

I. INTRODUCTION AND COURSE OVERVIEW

- A. Course Purpose: This is an eight (8) hour class designed for all law enforcement personnel. The course content emphasizes all facets of a personnel complaint investigation from inception to disposition. The teaching method is an informal lecture format with opportunities for student interaction. There will also be tests throughout the lecture delivered in a PowerPoint presentation.
- B. Course Objectives: Upon completion of this course, students will be able to:
 - 1. Have a thorough understanding of the personnel complaint investigation process and how to properly initiate a preliminary investigation.
 - 2. Conduct a comprehensive personnel complaint investigation ensuring the proper collection of evidence, interviewing techniques, Non-Disciplinary actions and bifurcated investigations.
 - 3. Have a thorough grasp of the Public Safety Officers Procedural Bill of Rights Act, the Skelly process, the Garrity, Lybarger, and Miranda decisions' applicability to internal investigations.
 - 4. Evaluate the necessary factors to effectively adjudicate a personnel complaint investigation and, if necessary, determine a fair penalty.
- C. Major Topics and Definitions:
 - 1. Personnel Complaint Definition – A discussion of what actions or omissions would constitute a personnel complaint.
 - 2. Duty to Report Misconduct – Each law enforcement employee's responsibility to report misconduct will be discussed along with management's expectations.
 - 3. Investigator's Role: Different agencies require different roles for investigators. The advantages and disadvantages of fact finder versus investigative conclusions will be examined.
 - 4. Preliminary Investigation: The various components of a preliminary investigation will be discussed to ensure that all complainants, in spite of their criminal activity or mental state, are thoroughly interviewed and valuable evidence is obtained at the beginning of each investigation.
 - 5. Type of Allegations: The myriad of misconduct allegations will be covered and classified to ensure uniformity.
 - 6. Typical Police Duties That Lead To Complaints: There are circumstances where citizens complain about police action but the action does not qualify as misconduct. These types of situations will be identified accompanied by suggestions for a quick resolution.
 - 7. Non-Disciplinary Complaints: Non-Disciplinary Complaints will be defined and explained to ensure that all departments are aware of this time-saving effective manner to handle investigations of minor misconduct.
 - 8. Forms, Reports, File Systems and Early Warning Management Systems: Department complaint forms, citizen complaint forms, and investigation formats will be examined to ensure that all important areas are

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documented. In addition, computerized file systems and early warning management systems will be examined.

9. Legal Issues, Case Law, and Practice: Legal issues and laws will be covered that include the Public Records Act, California Public Safety Officers Procedural Bill of Rights Act, Darvish Decision, Miranda Decision, Garrity Decision, Lybarger Decision, bifurcated investigations, Pitchess Motions, and Skelly Hearings.
10. Interviews: Effective interview techniques will be discussed that include proper question development to ensure that all salient details are covered.
11. Videos: The advantages and disadvantages of providing video evidence to accused employees before their interviews will be examined and alternative methods will be introduced.
12. Common Problems: Common problems in the investigation of personnel complaints will be discussed along with viable solutions. These identified problems include failure to notify complainants, lack of training, improper formats, wrong people assigned to internal investigations, incorrect complaint dispositions, inconsistent penalties, double standards, and high profile cases.
13. Adjudication of Complaints: The adjudication of complaints will be covered in its entirety. The discussion will include the purpose of discipline, fairness and consistency, preponderance of evidence, methods to determine credibility, and the assessment and administering of penalties.
14. Assessing Penalty: Assessing penalties to sustained complaints to ensure consistency and fairness will be examined along with alternative methods such as negotiated settlements, deferred penalties and last chance agreements.
15. Summation: The entire complaint process will be summarized emphasizing the importance of the internal affairs process and how it relates to the community we serve.

II. Definitions and Duties - Personnel Complaint Investigations

- A. Personnel Complaint Definition
 1. Personnel Complaints consist of any allegation of misconduct or improper job performance against any department employee that, if proven true, would constitute a violation of policy, procedure, or law.
 2. Personnel Complaints are not only acts by personnel; they may also be omissions or a failure to act.
 3. Personnel Complaints may be initiated by identified or anonymous parties.
- B. Duty to Report Misconduct - As a member of a law enforcement agency, it is your duty to report misconduct. When a non-supervisory employee observes or becomes aware of misconduct, they must stop the misconduct and immediately notify a supervisor.

III. Investigator's Role

- A. Personnel complaint investigators are usually divided into two roles. This role is determined by their agency. Some agencies want the investigator to determine findings regarding the allegations. In other words, the investigator will opine if the allegations are sustained, not sustained, unfounded or exonerated.
- B. In other agencies, investigators are objective fact finders. In this role, they do not determine findings. They are determined by the chief executive.
- C. Either role comports to best case practices, although with the investigator determining findings may subject the investigation to more challenges.
- D. Critics may allege the investigator adapted their investigation to justify their findings.
- E. In addition, if the chief executive disagrees with the investigator's findings, this may be problematic if the case is appealed through civil service or superior court.

IV. Preliminary Investigation

- A. Identify the involved parties. There are certain people you may want to interview immediately due to their transient nature. Oftentimes complainants or witnesses may be involved in criminal activity or may have mental or substance abuse issues. At the same time, all witnesses must be interviewed and credibility can be determined later. If a complainant is intoxicated, obtain their identifying information and interview them at a later date.
- B. Identify the allegation(s)
- C. Act quickly but thoroughly – Remember, your best opportunity to solve the investigation is to become involved immediately.
- D. Collect and preserve evidence. Be aware of the many possible items of evidence. Police work in the 21st century involves technical systems such as in-car video, recorded audio and computer-aided dispatching records. In

addition, examine the surrounding area for security cameras that could contain valuable evidence that may be short lived.

- E. Canvas the area, sometimes this should be done more than once. The incident may have occurred at 0100 hours and you may canvas the area at 1000 hours. It would be prudent to canvas the area at a later time in case witnesses left for work.
 - F. Interview and record the complainant and any witnesses that you locate.
 - G. Also, complete a complaint form and include your preliminary investigation.
 - H. Remember, it is our responsibility to take complaints from everyone. Many of our complaints come from people with mental health issues, prostitutes, gang members, and intoxicated people. If we have someone that is intoxicated, obtain their identifying information and interview them at a later date. Interviews of juveniles should generally be taken only with their parents or guardians present and after the parents or guardians have been informed of the circumstances prompting the complaint.
 - F. We also take complaints from arrestees, inmates, other law enforcement agencies, and anonymous complaints. Although it is not the preferred method, we also take telephonic complaints.
- V. Type of Allegations

- A. There are many types of allegations of misconduct that involve both on-duty and off-duty conduct. They may be generated from a citizen or by a department member. They may also include solely administrative or criminal misconduct. Here are the common allegations found in police work:
 - 1. Unauthorized Force
 - 2. Improper Tactics
 - 3. Unbecoming Conduct - usually involves off-duty situations such as narcotics use , alcohol related incidents like DUI, domestic violence, sexual misconduct and criminal offenses
 - 4. Discourtesy and Improper Remarks
 - 5. Ethnic Bias, Racial Profiling, and Ethnic Remarks
 - 6. Sexual Harassment is usually divided into two categories; quid pro quo relationships between supervisors and subordinates or the hostile work environment that is the most common form of sexual harassment in law enforcement. A hostile work environment occurs when a person is exposed to unwanted sexual behavior from persons other than their supervisor and management has not taken any steps to discourage such behavior. Examples include sexual photographs, dirty jokes, suggestive remarks, and allowing frequent physical contact.
 - 7. False or misleading statements, perjury, false police reporting, reporting false overtime, and benefits abuse
 - 8. Neglect of duty and insubordination

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9. Do not discount the improbable. The Abner Louima case is an example of improbable police behavior that was true.
- B. Typical Police Duties That Lead To Complaints
1. Inquires about employee conduct, which even if true, would not qualify as an allegation of misconduct may be handled informally by a supervisor and shall not be considered complaints. An example of these would be the following complaints: "The deputies pointed their guns at me."...."They took away my baby!"... "They handcuffed me and towed my car."... "All I did was push my wife and they arrested me."... "They wouldn't give me my medication."... "It took forever for them to get here."
 2. Personnel complaints should not take away the role of a field supervisor who has the responsibility to respond to such complaints and take appropriate action. Supervisors can usually resolve many of these issues at the field level and there is no need to initiate a personnel complaint.

VI. Non-Disciplinary Complaints

- A. Non-Disciplinary Complaints are complaints of minor misconduct where the department elects to handle them in a non-punitive manner or complaints that can be immediately unfounded.
- B. Common non-disciplinary complaints include discourtesy, parking violations, and vehicle code violations.
- C. To qualify as a Non-Disciplinary Complaint, it must undergo a preliminary case screening and meet the following requirements:
 1. The complaint, as stated, would not amount to the commission of a felony or a misdemeanor crime.
 2. The complaint, as stated, may not result in discipline against the employee; or the complained of act or omission by the employee has no nexus to the employee's position with the Department.
 3. The complaint does not allege any of the following: unauthorized force; discrimination of any kind; unlawful search and/or seizure of person or property; dishonesty; domestic violence; improper/illicit use of alcohol, narcotics, or drugs; sexual misconduct; theft; or retaliation/retribution against another employee. Exception: When a complaint is clearly exonerated or unfounded at the time it is initiated, the complaint may be handled as a Non-Disciplinary complaint.
 4. The complaint was not a result of concerns arising out of a criminal prosecution or dismissal of Interfering / Obstructing or charges otherwise initiated by a judge or prosecutor acting in their official capacity.
 5. The accused employee has no apparent pattern of similar behavior (within the last 5 years) for which he or she is accused.
 6. The complaint was not initiated in response to civil suits or claims for damages involving on-duty conduct and civil lawsuits regarding off-duty conduct required to be self-reported by employees.

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- D. Non-Disciplinary Dispositions are classified as follows:
1. POLICY/PROCEDURE – The facts of the case revealed that the complaint relates to Department policy/procedure and not to a specific employee's actions.
 2. EMPLOYEE'S ACTIONS DID NOT RISE TO THE LEVEL OF MISCONDUCT – A preliminary investigation revealed that the allegations did not rise to the level of misconduct and/or the named employee's actions were protected by law or found to be consistent with Department policy or procedure.
 3. EMPLOYEE'S ACTIONS COULD HAVE BEEN DIFFERENT – The facts in the complaint revealed the employee's actions could have been different. However, the employee's act or omission is best addressed through corrective action by the employee's supervisor. The correct action taken was: Counseling, Training, or Memorandum.
 4. DEMONSTRABLY FALSE – The complaint was demonstrably false (unfounded), or demonstrates an irrational thought process and was consistent with the complainant's established pattern of making chronic or crank complaints.
 5. DEPARTMENT EMPLOYEE(S) NOT INVOLVED – The preliminary investigation revealed that the complaint did not involve Department employee(s).
- VII. Forms, Reports, File Systems and Early Warning Management Systems
- A. Department Complaint Forms are usually the instrument used to initiate the complaint. The form contains the complainant's identifying information, the time, date, and location of the complaint, witness and accused employee information and a brief summary of the nature of the complaint. The form may also contain the complainant's receipt and an explanation of the process. Some forms also have the Non-Disciplinary Complaint information and a space where the investigating supervisor can input relevant information.
- B. Citizen Complaint Forms may be handed out to citizens at stations or accessed online. This is not the preferred method to initiate a complaint. The preliminary investigation is more complete if upon notification of a complaint, a supervisor is dispatched to initiate the complaint form. The citizen complaint form is used in situations where a citizen can't wait for a supervisor or they access the form through the internet.
- C. Typical complaint investigations have the following headings:
1. Complaint – Describing the nature of the allegations and the identity of the accused employee ex. "Public complaint of discourtesy against Officer John Doe #666, South Patrol Operations."
 2. Summary – The summary provides a chronological narrative leading up to the allegations ex. "Officer Doe was assigned to South Patrol Operations driving a marked police vehicle when he

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observed a red Ford truck fail to stop at the westbound stop sign at Main Street and Broad Avenue. Officer Doe immediately initiated a traffic stop on the 200 block of West Main Street and approached the complainant, Adam Smith, who was the sole occupant of the vehicle.”

3. Allegation – The allegation is the specific charge of wrongdoing against the employee ex. “Adam Smith alleged that Officer Doe began his conversation by stating “What in the hell is wrong with you? Didn’t you see that stop sign knucklehead?”
 4. Interviews: The interviews are usually the first completed part of the investigation because the other areas use the information from the interviews. The interviews usually list the respondent’s name, address, phone number, date, time, location of the interview, and state the interview was recorded. If the interview was not recorded, there should be a statement why the interview was not recorded. The interviews are usually a chronological sequence of the events. The investigator must ensure that the respondent adequately addresses the allegation(s).
 5. Investigator Notes: Investigator Notes are used by the investigator to input pertinent information that is not found in the summary or statements. For instance, you may want to comment on the criminal disposition of the complainant’s case or you may want to mention witnesses that you attempted to contact and would not respond to your request.
 6. Addenda or Attachments: These are usually referenced documents such as arrest reports, photographs or other supporting evidence.
- D. File Systems: Although paper files are still common and relevant particularly with signed documents, electronic case files make storage easy and allow computer queries when necessary. Video, audio, photographs and scanned documents can be compressed in a digital file. There is also software available like IA PRO and AIM (Internal Affairs Management and Early Intervention) that not only provide an easy organized way to store IA investigations, they contain early warning systems that notifies management when an employee exceeds a threshold on personnel complaints, use of force incidents, pursuits, and traffic collisions. This is particularly useful for mid-size to large departments.

VIII. Legal Issues, Case Law and Practice

- A. There are many codified laws, case law, and practices pertaining to internal investigations. Some of the most common are the following:
 1. California Public Records Act: Government Code 6250 states that “...access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in the state.” This allows the public to gain access to many records not protected by confidentiality laws. For instance, a public records act to your last personnel complaint investigation could not be

legally honored, but a request to view your department cell phone's outgoing text messages and your department email might be granted under a public record's act request. Even the names of officers involved in a shooting are usually disclosed because in the opinion of the State Attorney General, a law enforcement agency must disclose those names unless, on the facts of the particular case, the public interest served by not disclosing the names clearly outweighs the public interest served by disclosing the names.¹

2. California Public Safety Officers Procedural Bill of Rights Act² is one of the most quoted Government Code sections used in the investigation of police misconduct. Some of the key points of this act are as follows:
 - a. The interrogation shall only have 2 interviewers.
 - b. The interrogation should be at a reasonable hour.
 - c. Officers shall immediately be informed of their Miranda rights if they may be charged with a criminal offense.
 - d. No officer shall be compelled to take a lie detector test against their will.
 - e. No search of locker or storage space except in officer's presence, or with consent, or where the officer is notified that the search is to be conducted, or with a valid search warrant.
 - f. You can record the interrogation.
 - g. You can have access to the recorded copy and reports of your interview if you are re-interviewed.
 - h. Whenever an interrogation focuses on matters that are likely to result in punitive action, you have the right to have a representative of your choice.
 - i. One year limitation period from the time the allegation is discovered by a person authorized to initiate an investigation. The limitation period can be tolled in the following circumstances:
 - i. Employee waives time period.
 - ii. Criminal Investigation
 - iii. Multi-jurisdictional investigation
 - iv. More than one employee and requires a "reasonable" extension
 - v. Involves civil litigation and the employee is a defendant
 - vi. Unavailability
 - vii. Involves an allegation of workers compensation fraud on part of the employee
 - j. Informed of the Nature of the investigation.

¹ To be published in the Official Reports Office of the Attorney General No.07-208, May 19, 2008.

² The Act applies to California Government Code Sections 3300 through 3312.

- i. The exception to this is found in Government Code Section 3303 (i). An example to this exception occurred in Inglewood California after a controversial use of force incident occurred that was captured on videotape. Inglewood Police Officers Jeremy Morse and Bijan Darvish were involved in the arrest of a juvenile named Donovan Jackson. The arrest resulted in an altercation between Officer Morse and Jackson. Officer Darvish was asked by a responding sergeant "What happened?" and he responded. In addition, the sergeant asked him to write a report regarding the incident. Darvish was later charged criminally and administratively for making a false police report. Darvish wanted to exclude his written report and his comments made to the sergeant regarding the use of force incident. Darvish stated that when the sergeant interviewed him and gave him instructions to write his report after the use of force incident, he was never advised regarding the nature of the investigation. Darvish argued that he would be protected under (Public Safety Officer Procedural Bill of Rights Act) Government Code Section 3300(c) that states that "The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation." In an unpublished "Darvish" decision, the court found that Government Code 3303(i) was applicable to this situation. The section states "The section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer." In other words, since the sergeant was investigating the event (Use of Force) and not an allegation of misconduct, the on-scene investigation was within the "routine" exception and Darvish's report and statements were found to be admissible.³
3. Brady v. Maryland⁴: This case involves the prosecution withholding exculpatory evidence where the evidence is material either to guilt or to punishment. Exculpatory evidence is the evidence favorable to the defendant in a criminal trial, which clears or tends to clear the defendant of guilt. Because of this ruling,

³ The Darvish v. Inglewood decision (unpublished) came for the California Court of Appeal, Second Appellate District that occurred on December 29, 2003.

⁴ Brady v. Maryland, 373 U.S. 83 (1963)

prosecutors must inform defendants when an officer involved in the case has a sustained record for knowingly providing false information. In part due to Brady, officers with these types of sustained complaints are oftentimes terminated because of their liability in court and limitations to perform basic law enforcement duties.

4. Labor Code 96 (k): The court has found that Peace Officers may be disciplined for off-duty conduct occurring away from their place of employment, which is otherwise lawful but conflicts with their roles as peace officers (e.g., association with known criminals). The key is the nexus between the act and the employee's position.
5. (Ernesto) Miranda v. Arizona⁵: Should peace officers involved in personnel complaint investigations receive a Miranda warning? The law⁶ requires that officers receive the Miranda warning "if prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights." If there is no potential criminal offense, then the Miranda warning is not provided. For instance, if you are investigating an employee for constant tardiness, no Miranda warning is given. However, if you are investigating an employee for benefits abuse, whether or not you are going to present the case to the district attorney, you should Mirandize the employee due to the potential criminal nature of the offense.
6. (Edward J.) Garrity v. New Jersey (1967)⁷. The Garrity decision involved parking ticket fixing. The officers were ordered to talk under the threat of losing their jobs but also told that anything they said would be used against them criminally. This case went to the US Supreme Court. The Court ruled that since their statements were compelled, they could not be used against them criminally.
7. Lybarger v. City of Los Angeles (1985)⁸. Mike Lybarger was a Los Angeles police officer whose vice unit was under investigation for a variety of potentially criminal offenses. When questioned by IAD, he was told that a criminal offense was pending and if he refused to answer questions, he would be considered insubordinate and could lose his job. He still refused to answer questions and was subsequently terminated. Lybarger was not advised that any statements he made could not be used against him in a subsequent criminal proceeding. Because of this omission by the investigating officers, the California Supreme Court reversed his termination.
8. Bifurcated Investigations occur when you have both a criminal investigation and an administrative investigation. The criminal investigation always takes precedence and is usually handled by a

⁵ Miranda v. Arizona, 384 U.S. 436 (1966)

⁶ California Government Code Section 3303(h)

⁷ Garrity v. New Jersey, 385 U.S. 493 (1967)

⁸ Lybarger v. City of Los Angeles (1985) 40 Cal.3d 822, 221 Cal.Rptr. 529; 710 P.2d 329

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- criminal investigator. The administrative investigation is usually handled by Internal Affairs. Information obtained in an administrative investigation, during a compelled statement, cannot be used in the criminal investigation. Criminal investigations and administrative investigations may run parallel but usually with concurrence of the prosecution.
9. California Penal Code Section 832.7 states that “ (a) Peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code...”
 10. California Penal Code Section 832.5 states “(c) Complaints by members of the public that are determined by the peace or custodial officer's employing agency to be frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the California Public Records Act.” These two sections essentially provide confidentiality protection to personnel complaint investigations. There are several exceptions; however the most common one is called a Pitchess motion in California. If a Pitchess’ Motion is initiated, the judge examines an officer’s personnel file in camera (in chambers) and decides if any of the information is relevant and should be disclosed to the party making the motion. The information usually involves prior relevant misconduct incidents including excessive force and dishonesty.
 11. California Penal Code Section 832.5 also requires public entities to retain personnel complaint investigations for a minimum of 5 years. California Penal Code Section 832.8 also defines personnel complaint investigations as personnel records. California Evidence Code Section 1045 provides that the court (Pitchess Motions) shall exclude from discovery complaints more than 5 years old.
 12. Although compelled statements are usually not reviewed by a District Attorney, California Penal Code Section 832.7 allows a District Attorney to review an officer’s personnel records. If these are compelled statements, the prosecutor cannot use the statements against the person making the compelled statements.
 13. Skelly Decision: Doctor John Skelly, who worked for the Health Department for the State of California, was terminated for taking excessive lunch breaks. In his last case, he was located in a bar drinking 2 martinis. He told his supervisor he was sick and was waiting for his wife to pick him up. He was terminated due to a history of similar behavior. Dr. Skelly appealed his case to the

California Supreme Court. The Court found that the Health Department at a minimum should have included a notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing to the authority initially imposing discipline. Therefore, we now have the Skelly decision and when management imposes discipline to permanent employees, that employee should receive the following:

- a. A notice of the proposed action
- b. The reasons for the action
- c. A copy of the charges
- d. The materials upon which the action is based
- e. The opportunity to respond, either orally or in writing, to the authority imposing discipline

The Skelly decision is essentially a discovery process and allows the disciplined employee to provide additional information to the investigation, request additional witness interviews, challenge the credibility of a witness, or even argue the severity of the penalty before it is imposed.

IX Interviews & Videos

- A. Although there is debate among experts, usually two interviewers (if practicable) are desired. One interviewer will take the lead, while the partner investigator takes notes. The partner investigator can consult and ask questions later in the interview.
- B. All interviews should be recorded. Consideration should be given to transcribed statements with important cases.
- C. Officers may be represented by attorneys or employee representatives. It is vital that the investigators control the interview.
- D. There are two types of interviews in personnel complaint investigations. The first type is the voluntary interview. In a voluntary interview, the officer's statement is subject to prosecutorial review and can be used against the officer criminally. In a compelled interview, the officer's statement and fruits of such statement will not be submitted for prosecutorial review and cannot be used against the officer criminally.
- E. To Obtain Best Interviews:
 1. Explain basic ground rules (no assumptions, speculations, or guesses) – does the officer have any questions
 2. Ask open ended questions
 3. Use a script with specific questions as a supplemental tool. This helps you organize your questions prior to the interview and you can review the script before ending the interview to ensure that all relevant questions were asked.
 4. Treat the interview like an interview – not an interrogation unless it is warranted. Oftentimes, the terms interrogation and interview are used interchangeably but the approach and demeanor by the

investigator differentiates the two. Interviews are non-accusatory and interrogations are accusatory. Both are designed to elicit the truth but in a different manner.

F. Videos

1. Should the officer have the right to view the video before the interview? Does the officer's ability to view the video before the interview compromise the integrity of the investigation? What is the best case practices involving this issue? These are common questions concerning video particularly due to the many in-car video / audio systems prevalent today in law enforcement vehicles.
2. If an officer views the video prior to their interview, they can familiarize themselves with the incident and their statement should be more accurate. Those that advocate the officer viewing the video prior to their interview compare it to a "walk through" after an officer-involved shooting. The advocates also purport that not allowing an officer to view the video would be part of the "gotcha" mentality allowing the officer to provide a statement that may be inconsistent in some small way from the video. This viewing may also prevent the officer from experiencing a "false memory." A false memory sometimes occurs during stressful situations where the mind fills in a void of something that is factually incorrect. An example of this is an officer-involved shooting where the officer observes a possible armed suspect and confronts him. The officer is then temporarily distracted and when he looks back at the suspect, the suspect is pointing a weapon at him. The officer then shoots the suspect but when the officer is interviewed, the officer stated that he observed the suspect pull his weapon from his waistband. When a video of the event surfaced, the suspect was seen pulling the weapon from his sleeve. This is an example of a false memory where the officer strongly believes that he is telling the truth, but he was factually incorrect.
3. Those that are against an officer reviewing the video argue that by viewing the video, it allows the officer and their attorney to craft a statement from what is revealed in the video. In addition, they might testify to what they see in the video than what they actually recall. This could compromise the integrity of the investigation. In addition, if there is probable cause that the officer committed a crime, you may not want him or her to view a video before they are interrogated.
4. Both sides have merits and each circumstance should be viewed on an individual case basis. If there was an apparent criminal action, you may not want to reveal the video to the officer prior to the interview. In other cases, particularly if the video un-founds the allegation, you might consider showing the officer the video. A safe way to handle such incidents is to show the video during the taped interview. Therefore, the officer's comments are contemporaneous. The investigator is not trying to "hide the ball"

nor could the investigator be accused of compromising the investigation.

X. Common Problems and Solutions Associated with Complaint Investigations

- A. **Problem:** Failure to Follow Laws Regarding Citizen Complaint Procedures and Employee Rights – This usually occurs through ignorance as opposed to specific intent. For instance California Penal Code Section 832.5 requires all Police Departments to establish a written procedure to investigate citizen complaints and make it available to the public, provide complainants a copy of their statement and provide complainants a written notification of the complaint disposition within 30 days of its completion. Some departments are unaware of this law and sometimes do not notify the complainant in a timely manner or provide them a copy of their statement. **Solution:** Provide training to ALL personnel as to the proper processing of personnel complaint investigations. Supervisors or employees who actually conduct the investigations should take a practical examination to show that they have a thorough understanding of the process. Each department should provide easily understood guidelines for investigators assigned to personnel complaint investigations.
- B. **Problem:** Many agencies have informal ways of handling personnel complaint investigations. They are often titled administrative investigations, miscellaneous memorandums or just Yellow Sheets. **Solution:** Eliminate all complaint imposters. Each incident that qualifies as a complaint should be handled as such. If the complaint is without merit, the investigation will unfound the complaint. When the complaint becomes an “official” investigation, it is given a number and becomes retrievable. It is important to collect valuable data, even from chronic complainers, so the department can take future action. For instance, if you classify someone as a chronic and frivolous complainer, you need data to justify this classification. When someone receives such a classification, their credibility becomes damaged and there are documented retrievable incidents that justify this classification.
- C. **Problem:** It is quite common in many agencies to have unnecessary investigation or adjudication delays. Even when employees are sure that the complaint has no merit, the delays adversely affect morale and cause unnecessary anxiety that could be alleviated. In addition, the public is not well served in a long protracted investigation. Sometimes, investigations take longer than anticipated due to the complexities of the case, criminal filing consideration, and the number of witnesses to interview. On many occasions however, poor organization or prioritization extends the life of these cases when it is unnecessary. **Solution:** There should be a department goal to complete these investigations from inception to service. An industry standard is usually 60 days. If most cases cannot be completed in 60 days, either the department has not prioritized the timeliness of these investigations or the department is understaffed with complaint investigators.

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- D. **Problem:** Some personnel selected to conduct personnel complaint investigations are not the right persons for the job. Internal Affairs investigators are sometimes referred to as “headhunters” because of their perceived delight to destroy the career of those they investigate. Unfortunately, some selected to this assignment portray a stern, inflexible demeanor that contributes to this persona. **Solution:** You must select the right person for this important assignment. This is definitely a management responsibility. Some departments consider an assignment to internal affairs to be an elevated position or a management training opportunity. People shouldn't be drafted into such assignments. They should be selected due to their investigative skills and, first and foremost, their professionalism. An internal affairs investigator should be affable, approachable, and open-minded. Most officers acknowledge that the department has an obligation to investigate personnel complaints and they hope for a fair-minded investigator who will diligently work to find the truth of the matter and complete the investigation in a timely manner. If the agency is too small to have a separate Internal Affairs Unit, then the supervisor or investigator assigned to investigate such an incident should possess the same type of aforementioned skills.
- E. **Problem:** Complaints are often given incorrect complaint dispositions. This is usually due to a misunderstanding of the dispositions. **Solution:** Every member of the department should be familiar with complaint dispositions. They should be outlined in a policy manual and explained to anyone receiving a personnel complaint. These dispositions are explained as follows:
1. Sustained: The investigation proved that you committed the allegation.
 2. Not Sustained: The investigation was unable to conclusively prove or disprove the allegation.
 3. Unfounded: The investigation clearly established that the allegation is untrue.
 4. Exonerated: The investigation clearly established that the officer's actions that formed the basis for the complaint are not violations of law or department policy.
- F. **Problem:** Inconsistent penalties for sustained complaints provide support to claims of disparate treatment. When employees believe that different penalties are given to different people for the same offense, it can have an adversely affect morale. **Solution:** Consider developing a penalty guide for large departments. For most departments, ensure that there is a clearinghouse for personnel complaints, usually an IA commander or Chief, where penalties are evaluated to ensure consistency and fairness. Sometimes, discipline is different for similar offenses but an explanation should be provided. Penalty guides must be flexible enough to address changing sensibilities. A good example of this would be domestic violence. How was domestic violence handled by the criminal justice system 30 years ago and how is it handled now? Here is an example of a penalty guide regarding the complaint of Discourtesy:

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1. A = Written Penalty through 4 suspension days
2. B = 5 through 9 suspension days
3. C = 10 through 14 suspension days
4. D= 15 through 22 suspension days
5. E= Termination

DISCOURTESY	1st Occurrence	2nd Occurrence	3rd Occurrence
Discourteous remark to public	A	B	B – E
Inappropriately hung-up on caller	A	B	B – E
Inappropriate gesture	A	B	B – E
Improper remark in public	A	B	B – E

6. It is the chief executive's responsibility to ensure that penalties are fair and consistent. There have been recent changes in the manner as to how penalties are imposed. Negotiated settlements, deferred penalties, and last chance agreements are just some of these. Some departments are able to suspend employees in excess of 100 days while most departments' maximum suspension days are 30. Each chief executive must ask how many suspension days are too much. Many believe that if an employee is deserving of a suspension in excess of 30 days, they should be terminated. Another area discussed earlier is "Brady" Employees. Should they be retained? Their limitations are often counterproductive to most law enforcement related assignments.

- G. **Problem:** Double standards of discipline for management are another concern. Although the discipline system for the chief executive may be different by charter, policy or contract, the rank and file is usually unaware of such nuances. **Solution:** On issues that become public, management must provide an explanation of the process to dispel rumors that management will be treated more leniently. In addition, if a high ranking officer's indiscretion becomes public, command effectiveness becomes an issue and it is not uncommon for a Chief Officer to lose their job when an officer in a lower rank might retain their job. Confidentiality laws often preclude transparency of discipline matters, but management should assure their employees that a double standard does not exist.
- H. **Problem:** Are high profile cases handled differently and should they? The answer is yes to both accounts. The reason why high profile cases should be handled differently is due to the political pressure, public scrutiny, and calls for immediate policy changes. It's as if a huge magnifying glass hovers over the department and every move is scrutinized. **Solution:** In handling a high profile case, the department must prepare for attacks on its image, potential government intervention such as commissions, decrees, and mandatory oversight. The department must assure the public that all necessary steps have been taken to get to the truth. Public confidence in the department's ability to conduct an objective investigation is essential and the department must act immediately and intelligently to maintain the public trust. The department must be as transparent as legally permissible. A press conference inviting entities to oversee or assist such as the FBI or

the District Attorney's Office should be considered. Sometimes ad hoc committees or commissions should be created. It is important to have a diverse panel on these committees or the department will be accused of creating a friendly committee to cover up its imperfections. It is better to be aggressive on these types of incidents than let the police critics act first. Many agencies can point to an incident where their inability to act quickly aggravated an already problematic situation and contributed to a negative outcome.

- I. **Problem:** Labor or Employee Representative Groups are continually at odds with management over disciplinary matters. **Solution:** Employee input is essential to success or failure of the disciplinary system. The meet and confer process and discussions prior to implementation of policy allows employees to express their concerns and affords management the ability to modify procedures if warranted. In union situations where there exists obvious disharmony, management has oftentimes neglected to obtain input from organized labor. Management must realize that they may disagree with labor over many issues, but the fact that they discuss these issues and obtain honest input and suggestions can alleviate many future problems. It is often said that it is permissible to disagree but not permissible to be disagreeable. Reasonable people do disagree but an open-minded process and willingness to compromise on both sides reaps huge dividends.

XI. Adjudication of Complaints

- A. The first thing to determine is did the misconduct occur by using the preponderance of evidence standard. The Preponderance of Evidence Standard means "evidence which as a whole shows that the fact sought to be proved is more probable than not."
- B. Mitigating factors should not be considered at the adjudication stage if misconduct was committed. Mitigating factors should be considered during the penalty phase.
- C. To effectively adjudicate, you must understand the purpose of discipline. The imposition of discipline: 1) Modifies the employee's behavior; 2) Sets expectations for other employees; and 3) Maintains the public trust. Employees must be given a clear set of expectations. In police work, there can't be a rule for everything. Managers must ensure that values and expectations are discussed on a daily basis. The point is to prevent misconduct before it occurs.
- D. Employees will be more accepting of punishment if it is fair and consistent. Fairness and Consistency are not synonyms. Consistency in discipline means that every employee will be held accountable for unacceptable behavior. Fairness in discipline means that a manager must take into consideration many factors that contributed to the act. Two employees involved in the same act may receive two different penalties based upon these circumstances.

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- E. Adjudication should be consistent but penalties flexible considering the circumstances. For example, in one case an officer arrested an irate subject for disturbing the peace. During the arrest the subject states into the officer's ear in crude terms what he would like to do sexually with the officer's mother. The officer's mother just passed away one week prior. This caused the officer to become extremely angry and he pushed the now handcuffed arrestee into a closed door causing minor injury to his face. In this type of situation, you could sustain the allegation but mitigate the penalty.
- F. It is always desirable to have an independent witness; however the absence of bias toward one party is only one element of assessing credibility. Adjudications must be based on the totality of the circumstances. It is the manager's responsibility to determine the believability and credibility of witnesses.
- G. Methods to determine credibility are found in jury instructions and include the following:
 - 1. The opportunity or ability for the witness to see or hear
 - 2. The ability of the witness to remember
 - 3. The existence or nonexistence of any fact stated by the witness
 - 4. The character of the witness for honesty
 - 5. Admission of the witness of untruthfulness
 - 6. Criminal history of the witness
 - 7. Bias or motive by the witness

XII. Assessing Penalty

- A. When assessing penalty, the following factors should be considered: Motive, Damage, Knowledge, Intent and History.
 - 1. Motive: Was the officer acting out of the public's interest or out of self-interest?
 - 2. Damage: Damage caused by an employee's action or omission can be tangible or intangible. Tangible damage can be seen by jury awards, vehicle damage, and medical costs. Intangible damage can include damage to the Department's reputation, credibility, and morale.
 - 3. Knowledge: What kind of experience did the employee have? Do we hold new employees to the same accountability as experienced employees?
 - 4. Intent: Intentional errors can reflect an employee's contempt, malice, or disregard for the rules. Did the employee's conduct involve misfeasance or malfeasance?
 - 5. History: What was the employee's complaint history? Is there evidence of a pattern of conduct?
- B. Penalties come in various forms including:
 - 1. Verbal or Written counseling
 - 2. Written Reprimand
 - 3. Suspension: How many days are too much?

4. Last Chance Agreement
5. Termination

XIII. Practical Test – 2 Videos

- A. Students will be divided equally into groups of five or six (depending upon class numbers).
- B. Students will be presented with the following two tests which will include the viewing of a video, and after viewing the video, will be asked within their groups to answer the questions on each test.
- C. The instructor will walk among the class/groups facilitating discussion and prompting results.
- D. Students will elect a representative(s) within their group to orally present their findings to the class as a whole.
- E. Each of the groups findings will be reviewed/discussed by the class.

TEST 1 Video -> Court TV Video: State Trooper traffic stop of off duty Miami PD officer. 4/9/97
Sgt. Richard Mankewich and Major Aaron J. Campbell

TEST # 1

You are going to see an off-duty officer having an encounter with on-duty officers.

- **If you were assigned the complaint, what would be the allegation(s).**
- **How would you start your investigation?**
- **If you were the adjudicating authority, would you find the officer guilty?**
- **If so, what type of penalty?**



TEST # 2

In the following slide, you are going to see a use of force situation.

- **If you were assigned the complaint, what would be the allegation(s).**
- **How would you start your investigation?**
- **If you were the adjudicating authority, would you find the officer guilty?**
- **If so, what type of penalty?**



TEST -2 Video -> Oakland Occupy Demonstration – Use of Force/Gas Canister
10/26/11

XIV. Summation - A common criticism of internal investigations is that the police can't properly investigate the police. In other professions, attorneys investigate attorneys and physicians investigate physicians. We have the skills to competently investigate allegations and arrive at fair decisions. It is important that we investigate ourselves; no one can do it better. We can only continue this process if we keep the public trust in mind, investigate with integrity and always seek the "truth of the matter." We owe it to the men and women in law enforcement and to the public that we serve.