mind. The majority of the time the complaints we, as police departments, receive are administrative, or policy driven, in nature. Many departments have voluminous policies. The term is still used—General Order—but there is nothing general about these policies today. Good or bad? That is a discussion for another day. But the fact remains that when you are protecting the integrity of the police department, you have many considerations and potential ramifications you would not typically have in a criminal case, such as, legal, administrative, ethical, and political consequences. For this reason, police departments should select and train individuals who can keep this broader perspective when investigating and making conclusions in an administrative case.

As we know sometimes complaints include allegations of criminal misconduct. Here is where your department should consider splitting off the criminal investigation and bifurcating the process as it is called. By doing so you will be able to protect the rights of the officers and also protect the organization from claims of cross contamination. Remember the one-way firewall between administrative and criminal. The criminal side

can share info with the administrative side but the admin side cannot share info with the criminal investigation.

3. Jettison all pre-conceived notions about the case. (E.g., “This complainant is just a mental patient...” or “The wife is just trying to get back at her police officer husband...”)

You may think you know the score when it comes to a complaint. Sure, we all do. We get that call for service, look at the call slip, and have a pretty good idea of what is ahead even when dispatch gets it wrong. Of course we always keep in the back of our head that there is always an unknown and a potential danger. But we pride ourselves on reading between the lines and knowing what is really going on.

Do not make that mistake with an administrative case. For example, just because you may think at the outset of a complaint that the complainant is mentally ill does not mean that he does not have a valid complaint. Just because an officer’s wife complained on him while they are going through a divorce does not mean that she is merely trying to better her position in the divorce case. Look at complaint with a detached and objective viewpoint. Is this difficult to do? Absolutely, since we are called upon to police our own and in most departments the investigator will at least know of, if not know personally, the officer he is investigating.

4. Take the complaint at face value and answer the issues brought up in the complaint.

Investigate the issues brought up in the complaint. Sound easy? Not always, especially when you believe at the outset that the complaint is frivolous or too far-fetched to be true. (See above bullet points on perspectives and pre-conceived notions.) If you do not investigate all issues brought up in a complaint, you may have to answer to someone someday why you did not investigate the allegation. It may occur in federal court, in the court of public opinion, or with the DOJ. Regardless, would you rather “wing it” and see if it ever becomes an issue or would you rather investigate all claims and have all claims documented in the internal affairs jacket? Investigate it up front.

5. You are not here to “help” the officer. And your job is not to “go after” the officer. Your task is to complete a thorough investigation and to follow the process.

Remember you are not there to “help” the officer. And you are also not there to “hurt” or “go after” the officer. What is the general rank and file perception of Internal Affairs? Oh, they are out to screw the officer. What is the reality? Internal Affairs investigators are there to do a job, not to “go after” an officer. Keep an objective viewpoint. If the target officer is lying or impeding the investigation, call a spade a spade and do your job.

Internal Affairs investigators must relentlessly pursue the facts. The decisions they make during the investigation have power. They decide the course of the investigation and what

questions are going to be asked. Police departments need investigators who will doggedly pursue the facts while conducting an objective investigation. The best investigators keep asking questions in order to get to the truth whether those questions are directed at the officer or the citizen complainant. If you had received a complaint and you knew you had done nothing wrong, what would you rather have on your record—a Not Sustained finding or an Unfounded finding? Police officers want that Unfounded finding, that is, the allegation was proven to be false. Obviously sometimes that just cannot happen because of the facts of the case but the best investigators tirelessly pursue the facts to get the best conclusion possible.

6. Thoroughly investigate. Ask the hard questions. You have to “chase the rabbits.”

Police departments must have thorough investigations. No stone can be left unturned. “Well, the complainant only complained about the officer’s rudeness on an extra job, why are we looking at his time records and his extra employment permit?” A prominent national law enforcement trainer, Randy Means, says that the road to gross misconduct is paved with minor misconduct. My experience after reviewing a couple of thousand Internal Affairs cases supports that statement. You have to go down the “rabbit trails.” If an officer can get away with minor misconduct, what is to say that he might not try getting away with something more egregious?

What does it look like to the public when we do not thoroughly investigate, when we do not go down all the avenues of investigation? You know what it looks like—it looks like a cover-up. It is the whole “blue wall of silence.” Choose whatever expression you prefer, you get the point. Not going “there” in the investigation could lead to a culture of “taking care of the officer,” looking the other way, and not doing the right thing.

If you pay attention to the little things, you will greatly reduce the potential of having to deal with a big issue. Take, for instance, an officer who does not run many calls, does not run much traffic, and is not on the radio much. Oh, we have GPS so we know where he is. Great! But is anyone looking at it? Is his sergeant paying attention? Do we know what that officer is doing with his uncommitted time? Is he at his girlfriend’s house? Is he checking his rental properties? God forbid, is he selling dope or sexually assaulting prostitutes?

7. Remember your burden of proof.

As law enforcement officers, we are used to thinking in terms of reasonable suspicion and probable cause. As you know, the burden of proof in a criminal case is beyond a reasonable doubt. But what is the burden of proof in an administrative case? Unless you have local law that prescribes a different burden of proof, an administrative case must be proven by a preponderance of the evidence. Preponderance is basically proving a fact as more likely than not. It has also been described as a percentage, such as, 51% or even 50.1%. Beyond a reasonable doubt is a much higher standard of proof than preponderance of evidence.

What does this mean for the police department? Do not discount any evidence that comes up during the investigation. Instead, determine whether the evidence should be given any weight. For example, in a rudeness complaint involving a traffic stop, the driver who complained on your officer may have had one or more friends with him in the car. The Internal Affairs supervisors might say, "Those passengers are biased," because they are friends with the complainant. These types of witnesses frequently are determined to be biased at the outset merely because they have a connection to the complainant. Granted, the witnesses may be biased and they may give a statement slanted in favor of the complainant. But IA should conduct thorough interviews of the officer and witnesses and consider all the facts to get to the truth before there is any finding of bias.

Police executives sometimes pass up a great opportunity to adjust officers' conduct or send a message when they look at the case through the lens of the wrong standard of proof. If you have in mind that you must have "all" facts proven or that you must be able to prove your case beyond a reasonable doubt, then you have put an unreasonable burden on yourself. Additionally, just because an officer was not charged criminally does not mean you may not have a viable administrative case based on the criminal conduct. If you have an officer that is accused of penal code violations, the district attorney's decision should not drive the police department's administrative decisions.

8. Realize that the DA is prosecuting a criminal case, not an administrative one.

Consider an officer who conducts a full search of a prisoner when potentially he was justified only in performing a Terry pat down. The District Attorney's Office will look at it from the perspective of whether the evidence will be lost later in the criminal case due to an unlawful search. Now suppose that the DA concludes that the search was lawful. Will the DA's determination about the search drive your decision as a law enforcement executive when determining whether the officer's actions were lawful and proper? Should it have bearing on your decision? You must always consider whether an officer's actions were lawful but you must also consider whether his actions complied with your departmental policy and training.

IA might sometimes utilize the DA's feedback about a particular issue to justify an officer's actions in the internal affairs conclusions. This is not an issue of the DA giving bad advice—this is an issue of IA taking the DA's determination on an issue of criminal law and turning it into something it may not be. The IA chain should be reminded that the DA is coming from a particular perspective and is not necessarily considering whether the officer's conduct violates federal civil rights, department policy, or department training issues. Police departments therefore should make determinations on policy and training issues in consultation with their executives, internal review boards, trainers and lawyers.

9. Thoroughly explain the conclusions in the case.

A good practice for IA investigations is to have an investigator prepare a report and a manager to prepare a set of conclusions, sometimes called a synopsis. The investigator's

report should contain all the facts gathered during the investigation and the synopsis can condense those facts into a digestible format. A synopsis provides a short description of the most relevant information in the case. A list of recommended conclusions would then follow the paired down facts. The conclusions should be tied to the allegations in the original complaint and well as any additional issues that arose during the investigation. If during the pendency of a rudeness complaint it was discovered that the officer wore an improper uniform and failed to receive permission for extra employment, then all three allegations need to be stated. The facts should be applied to each conclusion and fully explained. Departments should strive to get the conclusions right. Your department's conclusions may be reviewed at a later date by a federal court, by the public through open records, or by other review entities.

10. Follow your applicable civil service law.

Many police departments live under some type of civil service law, whether it is Chapter 143 of the Texas Local Government Code, Chapter 614 of the Government Code, or other provisions. In addition, your department should have its processes set out in policies and/or SOPs. Follow the process. Nothing will destroy the fairness of an Internal Affairs process like the inequitable application of the process. Ever heard that "so and so" got a sweetheart deal on his internal affairs case? Avoid that perception by sticking to the process and applying it evenly. It will also help you if you face an EEOC complaint or litigation.

In conclusion, as the idea of independent police review boards gains momentum in the country, some police departments, for good or bad, may lose the ability to police their own. In Texas, similar legislation has been proposed in past sessions and is currently pending with the 2015 Texas legislative session. Police departments must place trusted individuals in the IA process and continue to thoroughly complete investigations with the utmost integrity. Failure to do so could result in liability for police executives and the governmental entity.

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