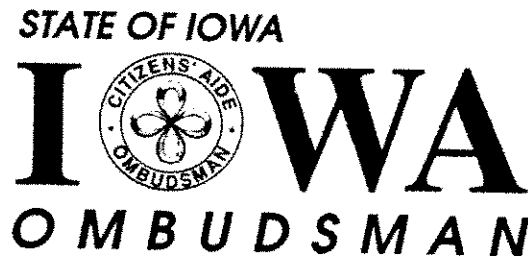


**Investigative Report**  
**98-2**



**Investigation of how the Des Moines Police Department  
handles complaints about its officers**

**TO: William Moulder, Chief of Police**

**Eric Anderson, City Manager**

**Preston Daniels, Mayor**

**City Council Members: Chris Coleman; George Flagg; Chris Hensley;  
Mike McPherson; Gene Phillips; and Tom Vlassis**

**FROM: William P. Angrick II  
Iowa Citizens' Aide/Ombudsman**

**RE: Case File 95-127**

**ISSUED: November 12, 1998**

**RELEASED: January 27, 1999**

# **TABLE OF CONTENTS**

## **REPORT**

<b>BACKGROUND</b>	1
<b>SURVEYS ABOUT OPS</b>	5
• 1996 Survey	6
• 1997 Survey	9
• Analysis	11
• Conclusions	13
• DMPD Concerns With Survey	14
<b>DMPD'S INTERNAL REVIEW PROCESS</b>	16
<b>DMPD'S INTERNAL REVIEW PERFORMANCE</b>	19
<b>CONCLUSIONS</b>	21
<b>RECOMMENDATIONS</b>	23
<b>APPENDIX A: CHAPTER 52, "INTERNAL AFFAIRS," FROM "STANDARDS FOR LAW ENFORCEMENT AGENCIES" BY CALEA</b>	25
<b>APPENDIX B: "COMPLAINT REVIEW POLICY" AND "MODEL POLICY" BY IACP</b>	28
<b>APPENDIX C: AUGUST 8, 1995 LETTER FROM OMBUDSMAN WILLIAM ANGRICK TO POLICE CHIEF WILLIAM MOULDER</b>	53

<b>APPENDIX D: 1996 SURVEY QUESTIONNAIRE</b>	55
<b>APPENDIX E: DR. SELZER'S 1996 REPORT AND ANALYSIS</b>	62
<b>APPENDIX F: 1997 SURVEY QUESTIONNAIRE</b>	67
<b>APPENDIX G: DR. SELZER'S 1997 REPORT AND ANALYSIS</b>	71
<b>APPENDIX H: HOW DMPD HANDLED COMPLAINTS ABOUT OFFICERS BEFORE OPS</b>	81
<b>APPENDIX I: HOW DMPD HANDLES COMPLAINTS ABOUT OFFICERS NOW</b>	82
<b>APPENDIX J: DMPD INTERNAL REVIEW STATISTICS 1990 TO 1997</b>	83

***POLICE CHIEF'S REPLY***

***OMBUDSMAN'S COMMENT TO POLICE CHIEF'S REPLY***

## **BACKGROUND**

Larry Milton was arrested by Des Moines Police in late 1991. Afterward, he had significant head and facial wounds. It quickly led to allegations of excessive force against the three arresting officers.

It also “tapped a wellspring of community anger over what is alleged to be a pattern of police misconduct against blacks,” according to a subsequent editorial in *The Des Moines Register*. Some people called for a citizens panel to review complaints about police.

Just a few days after the arrest, Police Chief William Moulder publicly declared, “The force used was proper.” His position was based on a “paper review” of the officers’ reports and endorsements from their supervisors.

The Office of Citizens’ Aide/Ombudsman (Ombudsman) investigated the incident and issued a report.<sup>1</sup> It concluded Milton grabbed an officer’s gun, and a second officer was therefore justified in hitting Milton’s head seven to eight times with a flashlight.

While concluding the officers did not use excessive force, the Ombudsman’s report questioned the Des Moines Police Department’s (DMPD) response to the incident:

Little if any of the information had been verified independently prior to Chief Moulder’s public pronouncement. Under such circumstances, is there any probability a subsequent internal affairs investigation could have contradicted the chief?

Indeed, DMPD’s internal investigation exonerated the officers. While reaching a similar conclusion, the Ombudsman became concerned with the *process* by which the department investigated complaints about officers.

The Ombudsman took a closer look and found:

- While the department had an Internal Affairs Unit (IAU), its role was limited to gathering basic information about complaints it received. IAU then forwarded the information to the accused officer’s immediate supervisor, who could gather additional information.
- The supervisor made a recommendation on whether the officer(s) acted inappropriately. The case then continued up the “chain of command” for a recommendation at each stop. Chief Moulder had the final say.<sup>2</sup>
- Complaints filed with a supervisor or commander were investigated by the “chain of command” with no involvement by IAU.

The Ombudsman took issue with the relatively significant role the department’s “chain of command” was playing in the process. An accused officer’s supervisors have an inherent interest in the final disposition of complaints. If a subordinate officer is found to have acted inappropriately, it could reflect negatively on that officer’s “chain of command,” since they are responsible for the actions of their subordinates.

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<sup>1</sup> Special Report 92-1, copies of which are available from the Ombudsman’s office.

<sup>2</sup> The phrase “chain of command” means the supervisory and managerial line of authority extending from the individual officer all the way to the Chief of Police.

As a result, whether gathering information or recommending a disposition, a supervisor might be motivated to ensure complaints are not sustained, *including those that have merit*.

While the same could be said of the “chain of command” in nearly any profession, the law enforcement field has:

- Responsibility to safeguard lives and property; and
- Authority to detain and arrest citizens, including the use of physical and even deadly force, under certain circumstances.

Because of its unique responsibility and authority, it is appropriate to expect the law enforcement profession to remove the “chain of command” from the process of reviewing complaints alleging serious misconduct by its employees.

In fact, two independent law enforcement organizations have established standards to that effect:

- The Commission on Accreditation of Law Enforcement Agencies (CALEA).<sup>3</sup>

The Ombudsman reviewed CALEA’s “Standards for Law Enforcement Agencies,” originally issued in August 1983 and last updated in April 1994. Of particular relevance was Chapter 52, “Internal Affairs.” (*This chapter is attached as Appendix A.*)

- The International Association of Chiefs of Police (IACP).<sup>4</sup>

The Ombudsman reviewed IACP’s “Complaint Review Policy,” a “concepts and issues paper” issued January 1, 1990, along with an accompanying “Model Policy.” (*This paper and model policy are attached as Appendix B.*)

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<sup>3</sup> According to its Internet web-site, CALEA was created in 1979 by four independent law enforcement organizations (the International Association of Chiefs of Police, the National Organization of Black Law Enforcement Executives, the National Sheriffs’ Association, and the Police Executive Research Forum). It says CALEA was formed “to develop a set of law enforcement standards; and to establish and administer an accreditation process through which law enforcement agencies could demonstrate voluntarily that they meet professionally-recognized criteria for excellence in management and service delivery.” CALEA is located at 10306 Easton Place, Suite 320, Fairfax, Virginia 22030-2201. CALEA can also be contacted by calling toll-free 1-800-368-3757; or on the Internet at: [www.calea.org](http://www.calea.org)

<sup>4</sup> According to its Internet web-site, IACP was founded in 1893 and “is the world’s senior law enforcement executive association.” It is guided by an advisory board of 52 police executives and addresses “contemporary issues facing law enforcement.” IACP is located at 515 North Washington Street, Alexandria, Virginia 22314. IACP can also be contacted by telephone at (703) 836-6767; or on the Internet at: [www.amdahl.com/ext/iacp](http://www.amdahl.com/ext/iacp)

IACP's policy paper noted both the chief and officers are potentially adversely affected under a "chain of command" review system:

- *Chief* — "The personal attitudes of personnel involved in the investigative process may also breach the integrity of the investigation.... Thus, whether due to personal selectivity or bias, the chief executive officer may receive a distorted picture of allegations of officer misconduct...."
- *Officers* — Investigations uncover information that "may potentially ruin the reputation and career of the subject of the investigation.... The chances of [a] breach of confidentiality increase where the internal investigation reports must be forwarded through numerous supervisory levels."

Both CALEA and IACP recommend law enforcement agencies, among other things:

- Record and investigate all complaints against the agency.
- Establish an internal affairs unit which:
  - 1) investigates allegations of serious misconduct; and
  - 2) reports directly to the chief, without involving the "chain of command."
- Have supervisors investigate allegations of minor rule violations.

Based on this information, the Ombudsman's 1992 report recommended DMPD:

- Establish a departmental order identifying the types of allegations IAU would investigate and the types of allegations the supervisory "chain of command" would investigate.
- Have IAU submit its investigative reports, including recommendations for final disposition, directly to the Chief of Police.
- Move IAU from the inspection services section to the office of the Chief.

DMPD did not submit a written response to those recommendations. The Ombudsman learned the department moved IAU to the Chief's office in 1992 and renamed the unit the Office of Professional Standards (OPS). However, it was unclear whether the department accepted or rejected the other recommendations.

Shortly thereafter, the Ombudsman began receiving complaints about OPS. Included were allegations of rude and dismissive treatment as well as poor or incomplete investigations.

The Ombudsman encouraged these people to complain to Chief Moulder. But many said they would not. Some said they felt intimidated or threatened. Others believed it would not make any difference.

The complaints about OPS and the general reluctance to contact Chief Moulder indicated the department perhaps still had problems with its internal review system. As a result, the Ombudsman opened a new investigation to review the OPS process and how to improve it, if necessary.<sup>5</sup>

The Ombudsman notified Chief Moulder of the investigation through an August 8, 1995 letter<sup>6</sup> which identified five issues to be examined:

1. Do persons making complaints to OPS have confidence in the process and do they believe their complaints receive a fair and thorough consideration? Do they believe they have been treated courteously and professionally as they went through that process?
2. Is OPS, in fact, an independent and impartial review entity? Does it report directly to the chief? Or, does it report within a chain of command that may inherently pose a risk that bias may affect its investigations, findings and actions?
3. How well do OPS' operations, structure and performance compare with any national standards for similar review processes?
4. Has the OPS system, which was put in place after the Milton incident, produced different statistical results than those of the former Internal Affairs process?
5. As the DMPD faces challenges and allegations regarding its dealings with the minority communities of Des Moines, it is timely to specifically ascertain the impact of the OPS upon those complaints and generally assess the manner in which the DMPD interacts with and is perceived by the minority communities.

The investigation was assigned to Michael J. Ferjak, Assistant for Public Safety, who was the lead investigator for Special Report 92-1. Ferjak resigned from the Ombudsman's office in August 1998. The investigation was completed by Jeff Burnham, Assistant Ombudsman.

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<sup>5</sup> Pursuant to Code section 2C.11(5), the Ombudsman is authorized to "be concerned with strengthening procedures and practices which lessen the risk that objectionable administrative actions will occur."

<sup>6</sup> A copy of this letter is attached as Appendix C.

## ***SURVEYS ABOUT OPS***

*ISSUE: Do persons making complaints to OPS have confidence in the process and do they believe their complaints receive a fair and thorough consideration? Do they believe they have been treated courteously and professionally as they went through that process?*

Policing is now acknowledging the value of social science methods for informed decisionmaking. An increasing interest in the application of survey research methods to community and police problems is evidence of this trend.

Consistent and diligent application of survey methods to police work will lead to more informed decisions and improved collaboration with community members.

— *“A Police Guide to Surveying Citizens and Their Environment,” published October 1993 by the U.S. Bureau of Justice Assistance*

The Ombudsman decided to conduct a “customer satisfaction” survey to objectively measure the public’s experience with and perception of OPS.

The Ombudsman contacted numerous law enforcement review agencies and ombudsman offices nationally and internationally but was unable to find any agency that had conducted such a survey. A “customer satisfaction” survey the Alaska Ombudsman’s office had used to evaluate itself was adapted for this review.

The Ombudsman’s first survey was conducted in 1996. Because of a relatively low response rate — 32 percent — a second survey was conducted. Changes were made to improve the survey and increase the participation rate. The second survey was conducted in 1997 and received a 53 percent response rate.

To analyze the surveys, the Ombudsman contracted with J. Ann Selzer, Ph.D., president of Selzer & Company, a Des Moines-based research organization.<sup>7</sup>

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<sup>7</sup> Selzer & Company specializes in public opinion research for clients seeking audience feedback. Dr. Selzer holds a Ph.D. in communication research from the University of Iowa. For the past three years, Selzer & Company has conducted the Iowa Poll for *The Des Moines Register*.



## 1996 SURVEY

The initial survey had 43 questions. A copy is attached as Appendix D.

The Ombudsman invited Chief Moulder and City Manager Eric Anderson to participate in drafting the survey. Some of their suggestions were incorporated.

The Ombudsman hoped to survey everyone who contacted OPS from October 1, 1992 (shortly after it was established) through November 1, 1995. However, OPS was not recording all contacts — only “formal” complaints were recorded. Administrators said OPS handled “countless” informal contacts each day which were not recorded.

This concerned the Ombudsman’s consultant, Dr. Selzer. In a preliminary report analyzing the initial survey results, she wrote:

... we have no read on how OPS carries out what may be the predominant part of their job: Providing information to citizens about police policies and procedures, answering questions about citizen concerns, and outlining the process for filing a formal complaint. An assessment of the OPS which misses the majority of the people with whom they interact is seriously flawed.<sup>8</sup>

As a result, rather than focusing on OPS in general, Dr. Selzer recommended narrowing the focus to the formal complaint process.

The Ombudsman found OPS had inaccurate or no addresses for about 46 of the people who filed formal complaints from October 1, 1992 to November 1, 1995. This left 281 people. The Ombudsman’s office mailed a survey to each one. It followed-up with a second mailing and a telephone call encouraging people to complete the survey.

Dr. Selzer reported 103 surveys were completed and returned, a response rate of 32 percent of people who filed a formal complaint; and 37 percent of those who were sent a survey.<sup>9</sup> In her preliminary report, she wrote:

Because the response rate falls below 50%, *we prefer to treat this survey as a preliminary test* of the methodology. While we see no obvious skews in the data suggesting the group who completed the survey are different from those who did not, we are still dealing with a low enough response rate that the data are hard to defend. [*emphasis added*]

But Dr. Selzer also noted:

The data from those *formal complainants* who completed a questionnaire probably does a fair job of representing the total group of formal complainants as a whole. [*emphasis added*]

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<sup>8</sup> Copies of Dr. Selzer’s preliminary 16-page report are available upon request from the Ombudsman’s office. She later revised the report into a five-page version, which is attached as Appendix E.

<sup>9</sup> One additional survey was returned, but with only one answer given. It was not considered in the analysis.

Concerning people's overall answers, she wrote:

Citizens whose complaints were sustained give OPS relatively solid performance ratings (with a couple of exceptions). Citizens whose complaints were unsustained, unfounded, or when the officer in question was exonerated are more negative toward OPS on every question in the survey.<sup>10</sup>

The first 30 questions were customer-service oriented. The survey gave respondents five choices for their answer, with assigned values for each:

- Much better than I expected (5 points).
- About what I expected (3 points).
- Much worse than I expected (1 point).

Dr. Selzer quantified and averaged the responses. Three questions received responses averaging three or better:

- How easy was it to contact OPS? (*averaged 3.40*)
- How convenient were their office hours? (*averaged 3.12*)
- How easy was it to contact the person working on your case? (*averaged 3.04*)

Regarding these results, Dr. Selzer wrote:

The items that rank high all deal with the structure of the office, not with the way they interact with individuals. It is not terribly surprising OPS would rate the highest on these measures. That a majority of *all* respondents (both those who had their complaints upheld and those who did not) give OPS favorable ratings *suggests that respondents do not treat this survey as one more way to say bad things about the Des Moines police*. Were that the case, we would see indiscriminate negative ratings, even for things like office hours.... [*emphasis added*]

The "sustained" group averaged 3.0 or higher on each of the 30 "customer-service" questions except four:

- How good were they at keeping you informed? (*averaged 2.60*)
- How good were they at doing things right the first time? (*averaged 2.90*)

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<sup>10</sup> DMPD has four "complaint finding categories":

- 1) Unfounded: acts complained of did not occur.
- 2) Exonerated: acts occurred but were justified, lawful and proper.
- 3) Non-sustained: insufficient evidence to prove or disprove the allegation.
- 4) Sustained: acts complained of occurred and were inappropriate.

- How neutral were they? (*averaged 2.80*)
- How useful were they? (*averaged 2.80*)

Concerning these responses, Dr. Selzer wrote:

These are items that signal concern about how OPS interacts with complainants. When a majority of even the most satisfied customers give low ratings, there is reason to think these are the most pressing issues for OPS to consider.

The “not sustained” group averaged less than 2.0 points on 12 of the first 30 questions. Dr. Selzer wrote:

Among those whose complaints were not sustained, the areas of greatest disappointment involve getting to the bottom of the problem (in understanding the problem, being thorough, evaluating the issues and considering all the concerns), being objective (fair, neutral and impartial), and in solving the problem (effectiveness in handling the problem and usefulness). OPS also gets low ratings from the not-sustained group for trustworthiness and being error free.

**Interpretation.** We expect citizens who do not receive a favorable decision about their complaint to blame the system and so low ratings on measures of how well the problem was handled are not surprising. These are the kind of scores, however, that could show improvement with effort. OPS may not be able to satisfy every citizen in every case. But they could set a realistic goal of satisfying more in the coming year than they did in the past year....

Eleven questions involved people’s overall impressions and opinions of OPS. Dr. Selzer wrote the answers “show the same dynamic” — people whose complaints were sustained were more favorable than those whose complaints were not sustained.

She said a majority of the “not sustained” group gave the strongest negative answer for each of the eleven questions, except two:

- “*Were you harmed in any way because you complained to the Office of Professional Standards?*” — 14 percent said they were “very much harmed”
- “*How pleased are you with the people you worked with from the Office of Professional Standards?*” — 40 percent said they were “very displeased”

Regarding these responses, Dr. Selzer wrote:

... these low negatives confirm that unhappy complainants did not fill out the questionnaire by simply marking every negative answer. They appear to have given reasoned consideration to each question....

## 1997 SURVEY

In light of Dr. Selzer's concerns with the initial survey, the Ombudsman modified it with her help. Key changes included:

- Survey questions were rewritten and the number was reduced from 43 to 36.<sup>11</sup> During the re-writing process, the Ombudsman again invited Chief Moulder to participate and incorporated some of his suggestions.
- Greater effort was put into following-up with people who did not return the survey.

For the second survey, it was decided to contact people who filed formal complaints in 1996 — a group of 90 people. The Ombudsman's office sent surveys to each one. Responses were submitted to Dr. Selzer for analysis. She submitted a ten-page report, a copy of which is attached as Appendix G.

She said 48 surveys were completed and returned, a "respectable" response rate of 53%:

This is a majority of individuals who filed a complaint with OPS in 1996 and had it accepted and investigated. This can therefore be considered representative of the entire class who had formal contact with OPS in that year.

Dr. Selzer studied characteristics of people who responded and those who did not, to see if "responders" differed from "non-responders." She found:

... no difference in the responders and non-responders according to whether their complaints were sustained or not. One might reasonably wonder if complainants who had not had their concerns about the DMPD validated might be more likely to respond to this survey, perhaps as a parting shot and last expression of dissatisfaction. That does not appear to be the case....

One question asked those surveyed what led to their complaint, i.e., had they been arrested, witnessed a crime, etc. Dr. Selzer reported the following responses:

- Victims of crime — 25 percent.
- Called police — 25 percent.
- Detained by police — 23 percent.
- Other — 23 percent.
- Arrested — 15 percent.
- Witness — 13 percent.<sup>12</sup>

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<sup>11</sup> A copy of the 1997 survey is attached as Appendix F. Five categories were covered: accessibility; attentiveness/politeness; thoroughness; fairness; and communication.

<sup>12</sup> The percentages add to more than 100 percent because multiple responses were allowed.

Concerning the overall results, Dr. Selzer wrote:

**Positive evaluations.** On questions of accessibility, timely response and politeness OPS wins favorable ratings from a majority of all respondents, regardless of the findings of their complaint. The hours the office is open, its location, the availability of staff are all satisfactory to at least half of the respondents. A majority express satisfaction with the time it took OPS to get to their complaint, indicating the process began swiftly. And a majority say OPS staff treated them with politeness and respect.

**Mixed evaluations.** For two questions about OPS, a majority of respondents whose complaints were not sustained express dissatisfaction, while a majority of respondents whose complaints were sustained or mixed appear to be satisfied. These questions include the perceived objectivity of the OPS staff (66% of non-sustained respondents are mostly or very dissatisfied) and their willingness to gather facts (60%).

In addition, a majority of non-sustained respondents indicate overall dissatisfaction with the DMPD without specific regard to the incident that sparked the complaint (54%). On all these areas, sustained/mixed respondents are mostly satisfied. This suggests to us that the degree of dissatisfaction may reflect hard feelings related to the findings of the complaint. We therefore cannot draw a firm conclusion about the behavior of OPS for these items.

The same must be said of the one item where sustained/mixed respondents are negative where non-sustained respondents are not. A majority (57%) of sustained/mixed respondents express dissatisfaction with OPS staff's willingness to understand the nature of the problem they raised as compared to 30% of the non-sustained respondents.

**Negative evaluations.** We give the greatest credence to the three items where a majority of respondents — regardless of the outcome of their complaint — express dissatisfaction with OPS. One of the three is an overall evaluation of the way complaints are handled by OPS. Sixty-one percent (61%) of all respondents say they are mostly or very dissatisfied with OPS's handling of their complaint. This includes 43% who give the most negative response, saying they are very dissatisfied.

The other two elements where majorities of both groups give negative responses address communication between OPS and complainants. Fifty-eight percent (58%) of all respondents say they are mostly or very dissatisfied with how well OPS kept them informed about how the investigation was proceeding. Two out of three (67%) of all respondents are mostly or very dissatisfied with the explanation of the final decision.

... These findings fit with the initial study of the Des Moines Police Department conducted by the Citizens' Aide office in 1996. In that study we found that sustained complainants gave the lowest ratings for OPS when asked how well they kept them informed of the process.

Regarding perceptions of fairness and favoritism, Dr. Selzer wrote:

At least half of all respondents say OPS never acted in an intimidating way. However, on the other two measures, majorities of both sustained/mixed and non-sustained respondents say they were treated with bias or prejudice at least sometimes, and say that OPS showed favoritism to fellow officers at least sometimes.

On the latter point, fully half of sustained/mixed respondents say this happened most of the time.

These perceptions may be connected to the outcome of the complaint. A majority of all respondents say they disagreed strongly with the findings of their complaint. Even when we separate the sustained from the mixed, at least half of both groups say they disagreed strongly.

**Interpretation** It seems counter-intuitive that respondents whose complaints were sustained would disagree at all with the findings, let alone disagree strongly. Because that is exactly what we see in these data, we again wonder about how the findings are communicated. Perhaps complainants disagreed with the reasoning or with some element of the explanation of the decision, rather than the decision itself. If this is the case, this again underscores the importance of how information is conveyed to complainants, even when it is the news they must be wanting to hear.

## ANALYSIS

The survey responses reveal the public's experiences with and perceptions of the formal complaint process involving the Des Moines Police Department.

On the positive side, the structure of OPS scored well in both surveys. Office hours, location, and staff availability got positive marks from a majority in the 1997 survey. Office hours and similar issues also got favorable responses from a majority in the 1996 survey.

Nearly three out of four people in the 1997 survey (73 percent) said OPS staff treated them with politeness and respect. And 51 percent were satisfied with how long it took OPS to get to their complaint.

This indicates respondents give OPS positive ratings for:

- Office structure (i.e., hours, location, availability).
- Treating people with politeness and respect.
- Getting to formal complaints in a timely manner.

Significantly, these "positive" majorities included a majority of people whose complaint was not sustained. As Dr. Selzer noted, this indicates respondents were not treating the survey "as one more way to say bad things about the Des Moines police."

Similarly, only 15 percent of respondents in the 1997 survey, when asked about the circumstances behind their complaint, said they had been arrested. They were outnumbered by crime victims (25 percent) and people who called police (25 percent).

These findings indicate the surveys were not skewed by insincere responses from criminals — as suggested by DMPD — and that there is legitimacy to negative responses. In the 1997 survey:

- 70 percent said OPS showed favoritism to fellow officers “sometimes” or “most of the time.”
- 67 percent were dissatisfied with the explanation of the final decision.
- 61 percent were dissatisfied with how OPS handled their complaint.
- 58 percent were dissatisfied with how OPS kept them informed during the investigation.
- Only 22 percent would not hesitate to recommend OPS to a friend.

Significantly, all of these “negative” majorities included a majority of people who had a complaint sustained.

This indicates respondents give OPS negative ratings for:

- Favoring officers.
- Overall handling of formal complaints.
- Keeping people informed and explaining the final decision.

## CONCLUSIONS

There is no doubt that Des Moines police officers have a difficult job. It appears they are additionally burdened by a public perception that formal complaints about them are not handled fairly and adequately.

This negative perception could signal deeper problems for DMPD and the community itself. In its policy paper on internal review systems, the International Association of Chiefs of Police noted:

Public trust and confidence in law enforcement is injured where the public perceives that officer misconduct is ignored or punished in a negligible fashion.

Damage to the public's confidence can interfere with a law enforcement agency's ability to have an effective internal review system. In a 1973 report, the National Advisory Commission on Criminal Justice Standards and Goals stated:

Public participation is essential if a responsible, effective internal discipline system is to be maintained. Community members often are the only witnesses able to prove or disprove an alleged act of employee misconduct. *Unless the public is convinced that an agency is truly receptive to complaints, it will not participate in the system.* [emphasis added]

More significantly, police may be hindered in fulfilling their mission to protect and serve in a community which lacks confidence in the agency. As U.S. Supreme Court Justice Brandeis wrote in a 1928 dissenting opinion:

The police department is society's instrumentality to maintain law and order, and to be fully effective it must have public confidence and cooperation.<sup>13</sup>

These potential problems can be avoided, however, whenever a law enforcement agency takes complaints seriously and communicates that message to the public. As IACP's policy paper stated:

Public trust and confidence are built when the public perceives that officer misconduct is actively addressed and corrected by the agency. This, in turn, promotes a public that is willing to assist the agency in the law enforcement mission.

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<sup>13</sup> *Olmstead v. United States*, 277 U.S. 438, 48 S.Ct. 564, 575, 72 L.Ed. 944 (1928)



## DMPD CONCERNS WITH SURVEY

In a meeting with the Ombudsman and his staff, Chief Moulder said he saw no value to the survey and did not believe it would yield any valuable information. He made this assessment before the first survey was done.

He reiterated this position in two letters to the Ombudsman. Chief Moulder based his position on several points:

- The survey only involved people who filed complaints against DMPD. "We feel that this, in and of itself, makes the methodology of the survey negative and invalid," he wrote.

Ombudsman's response: Chief Moulder's comments signal an administrator who may not value the experiences and perceptions of people who have filed complaints about his department.

They also signal an administrator who does not view complaints about his department as an opportunity to learn and improve.

- The survey results would be skewed by insincere responses from lawbreakers who filed complaints as a smoke-screen in hopes of getting criminal charges dropped. (This claim was raised in a letter by Assistant Chief William McCarthy on behalf of Chief Moulder.)

Assistant Chief McCarthy continued, "Many times, the complainant believes a complaint about the officer's actions will result in the charges being dropped in a trade. Commonly, a complainant will change the desire to pursue the complaint when told it would have no effect whatsoever on the court's actions."

Ombudsman's response: Those people who did not follow-through with a formal complaint were not part of the survey, based on DMPD's own information, so it's unclear how they could have skewed the survey responses.

And analysis of responses by those who did participate indicates the surveys were not skewed by criminals — only 15 percent of those responding to the 1997 survey said their complaint was triggered by an arrest.

- The final disposition of people's complaints would impact their survey responses. "For instance, complaints which are investigated and come to a finding where the officer is cleared of the charges, will never leave the complainant satisfied, regardless of the structure or performance of the Office of Professional Standards," he wrote.

Ombudsman's response: This is refuted by survey data showing that, in fact, some people were satisfied even though their complaints were not sustained.

- “No other police department in Iowa is subject to a survey of this nature. To my knowledge, no police department in this nation is subject to a survey of this nature. Therefore, there is no frame of reference for evaluating the findings. It would be foolhardy for me to think that people who are dissatisfied with our service are going to give glowing accounts of how well the complaint was addressed. With that in mind, a judgment as to whether a 90% approval rating or a 10% approval rating is good is certainly without a point of comparison.”

Ombudsman's response: While it would be preferable to use other surveys as a frame of reference, this would have been a poor reason not to conduct these surveys. Even without a point of reference, the responses are meaningful, as reflected in Dr. Selzer's analysis.

## ***DMPD'S INTERNAL REVIEW PROCESS***

*ISSUES: Is OPS, in fact, an independent and impartial review entity? Does it report directly to the chief? Or, does it report within a chain of command that may inherently pose a risk that bias may affect its investigations, findings and actions?*

*How well do OPS' operations, structure and performance compare with any national standards for similar review processes?*

The Ombudsman examined the operational structure of OPS to determine whether it is an independent and impartial review entity.

It is worth noting that before OPS was established in 1992, DMPD's internal review process had the following features:

- While the department had an Internal Affairs Unit (IAU), its role was limited to gathering basic information about complaints it received. IAU then forwarded the information to the accused officer's immediate supervisor, who could gather additional information.
- The supervisor made a recommendation on whether the officer(s) acted inappropriately. The case then continued up the "chain of command" for a recommendation at each stop. Chief Moulder had the final say.<sup>14</sup>
- Complaints filed with a supervisor or commander were investigated by the "chain of command" with no involvement by IAU.

For more information about the department's internal review system before OPS was established, see Appendix H.

This investigation revealed the department's internal review system has undergone several changes. Since OPS was established in 1992, the department has:

1. Established two complaint categories:

-- *Standard of conduct*: Allegations involving breach of civil rights; excessive force; missing property; and corruption.

-- *Procedure*: Allegations involving unsatisfactory service; use of profanity/rudeness; and policy violations.

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<sup>14</sup> The phrase "chain of command" means the supervisory and managerial line of authority extending from the individual officer all the way to the Chief of Police.

2. Expanded the investigative role of OPS and reduced the investigative role of the supervisory "chain of command" as follows:

-- *Standard of conduct*: OPS personnel interview the complainant and all witnesses, including police personnel. OPS also reviews all other relevant information.

-- *Procedure*: OPS personnel interview the complainant and all civilian witnesses, but not police personnel. OPS also reviews all other relevant information. The accused employee's supervisor and commanding officers complete the investigation.

It is worth noting that in both categories, the information goes through the "chain of command" for a recommended disposition at each step, including the Police Chief, similar to the "pre-OPS" system.

3. Established a review committee of five individuals: Police Chief, City Manager, Director of the City's Human Rights Commission, Corporation Counsel, and Commander of OPS.

After being routed through the supervisory "chain of command" for proposed findings and recommendations, all complaint files go to the committee. It reviews the completed investigation, including findings and recommendations, for all complaints.

The committee advises the City Manager, who determines the final disposition. The City Manager then communicates his findings by letter to the complainant.

Initially, the committee conducted only "paper reviews." However, the process now includes face-to-face meetings of the members. The committee can review the file and question the OPS representative, but not the complainant or witnesses.

4. Published a brochure explaining the new process and sends one to each complainant. The brochures explain how citizens can appeal decisions and lists other agencies authorized to investigate complaints about DMPD.
5. Recently created a new position within OPS, a civilian "investigative assistant." This staff member is not a lead investigator. They may conduct interviews with complainants and civilian witnesses but not officers. They do not have decision-making authority concerning how a case is worked or the investigative findings.

For more information about how DMPD handles formal complaints now, see Appendix I.

These changes have brought DMPD's internal review system closer to the standards of IACP and CALEA (see *appendices A and B*). In this regard, the system has improved since 1992.

However, as noted above, the supervisory "chain of command" continues to play a significant role in helping determine the final disposition of complaints alleging serious misconduct. And it appears this remaining flaw is at least in part due to an apparent misinterpretation by DMPD of the standards by IACP and CALEA.

In a 1997 letter to the Ombudsman, Chief Moulder referenced the standards of IACP and CALEA and then wrote:

The Des Moines Police Department meets or exceeds those standards. These standards and recommendations point to the separation of investigative responsibilities relevant to the type of complaint received. They do not delineate who is responsible for making recommendations to the Chief of Police nor do they call for OPS to make them....

However, both standards clearly require the internal affairs unit to report *directly* to the chief of police, without going through the "chain of command" first:

- CALEA's chapter on internal affairs states in relevant part, "The sensitivity and impact of internal affairs matters on the direction and control of an agency *require* that the agency's chief executive officer receive all pertinent information *directly*." [*emphasis added*]
- IACP's policy paper states in relevant part, "The nature of the complaint review process, however, and the distinct duties of the chief executive officer, argue for placement of the internal investigations authority under the direct control of the chief.

"The chief executive officer is responsible for developing and implementing a philosophy to guide departmental operations. Part of this philosophy is generally to provide efficient law enforcement services to all citizens in a fair and impartial manner. Evidence of officer misconduct may be a signal that the implementation of this philosophy has somehow broken down. There may be a weakness in policy, training or supervision that must be corrected. *The process of self-correction of the departmental philosophy and mission could be slowed down when the chief receives allegations of misconduct only through indirect channels.*" [*emphasis added*]

"... The integrity of internal investigations into allegations of officer misconduct is protected by requiring that the internal investigations authority report directly to the chief executive officer."

## ***DMPD'S INTERNAL REVIEW PERFORMANCE***

*ISSUE: Has the OPS system, which was put in place after the Milton incident, produced different statistical results than those of the former Internal Affairs process?*

The Ombudsman asked DMPD for statistical information concerning the outcome of complaints filed from 1990 (two years before OPS was created) to 1997. DMPD submitted data from that period, which is attached as Appendix J.

The Ombudsman summarized that data in the following table:

### **Results of DMPD's internal review process, 1990-1997**

<i>Disciplinary measures taken in sustained complaints**</i>								
Year	Number of complaints	Number sustained	Percent sustained	Number of officers suspended	Number of written reprimands	Number of verbal counselings/reprimands	Number of demotions	Number with no action taken
90	242	34	14.0%	6	3	26		
91	132	24	18.2%	4	3	18		
92a*	100	15	15.0%	7*	8*	13*		
92b*	35	8	22.9%	*	*	*		
93	124	21	16.9%	3	11	13		1
94	117	14	12.0%	4	5	9		1
95	119	23	19.3%	2	4	18		
96	92	21	22.8%	1	3	16		1
97	85	29	34.1%	10	3	17	1	
Total	1,046	189	18.1%	37	40	130	1	3

\* — DMPD modified its internal review system on August 17, 1992. "92a" refers to the period of January 1-August 16, 1992. "92b" refers to the period of August 17-December 31, 1992. Regarding disciplinary measures taken in response to complaints filed in 1992 that were found to be sustained, the department is unable to identify how many were taken in each of the two respective periods.

\*\* — Disciplinary totals exceed the number of sustained complaints due to multiple employees being involved in some cases.

The Ombudsman analyzed the data in the table on the previous page to compare the internal review process before and after OPS was created (in August 1992). That comparison is summarized in the following table:

**Comparing DMPD's internal review process before and after OPS**

System	Number of complaints	Number sustained	Percent sustained
Pre-OPS*	474	73	15.4%
Post-OPS*	572	116	20.3%

\* — "Pre-OPS" refers to the period from January 1, 1990 through August 16, 1992. "Post-OPS" refers to the period from August 16, 1992 through December 31, 1997.

At first glance, the tables might appear to indicate the new system has increased the likelihood that a complaint will be sustained. They show the percentage of complaints sustained has risen — from 15.4 percent under the old system to 20.3 percent under the new system.

However, closer examination indicates this may be a comparison of dissimilar systems. While the *percentage* of sustained complaints per year has generally risen, the *number* of sustained complaints has either remained the same or dropped slightly. In 1990 and 1991 (the two years before the change in systems), 34 and 24 complaints were sustained, respectively.

But in the years since 1992, all but one (1997) showed fewer sustained complaints than 1990 and 1991.

Perhaps most significantly, the number of complaints per year has generally gone down since the change in systems. This could be in part or in whole due to the fact that all complaints were to be recorded under the old system, but not under the new system.

As a result, without additional data, it would be speculative to reach any significant conclusions based on the information in these tables.

## CONCLUSIONS

1. a) *Do persons making complaints to OPS have confidence in the process?*

The surveys indicate a majority of people do not have confidence in the process.

- b) *Do they believe their complaints receive a fair and thorough consideration?*

The surveys indicate a majority believe their complaints do not receive a fair and thorough consideration.

- c) *Do they believe they have been treated courteously and professionally as they went through that process?*

The surveys indicate a majority believe they have been treated courteously and professionally as they went through the process.

2. *Is OPS, in fact, an independent and impartial review entity? Does OPS report directly to the chief? Or, does it report within a chain of command that may inherently pose a risk that bias may affect its investigations, findings and actions?*

OPS reports within a chain of command, contrary to standards established by the Commission on Accreditation of Law Enforcement Agencies (CALEA) and the International Association of Chiefs of Police (IACP).

3. *How well do OPS' operations, structure and performance compare with any national standards for similar review processes?*

Changes to the unit's operations and structure since 1992 have brought it closer in line with the standards set by CALEA and IACP. However, the supervisory "chain of command" continues to play a significant role in determining the final disposition of complaints alleging serious misconduct, contrary to the standards set by CALEA and IACP.

4. *Has the OPS system, which was put in place after the Milton incident, produced different statistical results than those of the former Internal Affairs process?*

While the new system has produced different statistical results, there is insufficient data to attach any significant meaning to those differences.



5. *As the DMPD faces challenges and allegations regarding its dealings with the minority communities of Des Moines, it is timely to specifically ascertain the impact of the OPS upon those complaints and generally assess the manner in which the DMPD interacts with and is perceived by the minority communities.*

While this was one of the stated goals of the Ombudsman's investigation, information concerning this issue was not gathered.

## ***RECOMMENDATIONS***

Pursuant to Code section 2C.16(5), the Ombudsman recommends the Des Moines Police Department:

1. Record all pertinent information concerning citizen allegations of police misconduct regardless of whether the matter is formally investigated, in accordance with standards set by CALEA and IACP.
2. Revise the OPS Standard Operating Procedures manual concerning "standard of conduct" investigations to require OPS to submit its investigative files, including recommendations for final disposition, directly to the Chief of Police, in accordance with standards set by CALEA and IACP, as well as one of the Ombudsman's recommendations in Special Report 92-1.

The Ombudsman also requests:

1. The City of Des Moines formalize, preferably by council resolution or at least by departmental executive order:
  - the five-member review committee and its functions;
  - the city manager's responsibility for determining the final disposition and communicating that to complainants.
2. The City of Des Moines, preferably by council resolution or at least by departmental executive order, modify the committee's review process to allow complainants to personally appear and appeal any decision by the committee.
3. The Des Moines City Council and Mayor review the police department's internal review process and consider the Ombudsman's findings and recommendations.
4. The Des Moines City Council and Mayor consider arranging for additional and periodic surveys of people who file complaints about DMPD and compare the results with those already obtained to assess any changes in the public's perception on various issues.

In closing, the Ombudsman encourages DMPD and city officials to consider these matters carefully and take appropriate action to improve the department's process of handling complaints about officers.

While it certainly appears changes are needed, the Ombudsman is not advocating change to the degree of establishing an independent panel of citizens to review complaints alleging serious misconduct.

However, should DMPD and city leaders fail to take any corrective action in light of these findings and recommendations, such failure may actually increase the chances for a civilian review board to be established. As noted in the preface to Special Report 92-1:

*It is clearly apparent if the police do not take a vigorous stand on the matter of internal investigation, outside groups — such as review boards consisting of persons outside the police service — will step into the void.*

— O.W. Wilson, *Police Administration*, Third Edition

# 52

## INTERNAL AFFAIRS

The internal affairs function is important for the maintenance of professional conduct in a law enforcement agency. The integrity of the agency depends on the personal integrity and discipline of each employee. To a large degree, the public image of the agency is determined by the quality of the internal affairs function in responding to allegations of misconduct by the agency or its employees.

The standards in this chapter assume that in large agencies there will be a specialized organizational component, usually as a part of the office of the chief executive, responsible for internal affairs matters. In those cases involving the integrity of the agency, the specialized unit will actually conduct the investigation and carry out all assignments related to resolving the issue. The specialized unit should be a resource and should review those internal affairs matters of lesser importance that are investigated by supervisory personnel.

In smaller agencies, a specialized unit may not be established. However, the function is important and investigations may be assigned to an individual on an as-needed basis or be conducted by the chief executive officer.

Agencies having an internal affairs function consistent with these standards will have the capability to respond appropriately to allegations of misfeasance, malfeasance, and nonfeasance by employees, and to complaints about the agency's response to community needs, thereby instilling public confidence in the agency.

### 52.1 Administration and Operations

**52.1.1** *A written directive requires all complaints against the agency or its employees be investigated, and specifies:*

- a. the type of complaints to be investigated by line supervisors;*
- b. the type of complaints that require investigation by the internal affairs function; and*
- c. the type of complaints to be reviewed by the internal affairs function.*

**Commentary:** The intent of this standard is to provide guidelines regarding which categories of complaints are to be handled by the internal affairs function and which as part of routine discipline. The criteria for determining the categories of complaints to be referred to the internal affairs function may include allegations of corruption, brutality, misuse of force, breach of civil rights, and criminal misconduct. Criteria for assignment of the investigation of the complaint to line supervisors may include, for example, alleged rudeness on the part

of the officer, tardiness, or insubordination.  
(M M M M)

**52.1.2** *A written directive specifies that the position responsible for the internal affairs function has the authority to report directly to the agency's chief executive officer.*

**Commentary:** The sensitivity and impact of internal affairs matters on the direction and control of an agency require that the agency's chief executive officer receive all pertinent information directly.  
(M M M M)

**52.1.3** *A written directive specifies the procedures for notifying the agency's chief executive officer of complaints against the agency or its employees.*

**Commentary:** The directive should specify the nature of those complaints that should be brought immediately to the attention of the agency's chief executive officer and those that can be postponed to a later time. (O O O O)

**52.1.4** *A written directive specifies a time limit for completing an internal affairs investigation, with provisions for extensions.*

**Commentary:** None. (M M M M)

**52.1.5** *The agency keeps the complainant informed concerning the status of a complaint, to include at minimum:*

- a. verification of receipt that the complaint has been received for processing;*
- b. periodic status reports; and*
- c. notification of the results of the investigation upon conclusion.*

**Commentary:** The verification, usually in the form of a receipt, furnished to persons initiating complaints alleging misconduct on the part of the agency or an agency employee may contain a description of the investigative process. The status of investigations should be communicated to the complainant, although the degree of specificity of the notice is left to the discretion of the agency. This standard does not apply to anonymous complaints. (O O O O)

**52.1.6** *When employees are notified that they have become the subject of an internal affairs investigation, the agency issues the employee a written statement of the allegations and the employee's rights and responsibilities relative to the investigation.*

**Commentary:** None. (M M M M)

**52.1.7** *A written directive specifies the conditions, if any, during an internal affairs investigation, when:*

- a. medical or laboratory examinations are administered;*
- b. photographs are taken of employees;*
- c. an employee may be directed to participate in a line-up;*
- d. an employee may be required to submit financial disclosure statements; and*
- e. instruments for the detection of deception are used.*

**Commentary:** The written directive should be based on the legal requirements in the jurisdiction, case law, and precedent and should be consistent with other administrative decisions. An employee may be required to submit to a medical or laboratory examination, at the agency's expense, when the examination is specifically directed and

narrowly related to a particular internal affairs investigation being conducted by the agency. An example is the use of this process in determining drug use by employees. An employee may also be required to be photographed, to participate in a line-up and/or submit to a financial disclosure statement when the actions are material to a particular internal affairs investigation being conducted by the agency. (M M M M)

**52.1.8** *A written directive specifies the circumstances in which an employee may be relieved from duty.*

**Commentary:** The written directive should be supported by other documents establishing the powers and authority of the office of the chief executive. The relief from duty may be a temporary administrative action pertaining to an employee's physical or psychological fitness for duty or an action pending disposition of an internal affairs investigation. The authority to relieve an officer from duty should extend to supervisory levels. (O O O O)

**52.1.9** *A written directive requires a "conclusion of fact" for each investigation into allegation of misconduct.*

**Commentary:** The conclusion of the disciplinary process should be structured and should provide information to all participants in the process. The agency needs to be aware of changes in policies, procedures, rules, and regulations that may prevent future allegations of misconduct, as well as the need to modify or expand training.

Reference is made for guidance purposes to the Police Executive Research Forum Model Policy Statement "Police Agency Handling of Citizen Complaints" (September 1981) and the International Association of Chiefs of Police, Inc., National Law Enforcement Policy Center Concepts and Issues Paper and "Complaint Review Model Policy" (January 1990). (O O O O)

**52.1.10** *A written directive requires the agency to maintain a record of all complaints against the agency or employees and to protect the confidentiality of these records by maintaining them in a secure area.*

**Commentary:** The confidentiality of internal affairs records is important, and proper security precautions should be taken. This records activity is a task of the internal affairs function and is an exception to the personnel records or centralized records systems. (M M M M)

**52.1.11** *The agency compiles annual statistical summaries, based upon records of internal affairs investigations, which are made available to the public and agency employees.*

**Commentary:** None. (O O O O)

**52.1.12** *The agency makes available information to the public on procedures to be followed in*

*registering complaints against the agency or its employees.*

**Commentary:** Procedures for registering complaints should be made available to the community through the media or the agency's community relations programs. This information should also be disseminated to all agency employees. (O O O O)

## **Appendix B**

IACP National Law Enforcement Policy Center

### **Complaint Review Policy**

Concepts and Issues Paper, January 1, 1990

#### **I. INTRODUCTION**

The purpose of this paper is to accompany the Model Complaint Review Policy promulgated by the IACP/BJA National Law Enforcement Policy Center. This paper provides a discussion of critical issues pertaining to departmental review and investigation of allegations of employee misconduct. In addition, current trends in the law enforcement profession, and options that an agency may wish to pursue with regard to the complaint review process are addressed.

##### **A. Background**

This concepts and issues paper and the model policy address the processing and investigation of both internal and citizen complaints alleging misconduct by sworn officers. Handling of complaints ultimately necessitates reference to the broader disciplinary system used by law enforcement agencies in order to maintain internal control, award excellence in employees and correct behavior that falls below the standards set by the agency for efficient delivery of services. The complaint review process and disciplinary system are not isolated functions within the agency that only occasionally converge and impact upon each other and the operations of the agency. These components should be conceptualized and addressed by the agency as a dynamic and unified system for implementation and reinforcement of departmental goals and objectives. As such, each law enforcement executive should develop a philosophy for his agency that reflects this interrelationship, and that can activate the system in an efficient manner.

##### **B. Formulating a Departmental Philosophy of Discipline**

Neither citizen complaints nor the departmental disciplinary process have a pleasant connotation for law enforcement officers or executives. For some officers, they conjure up feelings of fear, shame, discredit, anger and alienation from the department. To law enforcement executives, these words raise anxiety. The thoughtful executive may question whether his current mechanism for detecting officer misconduct functions adequately to achieve its goal. In addition, the executive may question whether the existing disciplinary system is too lax or too harsh, whether it is applied consistently, and whether the disciplined officer will become embittered by the process or learn to become a better officer.

By contrast, some law enforcement officers and executives view citizens' allegations of officer misconduct and the disciplinary process in a significantly different manner. They may consider these functions to be a carefully created facade to satisfy political and community groups, with no real intention of generating meaningful penalties.

Neither contrasting perception of the complaint review process is healthy for the officer or law enforcement agency. Each undermines the basic goals of the complaint review process and disciplinary system. In order to maximize the goals and purposes of these critical functions, it is important for the law enforcement executive to understand the entire process, and formulate a philosophy of discipline for his department.

**1. Negative Discipline** Traditionally, the law enforcement profession has maintained a negative, reactive approach to both internal investigations into allegations of officer misconduct and the disciplinary process. The paramilitary style upon which the law enforcement profession is modeled has helped to reinforce this approach. This traditional, negative style of discipline remains in use by many law enforcement agencies today.

The concept of negative discipline functions on one reactive and negative premise: a proven allegation of misconduct receives immediate punishment. This style is deemed reactive because officer misconduct is only addressed after it has occurred. The department reacts to the problem of officer misconduct only as each case arises, and only in a punitive fashion. The disciplinary process is used as an end within itself and not as a means of educating officers as to appropriate levels of behavior, and to explain why such standards are necessary. And, while negative discipline is long on punishment, it generally does not provide balance by maintaining discipline by also rewarding excellence.

**2. Positive Discipline.** Many law enforcement theorists have increasingly questioned the efficacy of the negative management style of discipline. The current trend among law enforcement agencies, as reflected in the model policy, is to formulate an internal investigation and discipline system utilizing a more holistic and positive approach to discipline and allegations of officer misconduct.<sup>1</sup>

Law enforcement agencies must provide a firm foundation for the disciplinary process by developing clear goals to be achieved by the department. It is not enough for the chief executive officer to inform officers that the mission and ultimate goal of the department is to prevent and detect criminal activity. While this may be the overall mission, this statement or goal is too broad and simplistic. Modern agencies operate in a complicated environment that affects this mission, and thus requires thoughtful assessment of how these many factors affect delivery of public services. For example, relevant departmental goals may be to create an environment that both encourages the community to work with the agency, and to become actively involved with the citizen complaint process. Goals focusing on a more positive relationship with the community have ultimately proven to assist in achieving the larger mission of detection of criminal conduct.

Departmental policy is the written embodiment of such goals and objectives. In addition, it is one means of communicating these goals, and how they are to be implemented to the officer. Departmental policy also reflects the standards of behavior that are expected from officers in daily operations.

In order to achieve a positive, focused disciplinary system, it is important that department goals be effectively communicated to, and understood by the officers. Often, input by officers will help hone policy into a more effective form to implement departmental goals. Sharing the process of developing policy and how it is to be implemented will provide the officer with a better understanding of why a policy is necessary, and why he must conform his behavior to that standard. Internalization of management goals, through assisting in development and gaining a clearer understanding of the reasons for expected behavior, will help minimize disciplinary problems. Individuals will generally conform more easily to a standard that is understood and accepted as rational, than to blind orders to follow department policies.

Positive discipline focuses on determining why misconduct occurred, rather than solely on punitive measures to correct misconduct. Officer misconduct may be a result of poorly written policy or ineffective training. A positive disciplinary system analyzes each case to determine the cause of misconduct and develops appropriate remedial recommendations.



Positive discipline includes reinforcement of excellent behavior by maintaining an award system in addition to a punitive system. Actions by officers that exceed that standard expected as the norm deserve recognition. This may be done by special departmental commendations and medals. In addition, each agency has officers who may not be outstanding, but who are known for consistently doing their job well, and who are overall reliable officers. A positive management style rewards and encourages such behavior, too. Supervisors should be trained to reinforce this form of excellence, since reliability and a good solid performance record are the backbone of daily operations.

Generally, humans respond to even minimal praise in a more positive manner than to criticism or punishment. Discipline, or maintaining officer conduct at a set level, is asserted and reinforced through positive reinforcement of behavior as well as by punishing for behavior falling below the norm. Officers who perceive that the agency recognizes and appreciates their daily efforts feel better about themselves and want to continue doing a good or even better job. They feel a part of the agency and want to support the goals and reputation of the department. Intimidation of the officer to behave in a manner consistent with set norms through the threat of punishment, or failure to recognize the officer's vital contributions, only alienates the officer and encourages him to do the minimum expected of the position. This attitude does not encourage excellence or promote the efficient delivery of police services.

Finally, positive discipline implies a departmental goal of administering counseling, reprimands or suspension in a fair and consistent manner. Inconsistent discipline can undermine the entire disciplinary process. Where officers perceive that they may receive stiffer punishment than another officer for the same or similar misconduct, any lessons that the department hoped to impart to an officer through discipline will be lost.

In order to achieve consistency, fairness and objectivity in discipline, some departments have adopted uniform tables of penalties. These tables establish a mandatory code of discipline that will be administered for any given rule violation.

Theoretically, this type of uniform code would appear to provide more consistency in the administration of discipline. On the other hand, it may prove too inflexible and not permit the department the ability to consider mitigating information.

## **II. LEGAL CONSIDERATIONS FOR OFFICER DISCIPLINE**

Certain aspects of law enforcement officer discipline may vary in accordance with state or local law, civil service decisions or the terms of a collective bargaining agreement. In addition, several states have begun to provide statutory regulation of the citizen complaint process. For example, a recently enacted statute in Wisconsin (87-88 Wis. stats. Sec. 6. 312) provides as follows: "(3) Citizen Complaint Procedure. Each person in charge of a law enforcement agency shall prepare, in writing and make available for public scrutiny a specific procedure for processing and resolving complaint by any person regarding the conduct of a law enforcement officer employed by the agency."

A broad overview of the more general features of discipline is necessary to fully explain the policy and guide the law enforcement executive in assessing his disciplinary system.

### **A. Termination or Suspension Procedures**

The exact procedures for termination or suspension of a law enforcement officer are dependent on how such employment is characterized under the law.

## **1. Property Interest Held in Continued Employment.**

The 14th Amendment's due process clause guarantees that no person shall be deprived of life, liberty or property without due process of law. Property has been expanded beyond its face meaning to include the abstract concept of a vested interest or right to continue holding a certain occupation or job. Where such a "property" interest in continued employment exists, termination or suspension from such employment must conform with certain federally determined due process procedures.<sup>2</sup> A property interest in employment is not created by the federal Constitution but is conferred by state or local legislation, civil service decision or personnel handbooks. Such legislation determines the extent of the property interest.<sup>3</sup> In most jurisdictions, law enforcement officers are given property interest in their employment by state statute. Officers cannot be terminated or suspended without just cause, and such management decisions must be preceded by a pretermination hearing by the law enforcement agency or other appropriate tribunal.

The wording of legislation conferring a property interest may differ from state to state. Many state statutes provide that officers shall retain their position unless dismissed for just cause. Other statutes contain a listing, similar to that provided in the model policy, of behavior by the officer for which he may be subjected to dismissal or discipline. Statutory wording that limits when an officer may be dismissed or suspended generally implies an intent to confer a property right. Whether listed or not within the statute, some of the grounds that have been held to constitute just cause for dismissal are similar.

- **Grounds for Discipline.** Most states permit an officer to be disciplined up to termination for incompetency. The department is not required to retain an officer who is unable to perform his duties. Similarly, many states include neglect of duty or nonfeasance and failure to perform official duties as grounds for disciplinary action.

A basis for discipline that has become a recent subject of controversy is the catchall provision "conduct unbecoming an officer." Conduct unbecoming an officer may include prohibition of acts of moral turpitude by the officer, such as certain sexual activity or lying. This charge may also refer to acts that are considered to bring the department's reputation as a whole into bad repute, or that are detrimental to the welfare of the department or the public. Suspension or dismissal based on a charge of "conduct unbecoming an officer" has been criticized by some courts due to the vagueness of the charge. It is contended that the officer is not given adequate notice of the types of acts that are prohibited.

By contrast, many courts have upheld this charge as a basis for discipline. The officer is considered to be able to determine from state case law and department policy the scope of actions constituting conduct unbecoming an officer. In addition, officers are considered to be able to discern which of their acts would be considered to bring the department into disrepute from their own moral value systems. Law enforcement executives should begin to pay close attention to state employment law to determine whether a trend exists locally to abandon or modify the charge of conduct unbecoming an officer as a basis for discipline.

"Just cause" for discipline has also been found where the officer has violated departmental policies. Officers have a duty to obey all properly promulgated and legal policies and procedures of the department. Charges of misconduct by the officer or malfeasance are usually premised on such departmental policy violations. Dismissal may also be founded upon failure to obey an order of a superior officer.

Just as an officer may be disciplined for violating departmental "law," an officer may in most states be disciplined up to dismissal for violation of criminal law. Some jurisdictions require that there be an actual criminal conviction before termination, while others permit termination upon

indictment for criminal conduct. Where there is a concurrent departmental policy prohibiting criminal conduct, the officer may also be disciplined for violation of departmental policy.<sup>4</sup> Unless otherwise provided, an administrative finding of guilt and subsequent discipline will not be dependent on a judicial finding of guilt.

• **Elements of Pretermination Hearing.** Law enforcement officers holding a property interest in their position must be given an administrative hearing prior to suspension or dismissal.<sup>5</sup> However, where the officer would pose a significant hazard to the public or the department if remaining on active duty while awaiting a pretermination hearing, the department may suspend the officer without pay pending the administrative hearing.<sup>6</sup>

The pretermination hearing need not approach the formality of a full judicial trial to satisfy the due process requirements of the 14th Amendment. The purpose of the hearing is to determine whether there are reasonable grounds to believe that departmental charges against the employee are true, and suspension or dismissal are thus merited. Due process requires that the officer be given notice of, and an opportunity to be heard on the charges. To satisfy the "notice" requirement, the officer is entitled to an oral or written summary of the charges that the department asserts against him, and the proposed disciplinary disposition. The "opportunity to be heard" requirement entitles the officer to a meaningful hearing to present his explanation that mitigates or refutes those charges.<sup>7</sup> In order for the hearing to be meaningful, it must be held at a reasonable time and place. The officer must be permitted enough time before the hearing to prepare an adequate case or explanation to rebut the charges against him. The hearing must be held at a time and location that is easily accessible to the officer. The officer may present evidence or witnesses that support his version of the facts, and cross-examine or present evidence to rebut departmental evidence and witnesses.<sup>8</sup> Finally, the officer must be permitted a meaningful opportunity for appealing an administrative decision of suspension or termination to a judicial forum. This provides a fuller, more formal determination of the officer's actual guilt or innocence upon the charges, and whether the chosen course of discipline is merited. The administrative findings are not binding on the court.<sup>9</sup> Appropriate appellate procedures are largely determined by state civil service provisions and the terms of any collective bargaining agreement. These requirements are fulfilled in the departmental hearing section of the model policy.

**2. Terminable at Will Employment.** A more difficult legal disciplinary problem is presented by those states that do not confer a property interest upon law enforcement officers. While few in number, these states essentially treat public and private sector employees in a similar manner. Termination of officers is considered to be at the will of the employing agency, whether "for cause, no cause or even for cause morally wrong."<sup>10</sup> This quote, popularly used to explain nontenured, terminable at will employment, actually does not currently describe the true nature of such employment. Judicial and statutory modifications have somewhat altered the nature of "will" employment.

The federal due process pretermination requirements discussed in the previous sections do not apply to officers in states espousing the "right to work" philosophy, "terminable at will" employment. As the officer has no property interest in his position, there is no property that can be deprived upon termination that the 14th Amendment would protect. Thus, the officer has no right to a pretermination hearing to determine the validity of the firing decision except in certain limited instances.<sup>11</sup>

However, the 14th Amendment property provision has been read to include an abstract right of employees to a good reputation and clean name. This property interest in reputation triggers 14th Amendment due process requirements whether the employee is terminable at will or on just cause.<sup>12</sup> Where an officer is to be discharged on the basis of a charge that may seriously damage his standing in the community or attach a stigma to his good name, reputation, honor

integrity, a name-clearing hearing prior to termination is necessary.<sup>13</sup> Essentially, employers are not allowed to ruin the employee's chances of getting another job by firing him on the basis of scandalous or grievous charges that may be false, without giving the employee an opportunity to prove that the charges are false. For example, discharge of an employee for a positive drug-test would trigger the requirement that a name-clearing hearing be afforded the employee. The requirements for a pretermination administrative hearing discussed in the previous section would be applicable to a "reputation name-clearing" hearing.

Most "terminable at will" states imply a public policy exception onto the general rule that the officer may be terminated for any reason the employer chooses. This exception provides that any suspension or termination cannot violate a stated public policy. For example, 42 U.S.C. Sec. 2000e-17 et seq., popularly referred to as Title VII, provides that no public or private employer may discharge an employee on the basis of race, religion, sex or national origin. A public policy to deter discrimination in the workplace is enveloped in Title VII. Thus, terminable at will employers may not circumvent Title VII by arguing that their state law exempts them from Title VII coverage.

An important protection afforded both to many "at will" employees and those employees with a property interest are contained in state "whistle-blowing" statutes. These statutes prohibit employers from discharging employees who report or threaten to report an employer's violations or intended violations of the law.

The potential rights accorded a law enforcement officer in "terminable at will" states vary significantly from state to state.<sup>14</sup> Adoption of exceptions by statute or case law should be researched by the law enforcement executive in conjunction with the formulation of a disciplinary system.

### **III. FRAMEWORK OF POLICY**

The model policy places ultimate responsibility for the investigation of both internal and citizen complaints alleging officer misconduct with the internal investigations authority. The variety of procedures used by law enforcement agencies in investigating officer misconduct merit a fuller discussion of each option and the provisions ultimately embodied in the model policy.

#### **A. Internal Investigations Authority**

Each law enforcement agency should have a mechanism for investigating both internal and citizen complaints alleging employee misconduct. The internal investigations function is critical to maintaining the integrity and professionalism of the agency. Public trust and confidence in law enforcement is injured where the public perceives that officer misconduct is ignored or punished in a negligible fashion. In addition, the internal investigations function serves to maintain the internal discipline and control necessary to provide efficient law enforcement services.

The model policy defines the internal investigations authority as "the designated employees or unit responsible for conducting investigations into allegations of employee misconduct." This phrase is an accommodation of the varying sizes and organizational structures of each law enforcement agency.

The majority of law enforcement agencies combine responsibility for investigating civilian and internal complaints in one unit or a designated employee. Public accountability is minimal, as investigation and any subsequent punishment are vested in and determined solely by the agency. Many agencies have a separate unit whose sole function within the agency is to conduct such investigations of employee misconduct. Smaller agencies may be unable to staff a separate unit

without placing a severe strain on manpower. These agencies may informally designate an officer to conduct internal or citizen complaint investigations, or rotate responsibility as the need arises.

A growing number of law enforcement agencies have one internal unit to review the outcome of citizen complaint investigations and another to investigate internal allegations of employee misconduct. Some of these agencies staff the citizen complaint unit solely with department employees, or use a mixture of citizens and officers. The latter may create more public accountability, as the citizens within the unit may ensure against bias.

Several large urban areas have attempted to develop distinct units outside the department to facilitate the citizen complaint review process and subsequent discipline. These units are usually staffed exclusively by citizens, such as community leaders and local politicians. In a recent study of citizen complaint procedures by the Police Executive Research Foundation (PERF), it was determined that these externally based units have not worked as well as initially expected.

Proponents of external citizen complaint review units cite the value of injecting an independent and more objective voice in assessing and remedying officer misconduct. Citizen involvement in this function reinforces goodwill between the department and the public. The public gains confidence that misconduct is fairly and adequately addressed where citizens serve within the citizen complaint review system.

The PERF study notes that opponents of external, citizen-staffed review units consider them to undermine the morale of the entire department. The authority and responsibility of command to manage the department is interrupted and influenced by persons who are inexperienced in law enforcement and its unique workings. The study suggests that early citizen review boards may have additionally been inherently biased against law enforcement, and thus failed to achieve their goals.

An interesting argument raised in the study is that citizen review boards are reactive, as they must wait for complaints before taking action, whereas review units based within the department and staffed with officers can be more proactive. Members of internal review units may have greater expertise and opportunity to investigate and detect misconduct through ongoing inspections. Perhaps an approach that combines both citizens and sworn officers can satisfy all concerns.

**1. Accountability of Investigative Authority.** The placement of the internal investigations authority within the organizational structure of the agency is an issue of critical importance. The internal investigations authority, whether a unit or employee, should be under the direct oversight of the chief executive officer of the department. The authority should have direct access to, and report only to this chief executive officer.

Some departments place the internal investigations authority under the supervision and control of another high-ranking official within the agency who generally has other responsibilities. This organizational placement can dilute the effectiveness of the internal investigations function, since cases must be processed through an additional bureaucratic layer before reaching the chief executive officer. On the other hand, the chief also has a broad range of responsibilities, and may not always have sufficient time to adequately address the complaint review process. Thus, the responsibility must be delegated to another command official who can manage this process in a more expedient manner.

The nature of the complaint review process, however, and the distinct duties of the chief executive officer, argue for placement of the internal investigations authority under the direct control of the chief. The chief executive officer is responsible for developing and implementing a philosophy to guide departmental operations. Part of this philosophy is generally to provide

efficient law enforcement services to all citizens in a fair and impartial manner. Evidence of officer misconduct may be a signal that the implementation of this philosophy has somehow broken down. There may be a weakness in policy, training or supervision that must be corrected. The process of self-correction of the departmental philosophy and mission could be slowed down when the chief receives allegations of misconduct only through indirect channels.

The chief executive officer is responsible for control of the law enforcement agency and its employees. Immediate and firsthand knowledge of employee actions is necessary so that he can effectively fulfill this responsibility.

The integrity of internal investigations into allegations of officer misconduct is protected by requiring that the internal investigations authority report directly to the chief executive officer. Such investigations unearth sensitive and confidential information that may or may not prove true. This information may potentially ruin the reputation and career of the subject of the investigation. Thus, access to the information must be closely guarded and limited to those personnel with a need to know. This will protect the subject from the unfounded rumors or false accusations that may arise where numerous employees have access to all or some of the investigative information. The chances of this breach of confidentiality increase where the internal investigation reports must be forwarded through numerous supervisory levels.

The process of conducting internal investigations must be guarded from personal influence or bias. The possibility that an investigation may be stifled or unduly influenced as a result of favoritism, discrimination or personal dislike are increased as more departmental personnel are involved in the internal investigation function. Where the internal investigations authority does not report directly to the chief executive officer, there is a greater opportunity that corrupt officers may be tipped off to an investigation or may successfully influence the outcome of internal investigations. The personal attitudes of personnel involved in the investigative process may also breach the integrity of the investigation. For example, a supervisor may privately consider investigation of uses of force to be less important than investigations of cruiser accidents, because the supervisor believes that all uses of force are merited. The supervisor may thereby practice an internal selectivity in directing the internal investigations. Thus, whether due to personal selectivity or bias, the chief executive officer may ultimately receive a distorted picture of allegations of officer misconduct where the internal investigation authority does not report directly to him.

These subtle and not so subtle influences on the complaint review procedure can also occur to some extent where the internal investigations authority is under the direct control of the chief. In either model, the annual summary review of complaints can be a critical check on the process.

**2. Staffing of Investigative Authority.** Choice of staff to perform internal investigations, and departmental commitment to the entire disciplinary process are critical factors in ensuring that this process is not undermined. The chief executive officer and command staff must be committed to developing a strong and meaningful internal investigations function within the department. When command officials demonstrate an ambivalent attitude toward investigation of officer misconduct, it is transmitted through the ranks. Officers perceive that they will not be punished for misconduct, as the command staff are not seriously committed to maintaining these standards. Thus, internal discipline is weakened.

The commitment to a fair and meaningful internal investigative function must further be reinforced by delegation of this responsibility only to personnel who share a similar philosophy and commitment. Some law enforcement managers are uncomfortable with the prospect of administering discipline to fellow officers for misconduct. Often, they retain the perception that everything is different on the street, and any subsequent review of the facts to determine potential

misconduct cannot accurately reproduce the event or duplicate the officers feelings while involved in the incident.<sup>12</sup> Where a civilian is in charge of reviewing internal investigations of misconduct, he may compensate for lack of street experience by recommending light discipline. Thus, the chief executive officer must choose an employee or unit to conduct internal investigations that understands the critical necessity for accurate and unbiased investigations.

## **B. Citizen Complaints**

The most appropriate manner of addressing citizen complaints has become a matter of concern for law enforcement executives. It is recognized by most law enforcement professionals that investigation of such complaints can assist the law enforcement agency in isolating officer misconduct. At issue, however, is whether *all* citizen complaints received by the department should be subject to a thorough internal investigation.

Some law enforcement executives and officers maintain a skeptical attitude towards citizen complaints. It is asserted that the citizen complaint process can be manipulated by citizens to exact revenge against officers with who the citizen has had official contact. The increasingly high monetary judgments against law enforcement agencies in Title 42 U.S.C. Sec. 1983 actions has potentially contributed to the filing of frivolous or harassing citizen complaints. It is argued that some citizens file misconduct complaints and legal actions in the hopes of forcing the agency into a quick, out-of-court monetary settlement. It is speculated that the department will be motivated to settle in order to stem negative publicity about the department. Also, many officers dislike citizen complaints, because they fear that the department is more willing to believe the citizen than its own employee. The possibility of abuses in the citizen complaint filing process has thus prompted some agencies to investigate only the most serious of allegations of officer misconduct.

Criticisms of the citizen complaint review process focusing on the potential for abuse of the system have not proven without merit. Citizen abuse of this mechanism has occurred. However, when weighed against the benefits accruing to the department and public from a strong citizen complaint review process, these criticisms prove negligible. The model policy provides that all citizen allegations of employee misconduct be recorded and fully investigated by the internal investigations authority. Complaints should be accepted whether given in person, over the telephone or in writing. The complaint should be accepted and investigated whether or not the complainant wishes to remain anonymous.

There are numerous reasons that explain why a citizen may wish to remain anonymous, or distance himself from the complaint review process. Elderly citizens may have witnessed misconduct, but illness or infirmity may impede their ability to participate. Fear of reprisal should not, but can, influence a complainant's decision. The citizen may believe that a complaint against an officer will target him both by the department and the individual officer against whom the complaint was lodged. Visions of daily parking tickets, citations for minor or nonexistent infractions and officer failure to respond to a genuine emergency because the citizen was responsible for punishment of another police officer may scare the citizen into requiring anonymity or not registering a complaint at all. A more open and responsive attitude by the department concerning citizen complaints will help eliminate this aspect of fear of reprisals. Often, the citizen may have something unrelated to the complaint that they wish to cover up. The focus for the department should be on the fact that potential misconduct was reported, not the form in which it was received. Thorough investigation of the complaint, not second-guessing its potential validity, will prove the veracity or falseness of the allegations.

**1. Community Relations.** Acceptance and investigation of all citizen complaints, as required by the model policy, furthers the vital law enforcement goal of building and maintaining a good working relationship with *all* members of the community.



Law enforcement officers hold a unique position of trust, power and authority in society. One purpose of the complaint review process is to ensure that evidence of officer abuse of his official position is revealed and corrected. However, some citizens are unaware of the fact that a departmental mechanism exists to address citizen complaints of officer misconduct.

According to the PERF study, the departmental internal investigation function has remained veiled in an air of secrecy for many years. Law enforcement agencies have not, until recently, begun to take active steps to inform the public that this process exists. Nor have agencies, until recently, provided the public with a summary of the annual citizen complaints investigated and resolved by the agency. Many agencies have begun to provide such information to the public to establish more credibility with, and accountability to, the public. However, there have been times when as a result of the general lack of knowledge about the complaint review process, individuals have simply accepted certain minor forms of officer misconduct without question. Thus, isolated from a full picture of officer misconduct by continuing the secrecy, departments often have remained relatively unaccountable for the disposition of citizen complaints.

Failure to adequately address potential citizen complaints or to involve the public in this process may have two unfortunate results. First, incomplete knowledge of officer misconduct may permit officers with hostile and overly aggressive characters to remain in their position of authority and to continue to abuse that authority. Officers with temporary physical or emotional problems that cause misconduct may not be identified by early warning signals of citizen complaints. Second, the public and the law enforcement profession can develop into two isolated and opposing camps. Incidents of discriminatory behavior by the law enforcement profession may increasingly alienate large segments of the population, causing breach of the public trust. Added to unevenly checked instances of officers with overly aggressive tendencies, the law enforcement profession may gain a reputation of being manned by individuals held accountable to no one. "To serve the public" could become a largely meaningless phrase, as the public is seldom consulted or considered.

Investigation of all citizen complaints received by the law enforcement agency is an important means of serving the public and remaining in touch with the public's needs. Public trust and confidence are built when the public perceives that officer misconduct is actively addressed and corrected by the agency. This, in turn, promotes a public that is willing to assist the agency in the law enforcement mission. In a climate that fosters trust and confidence between the public and law enforcement, citizens are more likely to come forward to testify, to provide evidence of criminal acts and to provide other needed assistance in reducing crime.

The department should take active steps to educate the public about the citizen complaint process in order to facilitate this climate. Annual summaries of complaints investigated and resolved should be made available to the public, as required in the model policy. These reports should not name the officers involved, but should be a summary of the nature of the complaints and dispositions. Increased education about the citizen complaint process, and the daily operations of its law enforcement agency will help the public better understand law enforcement procedures. Often, citizen complaints arise due to a lack of understanding of these procedures.

The model policy requires any supervisor within the department to accept and record a citizen complaint. The PERF study found this to be the prevalent practice among law enforcement agencies. Many departments permit any sworn officer or department employee to accept such complaints. This certainly has the benefit of actively involving all employees in helping the public to identify official misconduct. Citizen access is maximized by not requiring the citizen to go through lengthy procedures before being able to register a complaint, and the citizen perceives that all officers and departmental personnel are genuinely open to investigation of misconduct. However, allowing an officer to take and record a complaint may promote a lack of organization in the complaint review process, and permit individual officers to bypass the process by omitting a



troublesome complaint. Thus, officers and department personnel should instruct citizens to contact a supervisor. The officers contacted by a citizen to register a complaint should assist the citizen in finding a supervisor.

Supervisors are generally considered to have primary initial responsibility for observing officers' behavior for potential misconduct; thus, responsibility for primary intake of citizen complaints reinforces their knowledge. Often, the complaint may be immediately resolved by an explanation of department policies or procedures. For example, some citizens are unfamiliar with the field interview procedure and its purpose. Citizens may view the minimal "stop and question" process as harassment. A simple explanation of the purpose of this procedure will resolve feelings of harassment, and may leave the individual with positive feelings about law enforcement investigations and protection of the community. The model policy permits a supervisor to attempt to resolve those complaints based on misunderstanding upon receipt of the complaint.

All citizen complaints are required by the model policy to be documented upon receipt and forwarded to the internal investigation authority. Even where the supervisor has resolved or attempted immediate resolution by an explanation of departmental policy or other actions, this process should still be adhered to. The documentation should note the type of actions taken by the supervisor in attempting to resolve the complaint, and the citizen's reaction. The internal investigative authority may still review the complaint and contact the citizen to determine if he was satisfied, or subsequently initiate a follow-up investigation.

Some departments maintain a specific citizen complaint form to record citizen complaints (see Appendix A). This may be a wise investment, no matter how large or small the agency. Actions forming the basis for a citizen complaint may also form the basis for litigation against the department and the officer for a violation of individual rights. Full documentation of the complaint can assist the department with initial evidence that the facts as reported to them were received and then acted upon to the fullest extent of the department's abilities. Should the complainant revise his story, the department will have evidence to rebut these changes. Where the complainant has fraudulently filed a citizen complaint, the officer or department may decide to take legal action against the citizen. The documented citizen complaint may be used to prove these charges. Failure to fully document all complaints can additionally create a perception that the department is covering up some officer misconduct. (See IACP/BJA Response to Civil Litigation Policy and Concepts and Issues Paper.) Thus, some written documentation of all citizen complaints should be instituted by the law enforcement agency.

The model policy requires that the internal investigations authority contact the complainant, where possible, and inform him that the complaint has been received and is under investigation. Similarly, at the completion of the investigation, the complainant should be informed of the final disposition of the complaint.

These provisions conform with the general philosophy that a more "open" citizen complaint process encourages more positive law enforcement-community relations. In the past, citizens often filed complaints but received little feedback as to the final disposition, or indeed whether the complaint was ever investigated. This helped promote a general perception that such complaints were discouraged by the agency, or that the agency would take little meaningful action on the complaint. While agencies may have actually investigated the complaints in good faith, lack of public knowledge concerning how citizen complaints were addressed reinforced this misperception.

Thus, when contacting the complainant initially, the internal investigator should provide the citizen with a brief description of the process. This call also serves to notify the citizen that the department has received his complaint. The citizen should be advised that he will be contacted as

to the final disposition, and that he may contact the department with any further questions concerning the case or the procedures. The model policy vests responsibility for maintaining records of citizen complaints with the internal investigations authority. It is important that each law enforcement agency recognize the importance of maintaining these records. The integrity of the internal investigations process is protected by maintaining step-by-step written documentation of this process, from the initial complaint to any potential disciplinary action taken by the department. Officers who become the subject of an internal investigation are protected from an investigation tainted by personal influence or other corrupt actions from within the department through secured retention of such documentary evidence. The officer also gains protection should he be sued by a citizen for misconduct, as described in the previous paragraph. In addition, an administrative finding of innocence from an untainted and fully documented investigation will weigh strongly in the officer's favor in any later litigation.

Later analysis of documented citizen complaints and their investigative disposition may provide the department with critical information pertaining to the need for increased training and policy on a department-wide basis. This analysis may also act as an early warning system, by producing evidence of a pattern of misconduct by an officer. The goal of the departmental disciplinary process is to find out why misconduct occurred and to remedy it, not solely to be a punitive measure. Analysis may also illuminate malfunctions in the disciplinary process itself that may be then corrected, such as inconsistent discipline. Thus, retention of citizen complaints will assist the department in more efficiently providing law enforcement services. This, in turn, benefits the public receiving such services and leads to more positive relations between the agency and the public.

Due to the confidentiality of internal investigations, these records must be maintained in a secured area with access limited to only those personnel with the appropriate credentials. To protect the confidentiality of the complainant, each complaint should be assigned a number, which should be used as a reference during the investigation.

### **C. Investigation of Employee Misconduct**

The model policy provides that the internal investigations authority within the law enforcement agency shall be responsible for investigating all complaints of employee misconduct. However, supervisors play a critical role in observing abnormal behavior that may signal isolated personal problems that may lead to the officer becoming a disciplinary problem. The supervisor is the department's first-line asset to continually reinforce for officers the department's evolving policies, procedures, goals and objectives.

Thus, as required by the model policy, supervisors should continuously observe and evaluate assigned officers and become familiar with their job performance. Command staff should institute training for supervisors to impart to them their critical role within the department.

Often, officer misconduct does not rise to the level of an offense for which suspension or dismissal is a desirable remedy. "Positive" discipline, as discussed earlier, may include additional training or counseling for an officer as an option to more punitive measures. For example, the officer may simply need a refresher on departmental policies in order to correct a problem with minor infractions. The supervisor may often be in the best position to ascertain where these specific measures would be most effective, and to administer them.

Under the model policy, the supervisor may also give the officer an oral or written reprimand for minor infractions, or more serious infractions that still may not merit submission to the department's formal disciplinary process. These reprimands should be used also in an educational manner for the officer, and not purely as punishment.

In addition, the model policy provides that the internal investigations authority may assign the responsibility for conducting investigations of minor rule infractions by the officer to that officer's supervisor. The supervisor would also be responsible for making recommendations for disposition of the case. This system permits a more efficient and rational allocation of internal investigative manpower. Serious allegations of misconduct, such as brutality, may be the responsibility of the internal investigations authority, while continued tardiness may be investigated by the officer's supervisor. Thus, the model policy provides that the internal investigations authority should conduct a preliminary assessment of the allegations to determine the best course of investigation. The model policy permits a supervisor's investigation to be preempted by the internal investigations authority should a more stringent investigation be required.

Part of the initial assessment of a case by the investigative authority must include analysis of the presence of any potential criminal activity by the officer. This distinction can make a significant difference both in the rights afforded the employee under investigation, as well as the investigative process followed by the department. How to proceed with an investigation where allegations of criminal conduct have arisen is a matter of differing opinion within the law enforcement profession. The course chosen by the model policy both protects the rights of the employee and maximizes the integrity of the investigative procedures.

Where no allegations of criminal conduct by the officer have been asserted, and the charge is based solely on violation of a departmental policy or procedure, a purely administrative investigation is required. However, where an administrative investigation produces evidence of criminal activity, the model policy requires a somewhat different investigative route. The model policy requires that investigation of the criminal charges be turned over to the respective unit within the department responsible for investigating the specific criminal activity, and that a prosecutor be notified. The investigation of the criminal charges should be allowed to take precedence over the administrative investigation. The internal investigations authority should continue to gather information on the administrative charge only, in a manner that would not impede the criminal investigation. This generally precludes interviewing the officer under investigation, as the officer would be required to impermissibly incriminate himself during the administrative interview. Where the initial assessment of allegations provides immediate evidence of criminal activity by the officer, the investigative unit should notify a prosecutor and assign the case to the criminal investigative unit. The department should let any criminal court proceedings occur, and use the evidence and finding to build an administrative case against the officer for criminal activity. In the event that the officer is found innocent in criminal proceedings, an administrative adjudication is not precluded.

The model policy requires that internal investigations of officer misconduct be completed within a specified, set time period, and that regular status reports be submitted pertaining to the investigation. The Accreditation Standards recommend that such investigations be completed within 30 days, with weekly status reports (the standards would permit extensions in limited circumstances). Some law enforcement executives have argued that the 30-day limit is not feasible. For example, this time limit may be impractical in case of investigations of criminal activity, where the administrative investigation is suspended to allow the criminal investigation to proceed. However, administrative investigations should comply with some set timetable in order to ensure the freshness and continuing availability of all witnesses and relevant evidence. In addition, compliance to a time limit demonstrates the department's serious commitment to investigation of alleged misconduct—both to its officers and the community. A set time limit on internal investigations eliminates the atmosphere of suspense and pressure that exist where the officer must wait an interminable period for the conclusion of the investigation. Finally, a set timetable for all internal investigations tends to ensure fairness in the process.

#### **D. Employee Rights During an Internal Investigation**

The model policy contains a listing of certain rights that are retained by an officer who is the subject of an internal investigation. This section also contains rights retained by law enforcement management in conducting the internal investigation. Several of these rights may vary according to state and local law, or the terms of a departmental collective bargaining agreement. In addition, the administrative or criminal characterization of the investigation may determine these provisions. The law enforcement executive is urged to consider these references when implementing the Model Complaint Review Policy.

**1. *Uniform Peace Officer's Bill of Rights.*** Several state legislatures have enacted legislation addressing the various rights guaranteed to law enforcement officers during their employment. Known as the Peace Officer's Bill of Rights, this legislation usually contains specific guarantees for officers under investigation for misconduct. Some of the states that have adopted the Peace Officer's Bill of Rights include Kentucky, West Virginia, Virginia, Rhode Island, Maryland, Illinois, California and Florida. Law enforcement agencies in states that have enacted a Peace Officer's Bill of Rights must provide officers with the rights guaranteed under that legislation.

**2. *Characterization of Investigation.*** Where the allegation of officer misconduct may involve a violation of criminal law, a different investigation procedure is utilized, and more stringent officer rights are generally guaranteed. For example, the model policy requires that an officer who is to be questioned concerning his potential criminal activity must be read his *Miranda* rights before questioning is begun, and those dictates must be honored during the interview. By contrast, questioning of an officer during a purely administrative investigation into noncriminal violations invokes what are known as "Reverse *Miranda*" rights.<sup>16</sup> The officer is not entitled to remain silent, and must truthfully answer questions narrowly, specifically and directly related to the performance of his official duties. Failure to answer these narrowly focused questions may be grounds for discharge on the basis of failure to respond to a direct order. Prior to questioning, the officer must be advised of the "Reverse *Miranda*" provisions.

This type of compulsory testimony raises a potential problem for the officer. The officer knows that by answering all questions truthfully, he may be forced to admit criminal activity, and thus face criminal charges. On the other hand, the officer knows that a failure to answer as ordered may result in being discharged from the job. In order to circumvent this problem and ensure that officers are encouraged to testify, the officer is given "use immunity" in return for waiver of his right against self-incrimination during the administrative investigation. "Use immunity" provides that the department will not "use" any admissions of criminal activity gained from compulsory testimony as a basis for filing criminal charges. The admissions may be used, however, as the basis for administrative charges for any departmental policies that may have been breached.

The model policy permits an officer under investigation to bring a personal representative into an internal interview. The personal representative may be an attorney, union representative, supervisor or other person chosen by the officer. This provision applies whether the investigation is administrative or criminal in nature.

Clearly, the Sixth Amendment mandates the right to legal representation and advice during interrogation for criminal charges. This protection does not extend to interrogation for administrative charges, unless evidence of criminal conduct is unearthed during such an interview. Thus, some law enforcement agencies only permit the officer under investigation to be accompanied by a supervisor or union representative. It is asserted that attorneys unnecessarily impede the progress of administrative investigations, without fulfilling any critical purpose.

However, in the complex world of civil liability, logic dictates that officers be permitted legal representation during an administrative interview. A supervisor or union representative may not be able to foresee all the potential ramifications of any given case, and help prepare the officer. A personal legal representative, although relegated to an observer's role only during an administrative interview, will still help the officer prepare a better case, while ensuring that the interview proceeds in an appropriate and legal manner. Finally, while an administrative hearing does not carry the threat of a jail sentence at the conclusion, it does target the livelihood and chosen profession of the officer under investigation. A sense of fairness suggests that an officer is thus entitled to protect his continued, unblemished livelihood by having a legal representative present as an observer during an administrative interview.

**3. *Special Examinations.*** The model policy permits either the investigative authority or officer to request certain special investigative examinations during an internal investigation, where it is probable that the examination will aid in the investigation. The special examinations referred to in the model policy include use of the intoximeter, polygraph, medical, psychological, blood and urine examinations.

State law varies on the permissibility of the use of the polygraph. The reliability of the polygraph examination has been increasingly challenged as a means of discerning the truth. Some states have outlawed employer use of the polygraph on employees in both the public and private sector. Law enforcement agencies in those states may not be permitted to use the polygraph as a tool to help prove or disprove employee misconduct.

The trend among the states has been to provide stringent regulations on the use of the polygraph, and required certification of the polygraph operator. Those states with statutes regulating use of the polygraph generally prohibit use within the private sector, but permit the law enforcement profession to use the polygraph in investigations of employee misconduct or as a recruit-screening device. States permit this exception based upon the heightened need for internal security by the law enforcement profession.

Where the polygraph examination is permitted as part of an internal investigation into officer misconduct, specific limits are placed on the scope of the questioning. The employee may only be asked questions that are narrowly related to performance of his official duties. The department may not ask broad-based questions unrelated to these duties in hopes of gaining other information. This standard is the same as that applicable to questioning of the officer in an oral investigative interview.

The model policy permits either the employee or the employer to request use of the polygraph if it could produce relevant information for the investigative hearing. Where the employer requires the employee to submit to a polygraph test concerning the allegations of misconduct, the citizen making the complaint should also be required to have the veracity of his allegations tested by a polygraph examination. Whether requested by the employee or employer, the employee must be advised prior to questioning that failure to truthfully answer questions could result in discharge. The "use immunity" for admissions of a criminal nature must be explained and a waiver obtained, as in normal face-to-face questioning.

Specialized examinations, such as medical or psychological, may only be required as part of an internal investigation where it is probable that the examination will produce relevant evidence. For example, an employee may be ordered to submit to a physical examination where the employee explains that misconduct occurred due to a temporary physical illness or condition.

The model policy permits the employer to conduct a search of the officer's workplace in order to obtain evidence of work-related misconduct. Those areas that may be properly searched in the

workplace are "those areas and items that are related to work and are generally within the employer's control."<sup>17</sup> The search may only be done where there is a reasonable suspicion that evidence of such misconduct will be found in the area to be searched. The employer may not search in purely private areas for evidence, such as a purse or closed luggage.

**4. Officer's Rights During an Interview.** The model policy provides the officer with certain important rights during an interview by the internal investigations authority into allegations of misconduct. First, the officer is entitled to a summary or copy of the complaint against him listing the relevant facts. As informants and complainants may wish to remain anonymous, the integrity of the internal investigations function may be impaired if the officer is given full access to all the evidence and names held by the investigators concerning the case. Thus, a summary of the complaint is generally the best possible means to advise the officer of the charges against him. The summary should include enough information to inform the officer of when the alleged misconduct occurred, what the alleged misconduct was and what violations of departmental policy occurred as a result of the act.

The interview should be held while the officer is on-duty, and within the employee's work area in order to accommodate both the needs of the officer and the department. These provisions allow the officer the fullest opportunity to comply with the internal investigative authority. The atmosphere of the interview should not be coercive or demeaning. For example, the model policy requires that while more than one internal investigator may be in the room during an interview, all questioning shall be done by one designated investigator. While some departments may permit questioning by more than one investigator, this practice can often degenerate into a hostile and coercive situation for the interviewee. The subject of the interview is as entitled to a presumption of innocence of misconduct as any suspect. The internal investigative process may be extremely difficult for the officer, as the questioning is being conducted by his peers. The officer should be treated in a dignified and respectful manner. Offensive and pressuring language will not assist the investigators in ascertaining the truth.

The model policy requires that the investigative interview be simultaneously recorded. This measure protects both the employee and the integrity of the investigation. Where this record of the interview exists, the officer cannot be charged with making statements that he did not make. The officer will also have a record of any improper actions by the investigators.

Finally, the model policy provides the officer under investigation, or his supervisor, the opportunity to contact the internal affairs authority to ascertain the status of the investigation. Some departments neglect to inform the involved officer of the outcome of the investigation until the disciplinary hearing is imminent. This minimizes the officer's opportunity to prepare his response and defense to departmental charges. In addition, where the officer is able to ascertain the progress of the investigation, the feelings of pressure and alienation generated by being the subject of such investigations may be minimized. The officer is not left in the dark, and may feel more in control of the situation.

#### **E. Disciplinary Hearing**

The model policy provides that upon completion of an internal investigation of alleged officer misconduct, recommendations shall be made to the chief executive officer concerning the probable veracity or falseness of the charge and suggested disposition. Federal due process requirements for a pretermination/suspension hearing were discussed from the legal viewpoint earlier in this paper. The model policy contains the required elements for this administrative name-clearing hearing.

The majority of agencies route case findings from the internal investigation to the supervisor of the officer under investigation. The supervisor reviews the report and forwards it through the chain of command to the chief executive officer, with comments by all intervening officials as to agreement or disagreement with the findings. Recommendations for disposition of the case usually emanate from the supervisor, with little or no input from the investigators.

The officer must be provided with formal notice of the charges, allegations and potential disciplinary outcome when discipline may result in dismissal or suspension. The model policy provides that the officer shall be served with written notice of the charges. Such notice should specify the nature of the alleged misconduct, when the alleged misconduct occurred and the recommended disciplinary action. The date of the hearing and location must be provided upon the charging form. Service should be made upon the officer within the departmentally specified time period, which should be set to give the officer adequate time to prepare his case.

During the administrative hearing, the officer is entitled to obtain a representative. Unlike the internal investigative interview, the officer is permitted to obtain an attorney to act as a representative during the administrative hearing. The department has the burden of proving allegations of misconduct—the burden is not on the employee to prove his innocence. The department must prove the veracity of the allegations of misconduct by a preponderance of the evidence before there may be a finding of actual misconduct.

The officer may, under the model policy, rebut the departmental evidence of misconduct by presenting witnesses who support his version of the facts. Cross-examination is also permitted during an administrative hearing. Witnesses testify under oath. The model policy requires that the administrative hearing be recorded (many agencies do not record these proceedings due to the expense of transcription). A recording should be made, however, to provide the department and officer with evidence that the hearing was conducted in a fair and impartial manner.

Final approval of, and determination of discipline after the hearing generally rests with the chief executive officer of the department. The model policy provides that the chief shall review the disciplinary case and give final approval. The model policy provides that the disposition of the case may fall within five categories: (1) the chief may decide that the charges were unfounded, because the allegation was false; (2) the officer may be exonerated on the charges; exoneration indicates that the incident complained of did occur, but was both lawful and proper, (3) charges against the officer may be held not sustained where there was insufficient evidence to either prove or disprove the allegations; (4) charges are considered to be sustained where the evidence is sufficient to prove the allegations; and (5) finally, the chief executive officer may determine that a failure in departmental policy caused the incident.

These findings must be formally served upon the officer prior to the beginning of termination or any suspension. The notice must include applicable procedures for appeal to the decision.

### **Endnotes**

<sup>1</sup>IACP, *Managing for Effective Police Discipline* (1977).

<sup>2</sup>*Goldberg v. Kelly*, 397 U.S. 254 (1970).

<sup>3</sup>*Arnett v. Kennedy*, 416 U.S. 134 (1974).

<sup>4</sup>16A McQuillan, *Municipal Corporations*, Sections 45.63 - 45.70 (3rd Ed.).

<sup>5</sup>*Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985).



<sup>6</sup>*Id.* at 544-5.

<sup>7</sup>*Id.* at 546.

<sup>8</sup>*Goldberg* at 260.

<sup>9</sup>*Goldberg* at op cit.

<sup>10</sup>*Payne v. Western & Atl. RR*, 81 Tenn. 507, 519-20 (1894).

<sup>11</sup>*Bishop v. Wood*, 426 U.S. 341 (1976).

<sup>12</sup>*Board of Regents v. Roth*, 408 U.S. 564 (1972).

<sup>13</sup>*Id.* at 573.

<sup>14</sup>For a fuller discussion of the exceptions to the doctrine of employment at will, and the available causes of action, see Larson, Barowsky, *Unjust Dismissal*, Mathew Bender Pub. (1987).

<sup>15</sup>West, Inspector Paul, *PERF Investigation of Complaints Against the Police Survey Summary Report of Results*.

<sup>16</sup>*Gardner v. Broderick*, 392 U.S. 273 (1968); *Garrity v. New Jersey*, 385 U.S. 493 (1967).

<sup>17</sup>*O'Connor v. Ortega*, 107 S. Ct. 1492 (1987).

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Every effort has been made by the IACP National Law Enforcement Policy Center staff and advisory board to ensure that this model policy incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no "model" policy can meet all the needs of any given law enforcement agency. Each law enforcement agency operates in a unique environment of federal court rulings, state laws, local ordinances, regulations, judicial and administrative decisions and collective bargaining agreements that must be considered. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives and demands; often divergent law enforcement strategies and philosophies, and the impact of varied agency resource capabilities among other factors.



**Appendix A**  
**Citizen Complaint and Inquiry Form**

\* This form should be completed in accordance with Departmental Directive 15.1  
*Complaints Against Members.*

Nature: \_\_\_\_\_ Citizen Complaint #: \_\_\_\_\_

Complainant's Name: \_\_\_\_\_ Race & Sex: \_\_\_\_\_

Home Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

Business Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

If applicable, list other complainants and/or witnesses: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Member Involved: (1) \_\_\_\_\_ Division: \_\_\_\_\_

Member Involved: (2) \_\_\_\_\_ Division: \_\_\_\_\_

Member Involved: (3) \_\_\_\_\_ Division: \_\_\_\_\_

Location of Incident: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Time: \_\_\_\_\_

Complaint Received By: \_\_\_\_\_ Date: \_\_\_\_\_

Forwarded for Investigation to: \_\_\_\_\_

**Summary of Incident:**

Disposition of Complaint or Inquiry:

- ☐ Court Issue
- ☐ Resolved with Citizen and/or No Further Action Deemed Necessary
- ☐ Complaint

**Investigative Comments:**

**Routing:**      Responsible Division Commanding Officer  
                     Responsible Assistant Chief of Police  
                     Internal Affairs Section

Signature of Responsible  
Division Commanding Officer: \_\_\_\_\_

Signature of Responsible  
Assistant Chief of Police: \_\_\_\_\_

## COMPLAINT REVIEW

### Model Policy

Effective Date August 1, 1989		Number
Subject Complaint Review Policy		
Reference		Special Instructions
Distribution	Reevaluation Date July 31, 1990	No. Pages

#### I. PURPOSE:

The purpose of this policy is to inform all sworn employees of departmental procedures for addressing complaints of misconduct.

#### II. POLICY

It is the policy of this department to investigate all complaints of alleged officer misconduct, and to equitably determine whether the allegations are valid or invalid and to take appropriate action.

#### III. DEFINITIONS

Internal Investigations Authority: The designated employees or unit ultimately responsible for conducting investigations into allegations of employee misconduct.

#### IV. PROCEDURES

##### A. Bases for Disciplinary Action

1. State law provides that officers shall not be subject to disciplinary action by the department, unless their actions constitute one of the following:
  - a. A violation of state, local or federal law;
  - b. Conduct unbecoming an officer;
  - c. Incompetency;
  - d. A violation of written or verbal departmental rules, policy, procedure, or orders;
  - e. Nonfeasance.

##### B. Supervisor's Role

1. The primary responsibility for maintaining and reinforcing officer conformance with the standards of conduct of this department shall be with the officer and the first line supervisors.
2. Supervisors shall familiarize themselves with the officers in their unit, and closely observe their general conduct and appearance on a daily basis.
3. Supervisors should remain alert for indications of behavioral problems or changes that may affect an officer's normal job performance. Such information should be documented by the supervisor.
4. Where a supervisor perceives that an officer may be having or causing problems, the supervisor should assess the situation, and determine the most appropriate action.
5. A supervisor may recommend additional training to refresh and reinforce an officer's skills.

6. Counseling may be used by the supervisor as follows:
    - a. To determine the extent of any personal or job problems that may be affecting performance, and to offer assistance and guidance;
    - b. To discuss minor and infrequent rule violations, and to discuss the substance and importance of the rules with the officer.
  7. The supervisor shall document all instances of counseling or additional training used to modify an officer's behavior.
- C. *Citizen Complaints*
1. All citizen complaints pertaining to departmental policies or procedures or that allege officer misconduct shall be documented and investigated by the department.
    - a. Complaints may be given in person, over the telephone or in writing.
    - b. Anonymous complaints, or complaints from citizens who wish their names to be held in confidence, shall be accepted for investigation.
  2. Citizen complaints may be accepted by any supervisor of the department who is approached for such assistance.
    - a. The supervisor shall document the complaint in writing and promptly forward the complaint to the internal investigations authority.
    - b. The supervisor may attempt to resolve a complaint by an exploration of departmental policies and procedures, where applicable. Attempts to resolve complaints shall be noted on the complaint report.
  3. Upon receipt of a citizen's complaint, the internal investigations authority shall contact the complainant and advise him that the matter is under investigation, and that the complainant shall receive written notice of the final disposition of the case. The internal investigations authority shall advise the complainant of departmental procedures for the processing and investigation of citizen complaints.
  4. Investigations of complaints shall be completed within the departmentally specified time period for such investigations. Regular status reports shall be filed.
- D. *Supervisor Investigation*
1. Upon becoming aware of or receiving notification of potential misconduct by an officer under his command, a supervisor shall begin an immediate investigation of such allegations.
  2. The supervisor's investigation shall be limited to questioning the officer, witnesses and complainants, and securing all relevant evidence.
  3. Upon completion of the investigation, the supervisor shall forward to the unit commander, through appropriate channels:
    - a. A report of the alleged violation;
    - b. All documents and evidence relating to the investigation;
    - c. Recommendations for further investigation, or other disposition of the case.
- E. *Responsibilities of Internal Investigations Authority*
1. The internal investigations authority shall have primary supervisory responsibility for the review and investigation of all complaints against officers, whether initiated by a citizen or the department. While investigating a complaint of misconduct, the internal investigations authority is delegated the authority of the chief for the purposes of directing the investigation.
  2. Upon receipt of a complaint, an initial determination whether to assume primary investigative responsibility for

the case or to refer it to the appropriate supervisor shall be made. A supervisor's investigation may be ordered stopped at any time, and full investigative authority assumed by the internal investigations authority.

- a. Allegations of minor rules violations may be investigated by the appropriate supervisor.
  - b. Allegations of misconduct that could result in discharge, suspension or demotion, or criminal charges being sought, will be investigated by the internal investigations authority.
3. The internal investigations authority shall have the following responsibilities:
    - a. Maintenance of a complaint log;
    - b. Maintenance of a central file for complaints in a secured area, kept in conformity with state law;
    - c. Conducting a regular audit of complaints to ascertain the need for changes in training or policy;
    - d. Publication of an annual summary, that shall be made available to the public, of the complaints received and investigated by the department, and their final disposition.
  4. The internal investigations authority may recommend to the chief that a case be referred to the prosecutor for criminal charges.

F. *Officer's Duties and Rights During Investigation*

1. Scope of Questioning During Interview
  - a. Prior to an internal interview concerning alleged criminal misconduct, the officer under investigation shall be read the Miranda rights. The provisions of Miranda will be adhered to throughout the interview.
  - b. Prior to an internal interview concerning allegations of administrative violations, the officer under investigation shall be advised as follows:
    - (1) The officer can be required to answer all questions specifically, narrowly and directly related to the performance of his official duties.
    - (2) Refusal to comply with an order to answer such questions is a violation of departmental rules which may subject the officer to further discipline up to, and including dismissal.
    - (3) Any required self-incriminatory admission made during the interview may only be used in subsequent administrative proceedings, and shall not be used against the officer in subsequent criminal proceedings.
2. Counsel at Interview
  - a. Officers will be permitted to have an attorney, union representative, supervisor or other personal representative with them in the room during any interview conceding allegations of misconduct by the employee.
  - b. The officer's representative is limited to acting as an observer of the interview, except where the interview focuses on, or leads to, evidence of potential criminal activity by the officer. In that case, an officer's legal representative may advise and confer with the officer doing the interview.
3. Special Examinations
  - a. An officer under investigation may request an intoximeter, blood, urine, psychological, polygraph or medical examination if it is believed that such an examination would be beneficial to his or her defense. Also, the department may require such examination

upon the direction of

(Designated Department Official)

- b. An on-duty supervisor is required to direct an officer to submit to a breath, blood or urine test when a level of inebriation or drug usage is suspected as the factor directly related to duty performance or operating a department vehicle.
  - c. If an identification line-up is solely for administrative purposes, and criminal prosecution is not anticipated, an officer can be required to participate in a line-up.
  - d. Property belonging to the law enforcement agency is subject to inspection where the employer has a reasonable suspicion that evidence of work-related misconduct will be found therein. Property includes, but is not limited to, vehicles, desks, files and storage lockers.
  - e. In the event that a polygraph is ordered by the department for an officer, the complainant must also agree to submit to a polygraph.
4. Rights During an Internal Investigation
- a. Prior to any interview or special examination, the officer under investigation will receive confidential written notification of the complaint. This notification will include a copy of the original complaint or a summary adequately listing the relevant facts, and the officer's rights and responsibilities during the investigation.
  - b. All interviews will be conducted while the officer is on duty, unless the seriousness of the investigation is such that an immediate interview is required.
  - c. The interview will be held at the officer's work area, or at a location agreeable to both parties.
  - d. During interviews conducted by the internal investigations authority, there will be one member designated as the interviewer; only the interviewer will ask questions of the officer.
  - e. Officers under investigation shall not be subjected to offensive language, nor threatened with transfer, dismissal, or disciplinary action during an interview. No promise or reward shall be made by the internal investigators as an inducement to answer any questions.
  - f. The complete interview shall be recorded whenever conducted by the internal investigations authority. Any interruptions will be noted, and any relevant discussions transpiring during breaks will be summarized on the tape recorder and verified for accuracy by the officer.
  - g. Accused officers or their supervisor may contact the internal investigations authority to ascertain the status of the investigation of a complaint filed against them.
  - h. The accused officers will be given an opportunity to explain their actions to the chief prior to the imposition of any disciplinary action.
- G. Command Action
- 1. Upon receipt of a supervisor's report conceding a violation of rules, the unit commander shall forward a copy to the internal investigations authority.
  - 2. Upon review of the case, the unit commander may determine that further investigation is required, and order such investigation. Where the internal investigations authority

- has assumed responsibility for an investigation, they may direct suspension of a unit commander's investigation.
3. After completion of all investigations, the unit commander shall forward to the internal investigations authority a full report stating recommendations for disposition of the case, along with the supporting evidence for such recommendations.
- H. *Chief's Action*
1. Upon receipt of a supervisor's recommendations on a disciplinary matter, or upon completion of an internal investigation, the internal investigations authority shall submit recommendations to the chief as to whether a violation has been sustained according to the evidence.
  2. The chief shall review the report and supporting documents, and shall give final approval of the disposition of the case as follows:
    - a. Sustained: Evidence sufficient to prove allegations.
    - b. Not sustained: Insufficient evidence to either prove or disprove allegations.
    - c. Exonerated: Incident occurred but was lawful or proper.
    - d. Unfounded: Allegation is false or not factual.
    - e. Policy failure: Flaw in policy caused incident.
  3. Upon final approval, the chief shall return the disciplinary recommendation to the officer's supervisor for service and execution of the decision.
- I. *Discipline Without Charges and Specifications*
1. A supervisor may administer an oral reprimand of record for minor violations.
  2. A supervisor may administer a written reprimand of record for minor violations that would not merit demotion, suspension or termination.
- J. *Discipline With Charges and Specifications*
1. When recommended disciplinary action may result in suspension, dismissal or demotion, a formal statement of charges and specifications shall be prepared by the appropriate officer.
  2. The charging form shall include:
    - a. The particular rule(s) alleged to have been violated;
    - b. The dates and places where the alleged acts or omissions occurred;
    - c. A statement of the alleged acts or omissions;
    - d. The recommended disciplinary action;
    - e. The officer's right to appeal, and appellate procedures;
    - f. Hearing date, time and place.
  3. The supervisor of the accused officer shall serve the charges and specifications upon the officer within the departmentally specified time period prior to the hearing date.
    - a. Where possible, service shall be made while the officer is on duty.
    - b. Where on-duty service is not feasible, the officer may be served at home.
- K. *Departmental Hearing*
1. A departmental hearing shall be convened upon the request of an officer against whom charges and specifications alleging misconduct have been filed, in order to consider such charges.
  2. The chief shall designate an appropriate panel to conduct the departmental hearing.
  3. Hearing proceedings shall comply with the charged officer's due process rights as follows:
    - a. The officer may obtain a representative for the

- hearing;
  - b. The officer may present evidence and witnesses on his or her behalf;
  - c. The officer may cross-examine adverse witnesses;
  - d. The proceedings shall be recorded or transcribed;
  - e. The department shall carry the burden of proving the violation or misconduct by a preponderance of the evidence;
  - f. Witnesses shall testify under oath, when authorized by law;
  - g. The hearing shall be open unless there is a compelling need for secrecy.
  - 4. The chief shall make a final recommendation as to the imposition of any disciplinary measures after a full review of the departmental hearing proceedings.
  - 5. Upon the determination of the chief or the pertinent appointing authority that dismissal or other disciplinary action of the employee is merited, the appropriate unit shall be directed to prepare and submit a statement to the officer, including the following:
    - a. The reason for the disciplinary action;
    - b. The effective date of dismissal or other disciplinary action;
    - c. The status of fringe and retirement benefits after dismissal, where appropriate;
    - d. A statement detailing the contents of the officer's employment record as pertains to the disciplinary action;
    - e. The appropriate procedures for appeal of the disciplinary action.
  - L. Appeals
- The officer may appeal any decision as outlined in state law, ordinances, collective bargaining agreement or departmental procedures.

BY ORDER OF

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CHIEF OF POLICE

This model Complaint Review Policy is intended to serve as a guide for the police executive who is interested in formulating a written procedure to govern complaint review. The police executive is advised to refer to all federal, state and municipal statutes ordinances, regulations, and judicial and administrative decisions to ensure that the policy he or she seeks to implement meets the unique needs of the jurisdiction.

Appendix C

STATE OF IOWA



CITIZENS' AIDE/OMBUDSMAN  
CAPITOL COMPLEX  
215 EAST 7TH STREET  
DES MOINES, IOWA 50319-0231  
(515) 281-3592

WILLIAM P. ANGRICK  
CITIZENS' AIDE / OMBUDSM.

In reply, please refer to: 950802730

August 8, 1995

William H. Moulder, Chief  
Des Moines Police Department  
25 East First Street  
Des Moines, Iowa 50309

Dear Chief Moulder:

I am initiating an investigation, pursuant to Iowa Code 2C.9(1), which will review the handling of complaints by the Office of Professional Standards (OPS) of the Des Moines Police Department (DMPD).

You may recall that my 1992 investigation and report of the Larry Milton incident recommended changes to the DMPD's Internal Affairs complaint handling procedures. You agreed to move certain investigations from the chain of command hierarchy to an independent process which would be responsible to you as the chief. It is my understanding the Office of Professional Standards was established in response to that recommendation.

Sufficient time has passed since the establishment of the Office of Professional Standards review process and I believe it is now appropriate that my office review the Des Moines Police Department's reorganized procedure for responding to complaints.

The Iowa Citizens' Aide Act gives me authority to investigate, among other things, issues which will strengthen "procedures and practices which lessen the risk that objectionable administrative practices will occur" (Iowa Code 2C.12). Each year my office receives many complaints and inquiries about the Des Moines Police Department. It has been our practice to refer these citizens to your Office of Professional Standards unit for review. Events over the past few months have caused me to question the objectiveness and independence of the reviews that are done by your Office of Professional Standards.

I am also concerned that there have been individuals referred by my office to the Office of Professional Standards process who have chosen to not pursue that avenue. I am concerned this may be a result of a community perception that your review process is biased towards employees of your department. In any event, I have an obligation to ensure those who seek help from my office feel they have been fairly treated and heard by their governments.



This current investigation will include, but not necessarily be limited to, the following issues:

- Is OPS, in fact, an independent and impartial review entity? Does it report directly to the chief? Or, does it report within a chain of command that may inherently pose a risk that bias may affect its investigations, findings and actions?
- Do persons making complaints to the Office of Professional Standards have confidence in the process and do they believe their complaints receive a fair and thorough consideration? Do they believe they have been treated courteously and professionally as they use that process?
- Has the OPS system, which was put in place after the Milton incident, produced different statistical results than those of the former Internal Affairs process?
- How well does Office of Professional Standards' operations, structure and performance compare with any national standards for similar review processes?

Additionally, as the DMPD faces challenges and allegations regarding its dealings with the minority communities of Des Moines, I believe it is timely to specifically ascertain the impact of the OPS upon those complaints and generally assess the manner in which the Des Moines Police Department interacts with and is perceived by the minority communities.

At the present time I request the following information:

- A copy of any policy and procedures manuals detailing the operation of the Office of Professional Standards;
- An organization table of the Office of Professional Standards including a listing of the personnel, listed by position, that have served in the office since its inception;
- Statistical reports by year of the number, kinds of complaints and their disposition that were considered by the Office of Professional Standards. At a later date I may need to review copies of all disposition reports issued by the OPS since its creation;
- Similar to my request for OPS, statistical reports of the Internal Affairs office for 1990, 1991 and 1992.

I look forward to a cooperative working relationship with you and your staff during this investigation which will occur during the next several months.

Sincerely,



William P. Angrick II

WPA:ml

Appendix D

**A Study of Citizen's Satisfaction  
with  
The Des Moines Police Department's  
Office of Professional Standards**

These questions concern your experience with the Office of Professional Standards unit of the Des Moines Police Department. We are interested in how satisfied you were with the services you received. Thank you for taking the time to complete this questionnaire. Your response will remain confidential.

Conducted by:  
**The Iowa Citizens' Aide/Ombudsman Office**  
An independent investigative office of Iowa's Legislature.



Please Return survey and comments to:

Iowa Citizens' Aide/Ombudsman Office  
Attn: William P. Angrick II, Ombudsman  
Capitol Complex  
215 East Seventh Street  
Des Moines, Iowa 50319-0231  
(515) 281-3592 or 1-800-358-5510  
FAX: (515)-242-6007

If you would like to direct other comments to the  
Des Moines Police Department, send them to:

Des Moines Police Department  
William H. Moulder, Chief  
25 East First Street  
Des Moines, Iowa 50307  
(515) 283-4800  
FAX: (515)-237-1665

# Instructions...

For the following questions, please circle the number which best reflects your feelings or beliefs. If you filed the complaint in behalf of another person (such as your child), please answer these questions as they pertain to the impact upon that person. Suppose for example, that we asked you about a sandwich you ordered as follows:

	Much Better than what I expected	About what I expected	Much Worse than I expected	Does not apply, Don't know.		
99. How good did the sandwich taste?	5	4	3	2	1	0


If the sandwich was about as good or bad as you thought it would be, you would circle number 3, as shown. If it was somewhat better than what you expected you would circle number 4. If it was much better than what you expected you would circle number 5, and so on. If you did not taste the sandwich, you would circle the 0.

Some questions are very similar. This was done on purpose because the words mean slightly different things to different people.

**Please be candid!** Remember, your responses will be kept confidential.

## Concerning your experience with the Des Moines Police Department, Office of Professional Standards

Compared to what you feel you have a right to expect from the Office of Professional Standards . .	Much Better than what I expected	About what I expected	Much Worse than I expected	Does not apply. Don't know.		
1. how fast were they in getting to your complaint?	5	4	3	2	1	0
2. once they got to your complaint, how fast were they?	5	4	3	2	1	0
3. how good were they in keeping promises?	5	4	3	2	1	0
4. how good were they in keeping you informed?	5	4	3	2	1	0

Compared to what you feel you have a right to expect from the Office of Professional Standards . .	Much Better than what I expected	About what I expected	Much Worse than I expected	Does not apply, Don't know.		
5. how good were they at doing things right the first time?	5	4	3	2	1	0
6. how comfortable did you feel when talking to them?	5	4	3	2	1	0
7. how trustworthy do you think they were?	5	4	3	2	1	0
8. how careful do you believe they were in guarding any sensitive information you may have shared?	5	4	3	2	1	0
9. how willing were they to listen?	5	4	3	2	1	0
10. how personal was the attention you received?	5	4	3	2	1	0
11. how competent were they?	5	4	3	2	1	0
12. how knowledgeable were they?	5	4	3	2	1	0
13. how professional were they?	5	4	3	2	1	0
14. how willing to help were they?	5	4	3	2	1	0
 how well did they understand your problem?	5	4	3	2	1	0
16. how well did they respond to your questions or requests?	5	4	3	2	1	0
17. how courteous were they?	5	4	3	2	1	0
18. how error-free do you believe they were?	5	4	3	2	1	0
19. how convenient were their office hours?	5	4	3	2	1	0

Compared to what you feel you have a right to expect from the Office of Professional Standards . . .	Much Better than what I expected	4	About what I expected	2	Much Worse than I expected	Does not apply, Don't know.
20. how easy was it to contact the Office of Professional Standards?	5	4	3	2	1	0
21. how easy was it to contact the person working on your case?	5	4	3	2	1	0
22. how fair were they?	5	4	3	2	1	0
23. how neutral were they?	5	4	3	2	1	0
24. how impartial were they?	5	4	3	2	1	0
25. how thorough was their investigation of your problem?	5	4	3	2	1	0
26. how effective were they in handling your problem?	5	4	3	2	1	0
27. were all your concerns considered?	5	4	3	2	1	0
28. how useful were they?	5	4	3	2	1	0
29. how interested did they seem in your problem?	5	4	3	2	1	0
30. How well did they evaluate the issues of your complaint?	5	4	3	2	1	0

## Concerning Your Overall Impressions and Opinions. . .

	Very Pleased 5	4	Neither Pleased nor Displeased 3	2	Very Displeased 1	Does not apply, Don't know. 0
31. How do you feel about the outcome of the complaint?						
	Very Much Favored the Officer(s) 5	4	Didn't Favor Either 3	2	Very Much Favored Me 1	Don't Know 0
32. Do you feel the Office of Professional Standards favored you or favored the officer(s) you complained about?						
	All of It 5	4	Some of It 3	2	None of It 1	Don't Know 0
33. How much of final decision regarding your complaint did you agree with?						
	Very Much Harmed 5	4	Somewhat Harmed 3	2	Not Harmed at All 1	Don't Know 0
34. Were you harmed in any way because you complained to the Office of Professional Standards?						
	Very Much Helped 5	4	Somewhat Helped 3	2	Not at All Helped 1	Don't Know 0
35. Were you helped in any way because you complained to the Office of Professional Standards ?						
	Totally Resolved 5	4	Somewhat Resolved 3	2	Not At All Resolved 1	Don't Know 0
36. To what extent did contacting the Office of Professional Standards resolve your problem?						
	Very Useful 5	4	Somewhat Useful 3	2	Not At All Useful 1	Don't Know 0
37. Was the Office of Professional Standards useful in helping you learn how to solve problems with the police department?						

**Concerning How Satisfied you are. . .**

38. How pleased are you with the people you worked with from the Office of Professional Standards?	Very Pleased 5	4	Neither Pleased nor Displeased 3	2	Very Displeased 1	Don't Know 0
39. How satisfied are you with the Office of Professional Standards?	Very satisfied 5	4	Neither Satisfied nor Dissatisfied 3	2	Very Dissatisfied 1	Don't Know 0
40. Knowing what you know now, would you use the services of Office of Professional Standards again?	YES! 5	4	3	2	NO! 1	
41. If a friend wanted to use the services of the Office of Professional Standards and asked your opinion, what would you advise?	Strongly Recommend Services 5	4	3	2	Strongly Not Recommend Services 1	

**Some Final Questions. . .**

42. Where did you first find out about the services provided by the Office of Professional Standards?

- ☐ Relative
- ☐ Friend
- ☐ Poster or brochure
- ☐ Telephone book
- ☐ Des Moines Police Department or officer
- ☐ Other Des Moines city official or employee
- ☐ Other law enforcement official or employee
- ☐ Media (TV, Newspaper, Radio etc.)
- ☐ Attorney or Lawyer
- ☐ Neighborhood or Community Organization
- ☐ Minister or Church
- ☐ Des Moines Human Rights Commission
- ☐ Iowa Civil Rights Commission
- ☐ Iowa Attorney General's Office
- ☐ Iowa Citizens' Aide/Ombudsman
- ☐ United States Attorney's Office
- ☐ Other (Please explain)
- ☐ Don't Remember

43. If you feel you (or the person you complained for) were harmed in any way because you complained to the Office of Professional Standards, we would like to know how you (or the person you complained for) were harmed.  
(Please comment)

Please use the space below if there is anything else you would like to tell us about your experience with Office of Professional Standards. This may include events that influenced your feelings about employees or the process, services you believe you should have received, but did not, or any other matters that you would like to comment on. If you would rather talk, please contact either Michael Ferjak, Assistant Ombudsman, or Duncan C. Fowler, Deputy Ombudsman at 515-281-3592. Those living outside Des Moines may call toll free at 1-800-358-5510.

Your contribution to this effort is greatly appreciated.



## Appendix E

### **CITIZENS' AIDE/OMBUDSMAN OFFICE REPORT ON THE STUDY ON CITIZENS' SATISFACTION**

During 1996, the Iowa Citizens' Aide/Ombudsman's Office developed and conducted a survey to determine satisfaction with the services citizens receive from the Office of Professional Standards of the Des Moines Police Department. SELZER & COMPANY has been retained to summarize the key findings from the survey.

In all, 281 questionnaires were sent out. This excludes some individuals with bad or missing addresses. That group is about 46 (a small group of individuals appeared on the "non-send" list as well as on the "send" list because they filed more than one complaint). One hundred and three (103) questionnaires were completed and returned (one additional questionnaire was returned, but with only one answer given and so it was dropped from analysis). We have data from 32% of the citizens who filed a formal complaint and 37% of those to whom questionnaires were sent.

#### **RESULTS OF SURVEY**

Attached to this narrative summary are two tables summarizing the findings from the survey. In the first, the first 30 questions have been quantified with numeric means across the five point scale. An average of three or better would suggest respondents were largely satisfied.

For three measures evaluating OPS, the average is in this range, all dealing with the accessibility of the office and the people who work there:

- How easy was it to contact OPS (average 3.40)
- How convenient were their office hours (average 3.12)
- How easy was it to contact the person working on your case (average 3.04)

*Interpretation.* The items that rank high all deal with the structure of the office, not with the way they interact with individuals. It is not terribly surprising OPS would rate the highest on these measures. That a majority of *all* respondents (both those who had their complaints upheld and those who did not) give OPS favorable ratings suggests that respondents do not treat this survey as one more way to say bad things about the Des Moines police. Were that the case, we would see indiscriminant negative ratings, even for things like office hours. We see some evidence of bias in that direction (in that those whose complaints were not sustained are indeed less positive than complainants who were upheld), however, a majority of even those who did not have a favorable outcome to their complaint admit OPS is accessible.

The table makes clear the difference in perceptions between those whose complaints were sustained and those whose complaints were not. On most of the other measures, responses from those whose complaints were sustained remain at or above the 3.00 mark, with a few exceptions:

- How good were they at keeping you informed (average among sustained 2.60)
- How good were they at doing things right the first time (average among sustained 2.90)
- How neutral were they (average among sustained 2.80)
- How useful were they (average among sustained 2.80)

**Interpretation.** These are items that signal concern about how OPS interacts with complainants. When a majority of even the most satisfied customers give low ratings, there is reason to think these are the most pressing issues for OPS to consider.

Among those whose complaints were not sustained, the areas of greatest disappointment involve getting to the bottom of the problem (in understanding the problem, being thorough, evaluating the issues, and considering all the concerns), being objective (fair, neutral, and impartial), and in solving the problem (effectiveness in handling the problem and usefulness). OPS also gets low ratings from the not-sustained group for trustworthiness and in being error-free.

**Interpretation.** We expect citizens who do not receive a favorable decision about their complaint to blame the system and so low ratings on measures of how well the problem was handled are not surprising. These are the kinds of scores, however, that could show improvement with effort. OPS may not be able to satisfy every citizen in every case. But they could set a realistic goal of satisfying more in the coming year than they did in the past year. This is the kind of objective tracking surveys could help monitor.

Responses to other questions in the survey show the same dynamic. Respondents whose complaints were sustained are considerably less negative than those whose complaints were not sustained. When we look at the complainants whose concerns were not upheld, we find only two questions where a majority do *not* give the most strongly negative answer:

- Very displeased with the people I worked with from OPS (40% of the non-sustained group)
- Very much harmed because I complained to OPS (14% of the non-sustained group)

**Interpretation.** Again, these low negatives confirm that unhappy complainants did not fill out the questionnaire by simply marking every negative answer. They appear to have given reasoned consideration to each question. The findings for the question about whether respondents have been harmed by complaining to OPS would be troubling no matter how small the response giving a negative assessment. At 14%, we would be tempted to discount this as a few unhappy souls voting negative on each question. However, from comments on questionnaires, we know that some believe they are worse off for filing the complaint. They report they get more police attention (from officers on the street) than they would like. It is a tough call, but again, this is a number OPS would probably like to see reduced.

## **APPENDIX ASSESSMENT PROCEDURE**

SELZER & COMPANY received datasets from the Ombudsman's Office as well as files of documents pertinent to the methods used in gathering data. Here is what SELZER & COMPANY did to assess this survey:

- Re-entered the data from completed questionnaires.
- Double-entered the data to verify its accuracy.
- Coded the comments for broad content categories.
- Tabulated results, including cross-tabulations among key groups.
- Compared respondents who completed questionnaires to two other key groups: Individuals who filed formal complaints and were sent a questionnaire but did not respond (n = 178) and individuals who filed formal complaints but were not sent a questionnaire because of insufficient or inaccurate address information (n = 57).
- Analyzed the data, using survey tabulation software.

**CITIZENS' SATISFACTION WITH OPS  
MEAN RATINGS**

	<u>Total</u>	<u>Sustained</u>	<u>Not Sustained</u>
How easy was it to contact OPS	3.40	3.81	3.35
How convenient were their office hours	3.12	3.67	3.04
How easy was it to contact the person working on your case	3.04	3.55	3.00
How courteous were they	2.94	3.48	2.87
How fast in getting to complaint	2.88	3.30	2.82
How professional were they	2.66	3.52	2.49
One they got to complaint, how fast were they	2.64	3.26	2.54
How knowledgeable were they	2.62	3.38	2.47
How willing were they to listen	2.59	3.10	2.49
How careful were they in guarding sensitive information	2.57	3.39	2.38
How personal was the attention you received	2.54	3.10	2.43
How comfortable did you feel talking to them	2.52	3.00	2.43
How competent were they	2.48	3.33	2.29
How good at keeping promises	2.44	3.31	2.28
How well did they respond to questions or requests	2.22	3.14	2.04
How good at keeping you informed	2.21	2.60	2.12
How willing to help were they	2.20	3.19	1.98
How well did they understand your problem	2.19	3.29	1.91
How interested did they seem in your problem	2.19	3.10	2.00
How good at doing things right first time	2.18	2.90	2.05
How trustworthy were they	2.02	3.10	1.77
How error-free do you believe they were	2.01	3.15	1.79
How impartial were they	1.98	3.05	1.77
How well did they evaluate the issues of your complaint	1.97	3.21	1.70
How thorough was the investigation	1.93	3.06	1.70
How fair were they	1.91	3.05	1.68
Were all your concerns considered	1.87	3.00	1.62
How neutral were they	1.86	2.80	1.69
How effective were they in handling your problem	1.83	3.17	1.58
How useful were they	1.80	2.80	1.59

**OTHER IMPRESSIONS OF OPS**  
**PERCENT GIVING STRONGLY NEGATIVE RESPONSE**

	<u>Total</u>	<u>Sustained</u>	<u>Not Sustained</u>
Not helped at all by complaining to OPS	71	45	77
Very displeased with outcome of complaint	69	29	76
Contacting OPS did not at all resolve the problem	62	20	70
Agreed with none of the OPS decisions	61	25	69
NO, would not use the services of OPS again	58	33	65
OPS was not at all useful in helping me learn how to solve problems with the police department	57	35	62
Very dissatisfied with OPS	50	24	56
Would strongly not recommend OPS to a friend	50	30	55
Very displeased with the people I worked with from OPS	37	19	40
Very much harmed because I complained to OPS	12	-	14

Note: The question about whether respondent feels OPS favored the officer or the respondents has been intentionally left off this list as it is not clear what the negative response would be.

## Appendix F

[Official seal, etc.]

Please take a few moments to complete this survey. One of our jobs is to help improve the administration of state and local government. One of the ways we are able to accomplish this is through citizen feedback. You can help us by completing this survey. We appreciate your time and attention.

**Instructions:** Please put an X in the box that best reflects your feelings or beliefs. Only your honest, forthright answers will help, so please give us your frank opinions. If any question does not apply to your situation, just leave it blank.

**Part I: Your contact with the Des Moines Police Department.** These first questions deal with the incident that led to the complaint about the Des Moines Police. When you answer these questions, think only about the police. Later, we will ask about the Office of Professional Standards.

1. Which of the following best describes your contact with the Des Moines Police Department that led your complaint: (MARK ALL THAT APPLY.)

- 1 ☐ I was arrested by the Des Moines Police
- 2 ☐ I was detained by the Des Moines Police in relation to a crime
- 3 ☐ I was a witness to a situation involving the Des Moines Police
- 4 ☐ I was the victim of a crime
- 5 ☐ I called the Des Moines Police to respond to a situation (including emergencies)
- 6 ☐ Other: (please explain) \_\_\_\_\_

2. Why did you file the complaint? because of your own experience with the Des Moines Police, or did you file a complaint on behalf of another person (such as a child, friend, or family member)?

- 1 ☐ Because of my own experience with the police
- 2 ☐ Because of something I observed or found out about that happened to someone else (a child, friend, family member, etc.)

3. Thinking about the contact with the Des Moines Police that caused the complaint, did the officer(s) act appropriately, or inappropriately. If this does not apply to your situation, just leave the answer blank.

	Acted Appropriately	Acted Inappropriately
A. How <u>quickly</u> the officer responded to the situation	1 <input type="checkbox"/>	2 <input type="checkbox"/>
B. How well the officer <u>listened</u> to explanations about the situation	1 <input type="checkbox"/>	2 <input type="checkbox"/>
C. The <u>language</u> the officer(s) used in dealing with the situation	1 <input type="checkbox"/>	2 <input type="checkbox"/>
D. The <u>physical contact</u> between the officer and anyone at the scene, including yourself	1 <input type="checkbox"/>	2 <input type="checkbox"/>
E. <u>Respect for the rights</u> of people at the scene	1 <input type="checkbox"/>	2 <input type="checkbox"/>

4. If there is anything else you'd like to explain about how the officer(s) might have acted, please describe:

5. Please indicate your overall satisfaction with the Des Moines Police Department, not just the incident that caused you to file a complaint.

1 ☐ Very satisfied                      3 ☐ Mixed/neutral                      4 ☐ Mostly unsatisfied  
2 ☐ Mostly satisfied                      5 ☐ Very unsatisfied

6. Apart from this incident, what is your overall opinion of the Des Moines Police Department? Do you consider them to be:

1 ☐ One of the best                      3 ☐ About average                      4 ☐ Below average  
2 ☐ Above average                      5 ☐ One of the worst

**Part II: Your contact with the Office of Professional Standards.** These questions deal only with the Office of Professional Standards (abbreviated OPS), the agency that handled the complaint you filed. Please think only about your contacts with OPS and not about the police.

7. Were you personally interviewed by OPS so they could get a complete statement of your complaint?

1 ☐ Yes                      2 ☐ No

8. To the best of your knowledge, did OPS conduct interviews with others (such as witnesses)?

1 ☐ Yes, OPS conducted interviews with others  
2 ☐ No, to my knowledge, OPS did not conduct interviews with others  
3 ☐ Don't know

	<u>Very Satisfied</u>	<u>Mostly Satisfied</u>	<u>Mixed Feelings</u>	<u>Mostly Unsatisfied</u>	<u>Very Unsatisfied</u>
9. <b>Overall satisfaction with the process.</b> Overall, how satisfied were you with <u>the way your complaint was handled</u> by OPS	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
10. <b>Accessibility.</b> How satisfied were you with:					
A. The <u>hours</u> the OPS is open	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
B. The <u>location</u> of the office	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
C. The <u>availability of staff</u> who can speak to you about your complaint	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
D. <u>How long it took them</u> to get to your complaint	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
11. <b>Attentiveness/politeness.</b> How satisfied were you with the following:					
A. The <u>politeness and respect</u> with which you were treated by OPS staff	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
B. The willingness of OPS staff <u>to listen</u> to your concerns and complaints	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
C. The willingness of OPS staff <u>to</u> <u>understand</u> the nature of the problem you raised	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

12. **Thoroughness of investigation.**  
How satisfied were you with the following:

	Very Satisfied	Mostly Satisfied	Mixed	Mostly Unsatisfied	Very Unsatisfied
--	----------------	------------------	-------	--------------------	------------------

- |   |                            |                            |                            |                            |                            |
|---|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| A. The thoroughness of their <u>interview with you</u> to understand your complaint         | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> | 3 <input type="checkbox"/> | 4 <input type="checkbox"/> | 5 <input type="checkbox"/> |
| B. The <u>willingness of OPS staff to gather facts</u> to find out more about what happened | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> | 3 <input type="checkbox"/> | 4 <input type="checkbox"/> | 5 <input type="checkbox"/> |

13. **Fairness in the investigation and outcome.**  
How satisfied were you with the following:

- |  |                            |                            |                            |                            |                            |
|--|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| A. The ability of OPS staff to <u>remain neutral</u> and complete the investigation <u>objectively</u> | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> | 3 <input type="checkbox"/> | 4 <input type="checkbox"/> | 5 <input type="checkbox"/> |
|--|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|

14. **Communication.** How satisfied were you with the following:

- |  |                            |                            |                            |                            |                            |
|--|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| A. The explanation of <u>how your complaint would be investigated</u>                                      | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> | 3 <input type="checkbox"/> | 4 <input type="checkbox"/> | 5 <input type="checkbox"/> |
| B. <u>Keeping you informed</u> about how the investigation was proceeding                                  | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> | 3 <input type="checkbox"/> | 4 <input type="checkbox"/> | 5 <input type="checkbox"/> |
| C. The <u>explanation of the final decision</u> provided at the end of the investigation of your complaint | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> | 3 <input type="checkbox"/> | 4 <input type="checkbox"/> | 5 <input type="checkbox"/> |

15. Thinking about your contact with the OPS office, how often did you feel:

- |  | Never                      | Sometimes                  | Most of the Time           |
|--|----------------------------|----------------------------|----------------------------|
| A. That you were intimidated by the way they acted or spoke to you | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> | 3 <input type="checkbox"/> |
| B. That they were treating you with prejudice or bias              | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> | 3 <input type="checkbox"/> |
| C. That they were showing favoritism to fellow officers            | 1 <input type="checkbox"/> | 2 <input type="checkbox"/> | 3 <input type="checkbox"/> |

16. Do you agree or disagree with the final results of the OPS investigation of your complaint?

- |   |   |  |
|---|---|--|
| 1 <input type="checkbox"/> Agree strongly | 3 <input type="checkbox"/> Mixed feelings | 4 <input type="checkbox"/> Disagree somewhat |
| 2 <input type="checkbox"/> Agree somewhat |   | 5 <input type="checkbox"/> Disagree strongly |

17a. All things considered, were you helped or hurt by filing the complaint with the OPS?

- |  |   |
|--|---|
| 1 <input type="checkbox"/> Helped a great deal | 4 <input type="checkbox"/> Hurt somewhat      |
| 2 <input type="checkbox"/> Helped somewhat     | 5 <input type="checkbox"/> Hurt a great deal  |
| 3 <input type="checkbox"/> Some of both        | 6 <input type="checkbox"/> Made no difference |

b. **If helped:** Please explain how you were helped by filing the complaint with OPS:

c. **If hurt:** Please explain how you were hurt by filing the complaint with OPS:



18. If you had a friend in a similar situation to the one you experienced with the Des Moines Police, would you recommend they use the services of OPS?
- 1☐ Yes, would not hesitate to recommend OPS  
2☐ Maybe, might recommend OPS, but would have some hesitations  
3☐ No, would not recommend OPS
19. Complaints about police officers could be handled a number of different ways. Which ONE of the following ways do you think would lead to the fairest decisions? (MARK ONLY ONE ANSWER.)
- 1☐ The officer's direct supervisor  
2☐ The Chief of Police  
3☐ A special unit inside the police department dedicated to handling complaints  
4☐ An office in city government, but outside the police department, set up to handle complaints about the police  
5☐ A committee of citizens set up to review complaints about the police
20. Please use the space below and attach additional pages if there is anything else you would like to tell us about your experiences with the Office of Professional Standards. This may include events that influenced your feelings about employees or about the process, services you received, or services you believe you should have received, but did not. If you have comments about how you believe your situation *should* have been handled, please explain in the space below. If you would rather talk to the Citizens' Aide/Ombudsman's Office in confidence, please contact:

Michael Ferjak, Assistant Ombudsman or Duncan Fowler, Deputy Ombudsman  
515-281-3592 (Des Moines)  
1-888-426-6283 (outside Des Moines)

Thank you for your time and thoughtful attention.

## **Appendix G**

### **CITIZENS' AIDE/OMBUDSMAN OFFICE REPORT ON THE STUDY ON CITIZENS' SATISFACTION**

During the summer of 1997, the Iowa Citizens' Aide/Ombudsman's Office conducted a survey to determine satisfaction with the services citizens who file complaints against the Des Moines Police Department receive from the Office of Professional Standards. SELZER & COMPANY, working with the Citizens' Aide office, developed a survey instrument after a review of a previous survey conducted in 1996, and analyzed the findings. This report summarizes the key findings.

#### **METHODOLOGY**

The Citizens' Aide office collected computer files of individuals who had contacted and filed a formal complaint with the Office of Professional Standards (OPS) of the Des Moines Police Department (DMPD) in 1996. Names and addresses for 90 individuals, along with details of their complaints, comprised the respondent pool for this survey. This group of individuals obviously does not include people who contacted OPS to complain about a Des Moines police officer but who decided *not* to proceed with a formal complaint. This study is therefore not intended as a full assessment of the job OPS does in handling complaints. Rather, it is a study of how OPS handles the *formal* complaint process.

Questionnaires were sent to respondents in three waves of mailings. In addition, respondents who had not replied within one month of the mailing were contacted by phone. Every effort was made to secure responses from all 90 complainants. The result of this effort was completed questionnaires from 48 individuals, a respectable response rate of 53%. This is a majority of individuals who filed a complaint with OPS in 1996 and had it accepted and investigated. This can therefore be considered representative of the entire class who had formal contact with OPS in that year.

#### **COMPARISONS BETWEEN RESPONDENTS AND NON-RESPONDENTS**

With any survey, we appreciate the opportunity to check for any difference between individuals who responded to the survey and those who did not. With the information kept in the OPS files, we can check some demographic characteristics as well as some circumstances surrounding the OPS contact to determine if our final group of respondents differs in any significant way from all 90 individuals who made up the universe of individuals eligible to participate in this survey. As the following table shows, we see only one striking difference between responders and non-responders: African-Americans were less likely than other racial groups to respond.

Most importantly, we see no difference in the responders and non-responders according to whether their complaints were sustained or not. One might reasonably wonder if complainants who had not had their concerns about the DMPD validated might be more likely to respond to this survey, perhaps as a parting shot and last expression of dissatisfaction. That does not appear to be the case. The percentage of responders who had none of their complaints sustained is exactly the same for both groups, indicating no bias of this kind in the data.

## CHARACTERISTICS OF RESPONDERS AND NON-RESPONDERS

	<u>Total</u> #	<u>Responders</u> %	<u>Non-Responders</u> %
<u>All OPS contacters</u>	<u>90</u>	<u>53</u>	<u>47</u>
Live inside Des Moines	75	55	45
Live outside Des Moines	13	54	46
Did not answer	2		
White	45	64	36
Black	19	16	84
Other	4	75	25
Did not answer	22		
Male	54	52	48
Female	32	53	47
Did not answer	4		
All complaints sustained	10	50	50
No complaints sustained	71	55	45
Mixed of sustained and non-sustained	9	50	50

### Characteristics of Respondents

Respondents to the survey report a number of different types of contact with DMPD that led to their complaint. The final respondent base includes individuals who were victims of crimes (25%), who called the police to respond to an emergency (25%), who were detained by the police in relation to a crime (23%), who were arrested (15%), and who were witnesses (13%). About one in four (23%) reported other circumstances that led to their contact with the DMPD. (Multiple responses were accepted, which is why the percentages add to more than 100%.)

## CIRCUMSTANCES LEADING TO COMPLAINT

	<u>Percent of</u> <u>Responses</u>
Victims of crime	25
Called police to respond to emergency	25
Detained by police in relation to a crime	23
Arrested by police	15
Witnessed crime or incident	13
Other	23

Three in four (74%) filed their complaint because of something they experienced personally, and 26% complained on behalf of a third party (a child or other family member, etc.).

## Evaluations of OPS

Complainants' interactions with OPS were evaluated on several dimensions: accessibility, attentiveness/politeness, thoroughness of the investigation, fairness, and communication. One purpose of such extensive questioning was to be sure we would be able to judge if respondents were merely choosing a single response (positive or negative) and not giving thoughtful attention to each question.

The key comparison for assessing citizens' perceptions of the DMPD is between respondents whose complaints were sustained and those whose complaints were not sustained. Respondents may have filed more than one complaint in 1996 and so, they were grouped according to findings this way: All sustained (5 respondents), none sustained (39 respondents), and mixed findings (4 respondents). In the case of sustained and mixed findings, we are dealing with an extremely small number of individuals. Analysis reveals no consistent pattern in comparing those in the "mixed" group to those in either the sustained or the non-sustained group. They are sometimes more favorable and sometimes more unfavorable in their reactions. But percentages are volatile because of the small sample size. We chose to combine the mixed and sustained group to help with that volatility, recognizing that we are looking for big picture patterns here, with no conclusion in this study able to rest on only a single data point.

When evaluating responses to this survey, we add together the two positive ratings (on the offered scale of one to five) or the two negative ratings, depending on the way the majority responds. This is a fairly stringent test, especially since the mid-point is labeled "mixed" and this often attracts those who are just somewhat unfavorable. When majorities say they are very or mostly dissatisfied, then we consider this a matter of some consequence.

That said, we review the findings.

**Positive evaluations.** On questions of accessibility, timely response, and politeness, OPS wins favorable ratings from a majority of all respondents, regardless of the finding of their complaint. The hours the office is open, its location, the availability of staff are all satisfactory to at least half of respondents. A majority express satisfaction with the time it took for OPS to get to their complaint, indicating the process began swiftly. And a majority say OPS staff treated them with politeness and respect.

**Mixed evaluations.** For two questions about OPS, a majority of respondents whose complaints were not sustained express dissatisfaction, while a majority of respondents whose complaints were sustained or mixed appear to be satisfied. These questions include the perceived objectivity of the OPS staff (66% of non-sustained respondents are mostly or very dissatisfied) and their willingness to gather facts (60%). In addition, a majority of non-sustained respondents indicate overall dissatisfaction with the DMPD, without specific regard to the incident that sparked the complaint (54%). On all these areas, sustained/mixed respondents are mostly satisfied. This

suggests to us that the degree of dissatisfaction may reflect hard feelings related to the finding of the complaint. We therefore cannot draw a firm conclusion about OPS behavior for these items.

The same must be said of the one item where sustained/mixed respondents are negative where non-sustained respondents are not. A majority (57%) of sustained/mixed respondents express dissatisfaction with OPS staff's willingness to understand the nature of the problem they raised, compared to 30% of non-sustained respondents.

**Negative evaluations.** We give the greatest credence to the three items where a majority of respondents—regardless of the outcome of their complaint—express dissatisfaction with OPS. One of the three is an overall evaluation of the way complaints are handled by OPS. Sixty-one percent (61%) of all respondents say they are mostly or very dissatisfied with OPS's handling of their complaint. This includes 43% who give the most negative response, saying they are very dissatisfied.

The other two elements where majorities of both groups give negative response address communication between OPS and complainants. Fifty-eight percent (58%) of all respondents say they are mostly or very dissatisfied with how well OPS kept them informed about how the investigation was proceeding. Two out of three (67%) of all respondents are mostly or very dissatisfied with the explanation of the final decision.

These concerns with communication are probably linked to complainants' lack of information about the investigation itself. Most (74%) say they were interviewed by OPS, but more than one in five of both sustained/mixed and non-sustained respondents say they were never interviewed by OPS. We understand this sometimes happens when a letter to the Chief is filed as a complaint and serves as the complainant's record of the situation and so, in these cases, interviews might not be needed.

A minority of respondents (22%) know for a fact that other individuals (such as witnesses) were interviewed by OPS. Thirty percent (30%) do not know if others were interviewed and 48% say no others were interviewed.

### ***Interpretation***

We cannot speculate on who should or should not be interviewed in the course of an investigation. We leave it to the DMPD to interpret these findings given their own internal knowledge of these cases.

However, it seems clear that respondents do not receive sufficient information about the investigation, including whether they will be interviewed, whether others will be interviewed, and so on. This may undermine their ultimate confidence in the OPS. In cases where communication is lacking, it is impossible to determine whether the problem is in the process itself (the investigation) or in the communication about the process. One masks the other. Because a majority of respondents, regardless of the outcome of their

complaint, express dissatisfaction with the entire process, the lack of communication is, at the very least, leaving a bad taste in complainants' mouths.

These findings fit with the initial study of the Des Moines Police Department conducted by the Citizen's Aide office in 1996. In that study, we found that sustained complainants gave the lowest rating for OPS when asked how well they kept them informed of the process.

### **Perceptions of fairness and favoritism**

Several questions in this survey address OPS's neutrality and their perceived prejudice. The data suggest these are at least somewhat of a problem. Respondents were asked if they felt intimidated by the way OPS acted, if they felt OPS treated them with prejudice or bias, and if they felt OPS showed favoritism. They could respond that they felt these three situations happened never, sometimes, or most of the time.

At least half of all respondents say OPS never acted in an intimidating way. However, on the other two measures, majorities of both sustained/mixed and non-sustained respondents say they were treated with bias or prejudice at least sometimes, and say that OPS showed favoritism to fellow officers at least sometimes. On the latter point, fully half of sustained/mixed respondents say this happened most of the time.

These perceptions may be connected to the outcome of the complaint. A majority of all respondents say they disagreed strongly with the finding of their complaint. Even when we separate the sustained from the mixed, at least half of both groups say they disagreed strongly.

### ***Interpretation***

It seems counter-intuitive that respondents whose complaints were sustained would disagree at all with the findings, let alone disagree strongly. Because that is exactly what we see in these data, we again wonder about how the findings are communicated. Perhaps complainants disagreed with the reasoning or with some element of the explanation of the decision, rather than the decision itself. If this is the case, this again underscores the importance of how information is conveyed to complainants, even when it is the news they must be wanting to hear.

### **Distinguishing between OPS and the DMPD**

In order to help respondents separate their feelings about the officer(s) involved in the incident that sparked the complaint and OPS staff, we asked several questions about police behavior at the beginning of the survey, before turning to questions evaluating OPS. These first questions asked whether officers had acted appropriately or inappropriately at the scene of the incident.

For each of the five questions asked, a majority of all respondents—sustained/mixed and non-sustained—say police acted inappropriately. The strongest concern is in the area of respect for the rights of people at the scene. The vast majority (86%) of all respondents say the police acted inappropriately in this area.

Respect is the heart of two other questions that draw significant negative response: how well the officer listened to explanations about the situation (79% say they acted inappropriately) and the language officers used (68%). Respondents are less adamant about the speed of police response (61% say officers were inappropriate), and physical contact between officers and civilians (53%).

These findings suggest the mood of complainants when they file with OPS is likely sensitive to the degree of respect with which they are treated.

We also asked a question calling for an overall evaluation of the DMPD. Given this is a respondent pool of citizens who have filed complaints against officers in the DMPD, we would hardly expect glowing evaluations. In fact, we find a majority of sustained/mixed respondents (57%) rating the DMPD average or better and 43% rating them below average or one of the worst. A modest majority of non-sustained respondents (52%) rate the DMPD below average or worse, with 48% saying they are average or better.

### ***Interpretation***

While we do not have comparisons to other police departments, nor to the civilian population as a whole, these findings seem reasonable and not overwhelmingly negative.

### **Suggested alternatives to OPS**

When asked their opinions on how complaints could be handled fairly, at least half of all respondents suggest a citizen committee to review complaints. This fits with the concerns of favoritism expressed elsewhere in the survey.

A minority of respondents say they were helped by filing a complaint. A minority say they would not hesitate to recommend OPS to a friend in a situation similar to the one that sparked their own complaint. These attitudes probably lead complainants to entertain other possible avenues for lodging complaints.

## SELECTED RESPONDENT COMMENTS

[Checked box: "No, I would not recommend OPS."] Extremely biased, no opportunity for mediation, reconciliation directly with the officer. Get a good lawyer instead.

The OPS never helped me . . . They were on the side of the arresting officers and did not handle my complaint well at all.

[Filing the complaint with OPS was] "more like a waste of time."

You cannot get a fair shake when [OPS's] office is 10 steps away from the dispatch desk.

I felt OPS whitewashed the whole affair. In retrospect there was never any doubt as to their decision.

No interview? Only a final letter to let me know their final results which did not collect the truth and my explanations and opinions! How can I believe that the OPS did do something in my case?

I wasted my time! Calling them made no difference!

[After visiting OPS] I felt as though at least the situation had been reviewed with the officers.

The Office of Professional Standards seemed very professional in my contact with them.

Should have received notification of completion of investigation (if completed)—some contact letting me know what happened to the police officers.

The two [OPS] officers handled my complaint very professionally.

I feel the OPS listened to me vs. the officer's supervisor but I would have rather had a chance to speak to the officer so I could express my feelings.

OPS assured me that I would receive some reasonable explanation, and an opportunity to review the officer's comments. They lied.... OPS is a defective safety net. You can feel good just knowing it's there. It's only when you really need it that you discover that it's not doing anything for you.



**SATISFACTION RATINGS**  
**SUSTAINED/MIXED VERSUS NON-SUSTAINED COMPLAINANTS**  
**Based only on those who answered**

	<u>Sustained/Mixed</u>	<u>Non-sustained</u>	<u>Combined</u>
	<u>%</u>	<u>%</u>	<u>%</u>
<b><u>50% or more of both groups gave positive response</u></b> <b>(Percent saying mostly or very satisfied)</b>			
Hours OPS is open	71	63	65
Location of the OPS office	67	68	68
Politeness and respect with which you were treated by OPS staff	57	76	73
Availability of OPS staff	57	66	64
How long it took OPS to get to your complaint	50	51	51
<b><u>50% or more of both groups gave negative response</u></b> <b>(Percent saying mostly or very unsatisfied)</b>			
The explanation of the final decision provided at the end of the investigation of the complaint	75	65	67
How well OPS kept you informed about how the investigation was proceeding	63	57	58
Overall satisfaction with way complaint was handled by OPS	50	63	61
<b><u>Mixed: 50% or more of "sustained" respondents negative</u></b> <b>(Percent saying mostly or very unsatisfied)</b>			
OPS staff's willingness to understand the nature of the problem you raised	57	30	34
<b><u>Mixed: 50% or more of "non-sustained" respondents negative</u></b> <b>(Percent saying mostly or very unsatisfied)</b>			
OPS staff's ability to remain neutral and complete the investigation objectively	25	66	59
OPS staff's willingness to gather facts	43	60	57
Overall satisfaction with DMPD, not just the incident in question	44	54	52
Thoroughness of the interview	14	47	42

# OTHER KEY RATINGS

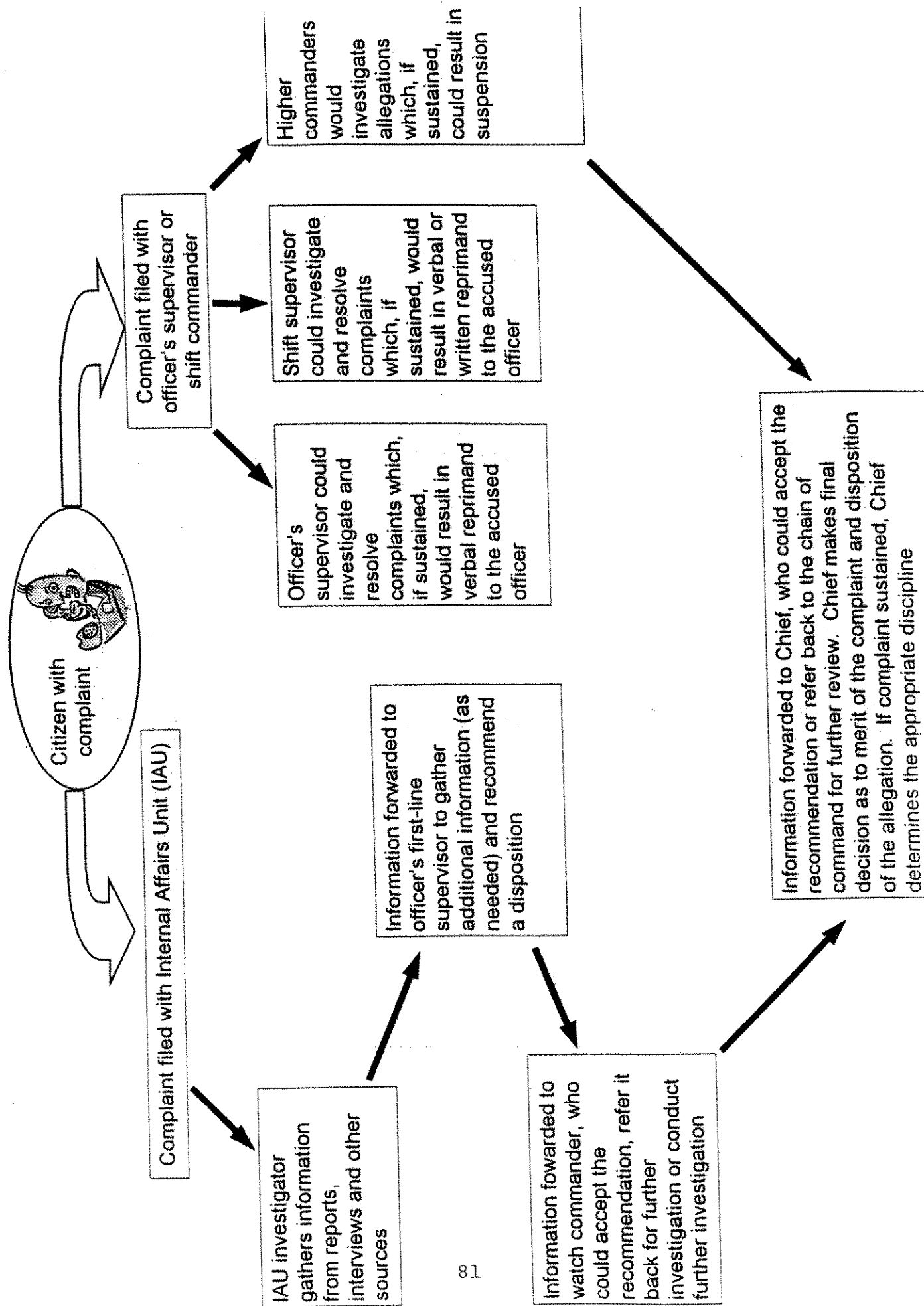
## SUSTAINED/MIXED VERSUS NON-SUSTAINED COMPLAINANTS

	<u>Sustained/Mixed</u> %	<u>Non-sustained</u> %	<u>Combined</u> %
<b>Police action appropriate/inappropriate</b>			
<u>How quickly police officer responded to situation</u>			
Police acted appropriately	40	39	39
Police acted inappropriately	60	61	61
<u>How well the officer listened to explanation of situation</u>			
Police acted appropriately	22	21	21
Police acted inappropriately	78	79	79
<u>The language the officer used in dealing with the situation</u>			
Police acted appropriately	38	31	32
Police acted inappropriately	62	69	68
<u>The physical contact between the officer and anyone at scene</u>			
Police acted appropriately	38	50	47
Police acted inappropriately	62	50	53
<u>Respect for the rights of people at the scene</u>			
Police acted appropriately	14	14	14
Police acted inappropriately	86	86	86
<b>Overall opinion of the Des Moines Police Department</b>			
One of the best	-	8	7
Above average	14	16	16
About average	43	24	27
Below average	14	24	23
One of the worst	29	28	27
<b>How often did you feel . . .</b>			
<u>Intimidated by the way the OPS acted or spoke to you</u>			
Never	50	62	60
Sometimes	25	30	29
Most of the time	25	8	11
<u>OPS was treating you with prejudice or bias</u>			
Never	50	48	48
Sometimes	37	23	26
Most of the time	13	29	26
<u>OPS was showing favoritism to fellow officers</u>			
Never	25	31	30
Sometimes	25	29	28
Most of the time	50	40	42

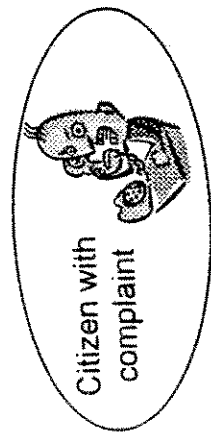
**OTHER KEY RATINGS (CONTINUED)**  
**SUSTAINED/MIXED VERSUS NON-SUSTAINED COMPLAINANTS**

	<u>Sustained/Mixed</u>	<u>Non-sustained</u>	<u>Combined</u>
	<u>%</u>	<u>%</u>	<u>%</u>
<b>Agreement/disagreement with final results of investigation</b>			
Agree strongly	14	11	11
Agree somewhat	14	-	2
Mixed feelings	15	13	13
Disagree somewhat	-	21	18
Disagree strongly	57	55	56
<b>Helped/hurt by filing complaint with OPS</b>			
Helped a great deal	-	3	2
Helped somewhat	45	13	19
Some of both	-	8	6
Hurt somewhat	-	13	11
Hurt a great deal	22	13	15
Made no difference	33	50	47
<b>Willingness to recommend OPS to friend in similar situation</b>			
Yes, would not hesitate to recommend	45	17	22
Maybe, might recommend with some hesitation	22	36	34
No, would not recommend	33	47	44
<b>Suggested agency to handle complaints fairly</b>			
Officer's direct supervisor	-	5	4
A special unit inside police department	13	3	4
Office in city government/not part of police department	37	35	36
Committee of citizens	50	57	56

# Appendix H: How DMPD handled complaints about officers before OPS



# Appendix I: How DMPD handles complaints about officers now



Complaint filed with Office of Professional Standards (OPS), which categorizes the complaint as involving either:

- *Standard of Conduct*: i.e., breach of civil rights, excessive force, missing property, corruption.
- *Procedure*: i.e., unsatisfactory service, use of profanity, rudeness, policy violations.

Standard of conduct complaints

Procedure complaints

OPS personnel interview the complainant and all witnesses, including police personnel. OPS personnel also review all relevant reports, as well as radio and telephone recordings.

82

The employee's division commander reviews the information and makes an initial finding and recommendation.

↓

The chief of police reviews all findings and recommendations.

↗

The completed investigation with findings and recommendations are reviewed by a committee of: the City Manager, Human Rights Director, Corporation Counsel, Chief of Police and Commander of OPS. The committee advises the City Manager.

↓

The City Manager determines the

OPS personnel interview the complainant and all civilian witnesses (but not police personnel). OPS personnel also review all relevant reports, as well as radio and telephone recordings.

↓

The employee's supervisor and commanding officers complete the investigation and make a recommendation.

↓

The chief of police reviews the recommendation and determines the appropriate disposition.

↓

Appendix J

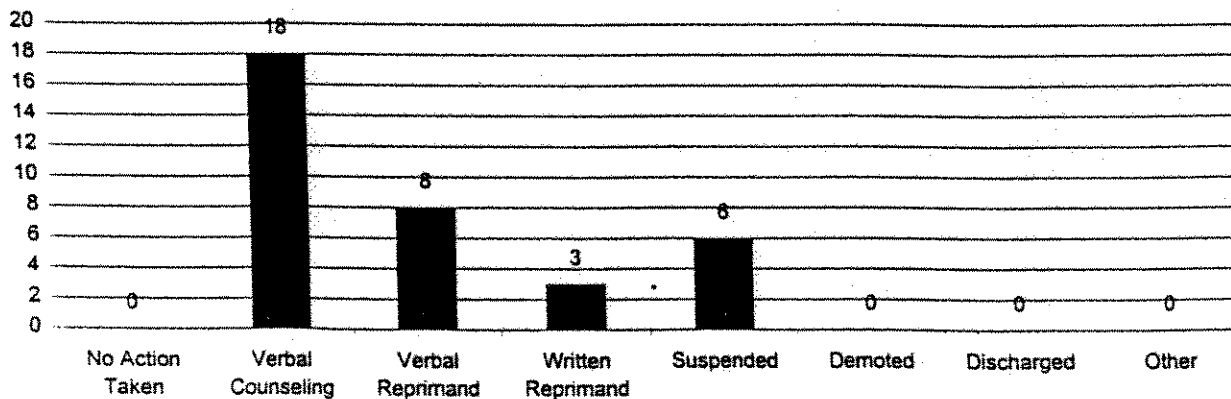
**Office of Professional Standards  
Complaints Received - 1990**

Complaint	# of Complaints	Disposition*			
		Unfounded	Exonerated	Non-sustained	Sustained
Excessive Use of Force	53	21	26	4	3
Standard of Conduct:					
Negligence in Performance of Duty	0				
Misuse of Official Position	8	2		2	3
Discourtesy and Rudeness	42	14	8	7	10
Derogatory Remarks	28	7	4	9	6
Unprofessional	1				1
Missing Property	11	6		2	
Operational Procedures	71	22	24	3	4
Police Service:					
Response Time	7		3		2
All Others	21	3	5		5
<b>Total Complaints</b>	<b>242</b>	<b>75</b>	<b>70</b>	<b>27</b>	<b>34</b>

\*Disposition totals may exceed the total number of complaints due to multiple employees being involved in a single case. No response was required on 17 complaints.

NOTE: Minor discrepancies in the disposition totals could not be verified due to the age of the records.

**Disciplinary Measures Taken in Sustained Complaints**



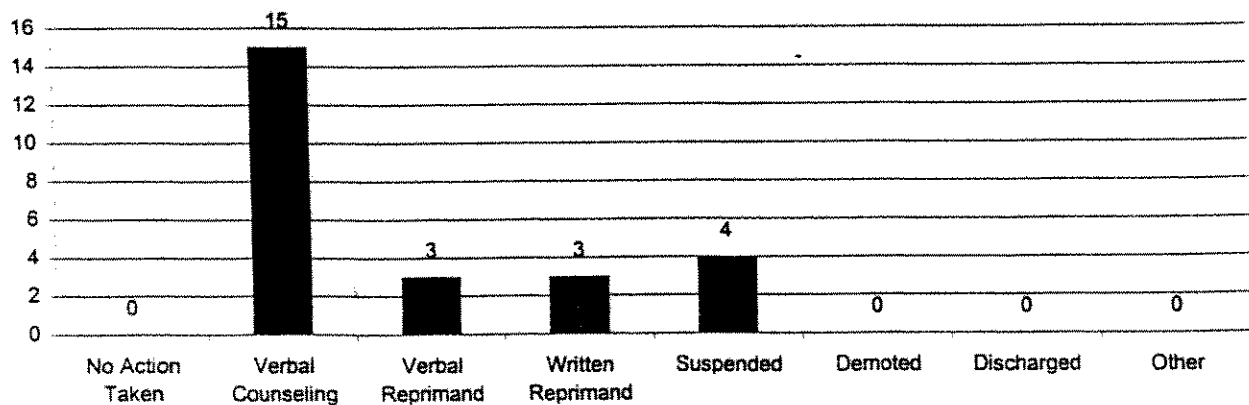
# Office of Professional Standards Complaints Received - 1991

Complaint	# of Complaints	Disposition*			
		Unfounded	Exonerated	Non-sustained	Sustained
<b>Excessive Use of Force</b>	<b>47</b>	<b>11</b>	<b>12</b>	<b>8</b>	<b>2</b>
<b>Standard of Conduct:</b>					
Negligence in Performance of Duty	3				2
Misuse of Official Position	2				1
Discourtesy and Rudeness	13	5	6	1	1
Derogatory Remarks	10	3	3	3	2
Unprofessional	0				
<b>Missing Property</b>	<b>13</b>	<b>8</b>	<b>1</b>	<b>4</b>	<b>2</b>
<b>Operational Procedures</b>	<b>27</b>	<b>3</b>	<b>7</b>	<b>3</b>	<b>4</b>
<b>Police Service:</b>					
Response Time	5	1	1		4
All Others	12	2	4	1	6
<b>Total Complaints</b>	<b>132</b>	<b>33</b>	<b>34</b>	<b>20</b>	<b>24</b>

\*Disposition totals may exceed the total number of complaints due to multiple employees being involved in a single case. No response was required on 23 complaints.

NOTE: Minor discrepancies in the disposition totals could not be verified due to the age of the records.

**Disciplinary Measures Taken in Sustained Complaints**



**Office of Professional Standards**  
**Complaints Received - 1992**  
**FOR THE PERIOD JANUARY - AUGUST 16, 1992 ONLY**

Complaint	# of Complaints	Disposition*			
		Unfounded	Exonerated	Non-sustained	Sustained
<b>Excessive Use of Force</b>	<b>25</b>	<b>12</b>	<b>10</b>	<b>3</b>	
<b>Standard of Conduct:</b>					
Negligence in Performance of Duty	1				1
Misuse of Official Position	1				1
Discourtesy and Rudeness	21	1	11	4	5
Derogatory Remarks	10	3	2	3	3
Unprofessional	0				
<b>Missing Property</b>	<b>11</b>	<b>7</b>		<b>3</b>	<b>1</b>
<b>Operational Procedures</b>	<b>29</b>	<b>8</b>	<b>16</b>	<b>2</b>	<b>4</b>
<b>Police Service:</b>					
Response Time	1				
All Others	1				
<b>Totals</b>	<b>100</b>	<b>31</b>	<b>39</b>	<b>15</b>	<b>15</b>

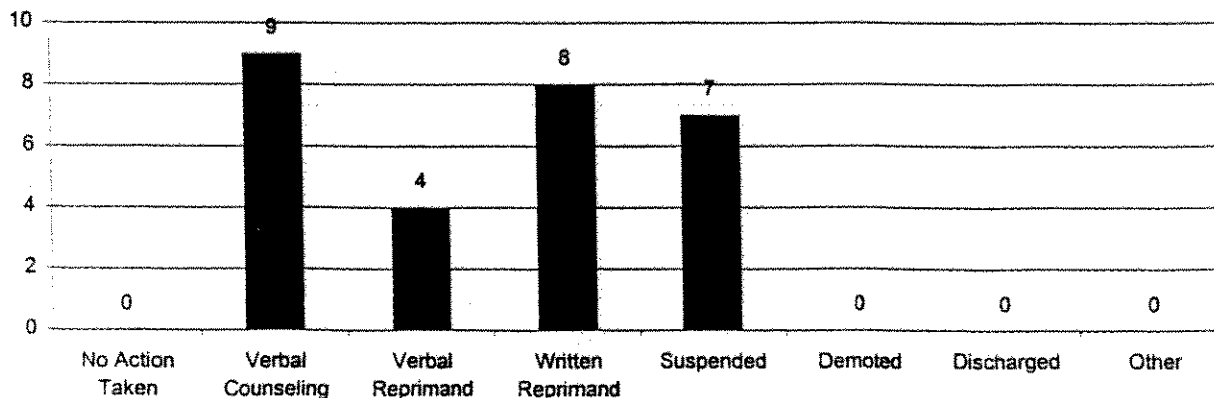
**FOR THE PERIOD AUGUST 17-DECEMBER 31, 1992 ONLY\*\***

Complaint	# of Complaints	Disposition*			
		Unfounded	Exonerated	Non-sustained	Sustained
<b>Standard of Conduct:</b>					
Breach of Civil Rights	1		1		
Corruption	0				
Excessive Force	4	1	2		1
Missing Property	3			1	2
<b>Procedure:</b>					
Policy Violation	2		2		
Use of Profanity/Rudeness	19	3	4	8	4
Police Service	6	1	3	1	1
<b>Totals</b>	<b>35</b>	<b>5</b>	<b>12</b>	<b>10</b>	<b>8</b>

\*Disposition totals may exceed the total number of complaints due to multiple employees being involved in a single case.

\*\*Complaint categories were changed.

**Disciplinary Measures Taken in Sustained Complaints**

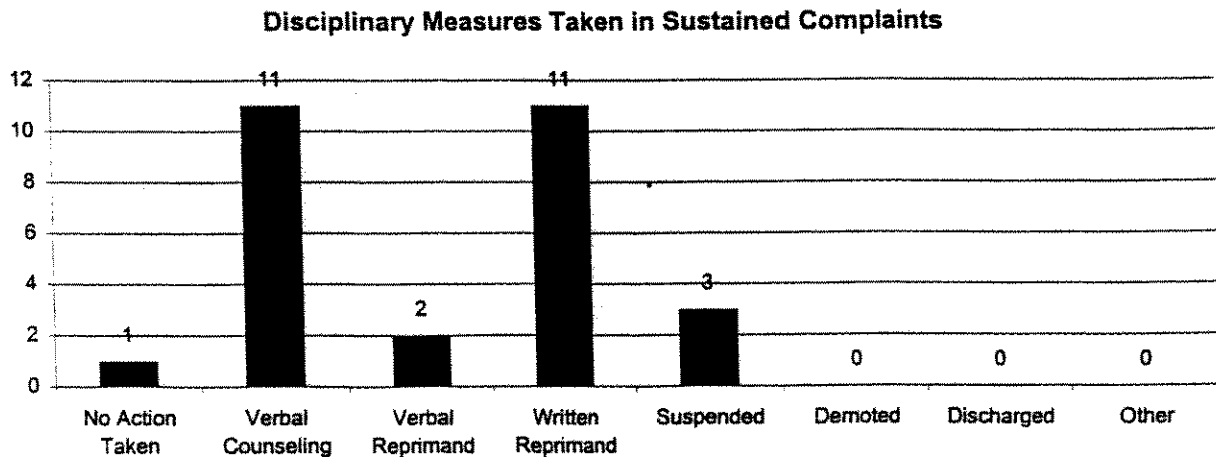




# Office of Professional Standards Complaints Received - 1993

Complaint	# of Complaints	Disposition*			
		Unfounded	Exonerated	Non-sustained	Sustained
<b>Standard of Conduct:</b>					
Breach of Civil Rights	0				
Corruption	0				
Excessive Force	17	6	8	3	
Missing Property	7	3	1		3
<b>Procedure:</b>					
Policy Violation	28	8	15	2	3
Use of Profanity/Rudeness	51	13	16	13	9
Police Service	21	1	13	1	6
<b>Totals</b>	<b>124</b>	<b>31</b>	<b>53</b>	<b>19</b>	<b>21</b>

\*Disposition totals may exceed the total number of complaints due to multiple employees being involved in a single case.

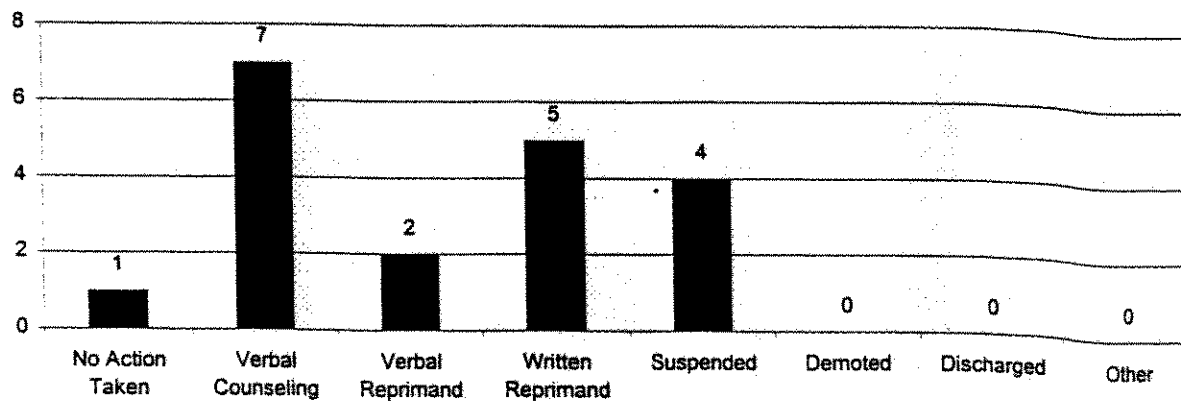


# Office of Professional Standards Complaints Received - 1994

Complaint	# of Complaints	Disposition*			
		Unfounded	Exonerated	Non-sustained	Sustained
<b>Standard of Conduct:</b>					
Breach of Civil Rights	3	1	1		1
Corruption	0				
Excessive Force	21	8	11	1	1
Missing Property	4	3			1
<b>Procedure:</b>					
Policy Violation	22	6	10	1	5
Use of Profanity/Rudeness	47	19	9	16	3
Police Service	20	3	14		3
<b>Total Complaints</b>	<b>117</b>	<b>40</b>	<b>45</b>	<b>18</b>	<b>14</b>

\*Disposition totals may exceed the total number of complaints due to multiple employees being involved in a single case.

**Disciplinary Measures Taken in Sustained Complaints**

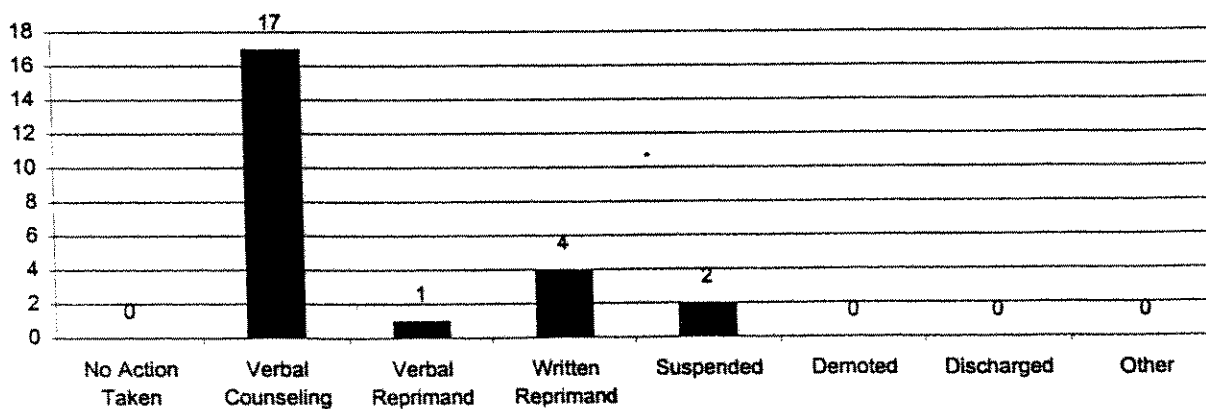


# Office of Professional Standards Complaints Received - 1995

Complaint	# of Complaints	Disposition*			
		Unfounded	Exonerated	Non-sustained	Sustained
<b>Standard of Conduct:</b>					
Breach of Civil Rights	0				
Corruption	0				
Excessive Force	41	12	18	8	3
Missing Property	1	1			
<b>Procedure:</b>					
Policy Violation	24	4	9	6	5
Use of Profanity/Rudeness	45	21	10	3	11
Police Service	8	3		1	4
<b>Totals</b>	<b>119</b>	<b>41</b>	<b>37</b>	<b>18</b>	<b>23</b>

\*Disposition totals may exceed the total number of complaints due to multiple employees being involved in a single case.

**Disciplinary Measures Taken in Sustained Complaints**

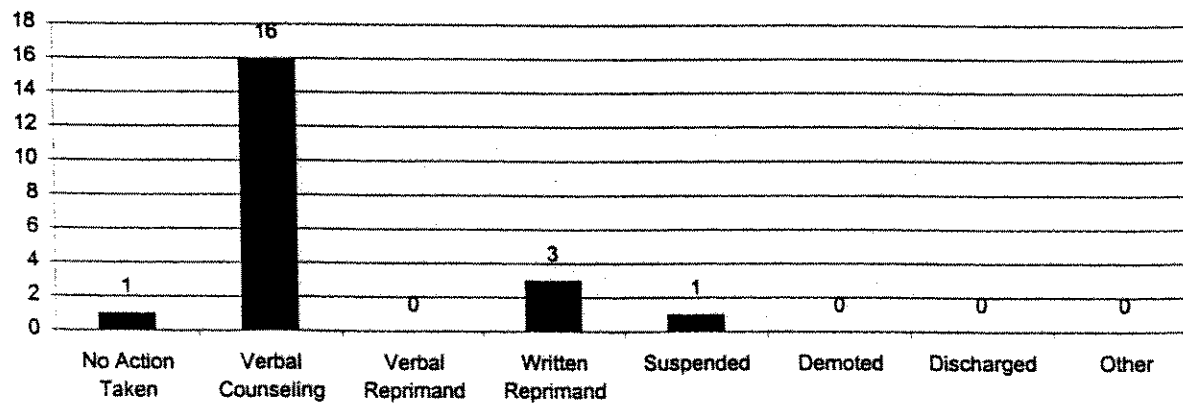


# Office of Professional Standards Complaints Received - 1996

Complaint	# of Complaints	Disposition*			
		Unfounded	Exonerated	Non-sustained	Sustained
<b>Standard of Conduct:</b>					
Breach of Civil Rights	1		3		
Corruption	1			1	
Excessive Force	20	7	13	4	
Missing Property	2	2	2	3	
<b>Procedure:</b>					
Policy Violation	22	6	13	4	9
Rudeness	32	25	11	15	5
Unsatisfactory Service	14	3	12	2	7
<b>Totals</b>	<b>92</b>	<b>43</b>	<b>54</b>	<b>29</b>	<b>21</b>

\*Disposition totals may exceed the number of complaints due to multiple employees being involved in a single case.

**Disciplinary Measures Taken in Sustained Complaints**

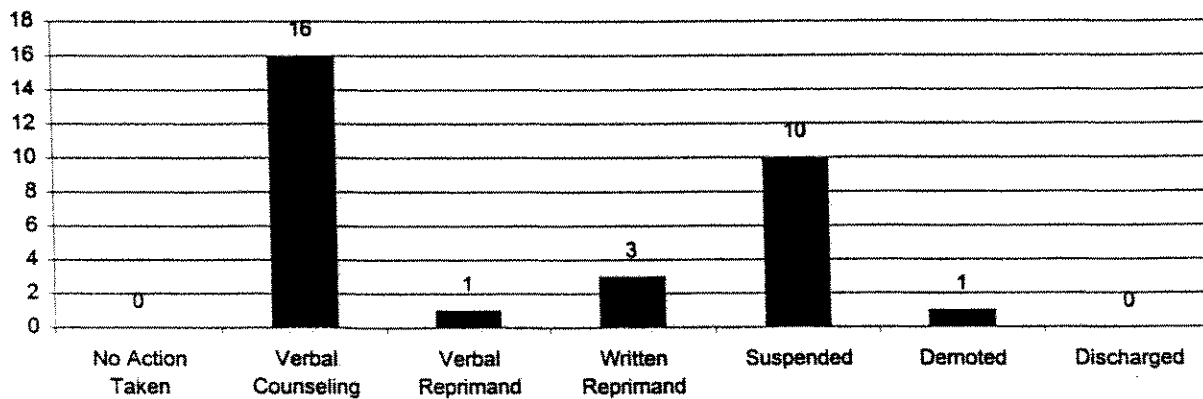


## Office of Professional Standards Complaints Received - 1997

		Disposition*			
Complaint	# of Complaints	Unfounded	Exonerated	Non-sustained	Sustained
<b>Standard of Conduct:</b>					
Breach of Civil Rights	3	3			
Corruption	1	2			
Excessive Force	25	20	18	9	3
<b>Procedure:</b>					
Missing Property	0				
Policy Violation	35	10	17	13	16
Rudeness	14	14	6	17	9
Unsatisfactory Service	7	3	5	2	4
<b>Totals</b>	<b>85</b>	<b>27</b>	<b>28</b>	<b>32</b>	<b>29</b>

\*Disposition totals may exceed the total number of complaints due to multiple employees being involved in a single case.

### Disciplinary Measures Taken in Sustained Complaints



28 December 1998

William P. Angrick II  
Citizens' Aide/Ombudsman  
Capitol Complex  
215 East 7th Street  
Des Moines, Iowa 50319-1231

DEC 28 1998

Dear Mr. Angrick:

The Police Department and the Ombudsman's office hold values in common. We agree that government should serve its citizens fairly and courteously. We agree that the Commission on Accreditation for Law Enforcement Agencies (CALEA) and the International Association of Chiefs of Police (IACP) Model Policies are good operational guides for law enforcement agencies. The Des Moines Police Department has operated in concert with those concepts since their publication.

CALEA, IACP and the Des Moines Police Department recognize that citizen complaints of police officer activity must be given a very high priority, recorded and investigated. We do that.

CALEA, IACP and the Des Moines Police Department believe that in large departments internal investigations should be carried out by a special investigative element. We do that.

CALEA, IACP and the Des Moines Police Department believe that the investigative element should report directly to the chief of police. We do that.

CALEA, IACP and the Des Moines Police Department are in agreement that the policy and procedures for internal investigations should be in the form of a written directive. We have that.

CALEA, IACP and the Des Moines Police Department want internal investigations conducted thoroughly and in a timely manner. We do that.

CALEA, IACP and the Des Moines Police Department understand that because investigations can take several weeks to complete, the complainant should be notified the complaint has been received and the expected date it will be completed. We do that.

CALEA, IACP and the Des Moines Police Department recognize the value of advising the complainant of the information found in the investigation and what action the department has taken as a result of the investigation. We do that.



CHIEF OF POLICE  
25 EAST FIRST STREET  
DES MOINES, IOWA 50309  
(515) 283-4800

ALL-AMERICA CITY 1949, 1976, 1981

William Angrick  
28 December 1998  
Page 2

In your report of 12 November 1998, the assertion that the Des Moines Police Department does not operate in concert with the CALEA standards and IACP Model Policy is factually wrong. In this communication you assert on page two that "...it is appropriate to expect the law enforcement profession to remove the 'chain of command' from the process of reviewing complaints alleging serious misconduct by its employees."

That is in direct contradiction with the model policy cited on pages 43 and 44 of your report:

The model policy provides that upon completion of an internal investigation of alleged officer misconduct, recommendations shall be made to the chief executive officer concerning the probable veracity or falseness of the charge and suggested disposition....The majority of agencies route case findings from the internal investigation to the supervisor of the officer under investigation. The supervisor reviews the report and forwards it **through the chain of command** to the chief executive officer, with comments by all intervening officials as to agreement or disagreement with the findings. Recommendations for disposition of the case usually emanate from the supervisor, with little or no input from the investigators.

The point at issue is the use of the chain of command. To make sure that our interpretation was valid we conferred with Phil Lynn, Manager of the National Model Policy Center for the IACP. He confirmed the intent of the policy is to involve the chain of command as is done by this department.

Think about it for a minute. Successful businesses are concerned with the conduct of their employees when interacting with customers. Would it make sense if the chief operating officer of Younkers was the only person responsible for the conduct of all the sales people in all the departments in all the stores? Of course not. The first line supervisors and store managers are held responsible to evaluate, train and correct employee conduct. That holds true for the Des Moines Police Department and every other police department of any size throughout the country.

The CEO of Younkers is ultimately accountable for the operation of the business. CALEA, IACP and the Des Moines Police Department believe the chief of police is ultimately accountable for the quality and fairness of the operation of the police department. So do I.

With respect to recommendation two, the Des Moines Police Department is operating in accord with the CALEA standards and IACP Model Policy. It is now. It was in 1992. It has been operating in accord with those documents since the documents were created.

Recommendation one is subject to more interpretation. The Ombudsman's Office, CALEA, IACP and this department agree that a written record should be made of all complaints. The difficulty arises when dealing with the practical application of that objective.

Complaints of unnecessary force and rudeness clearly need to be recorded and investigated. Procedure complaints are less clear. It is not uncommon for a citizen to call and file a complaint that the officer did not read them their rights when issuing a traffic citation. When it is explained that reading the Miranda Warning does not apply because they are not being questioned about a crime the complaint is resolved.

The entire transaction takes only a few minutes and in some cases the caller does not wish to tell who they are or who the officer is. We have elected not to make a record of that complaint. The records should serve some business purpose and this would not meet that standard.

Some complainants are clearly looking to bargain by offering not to make a complaint in exchange for reducing or dismissing the charge against them. When they are told the charges must be resolved in court, they elect not to proceed with the complaint. These complaints usually result in a written record but no investigation.

People call in with complaints that are really suggestions on how the action taken could have been done better or, if handled in a different way, would have been better received. Those suggestions are not intended to be complaints. They are recorded and forwarded to the appropriate supervisors in the department for evaluation.

The screening used to protect the dignity of murder victims found in public places was a result of that type complaint/suggestion. The Victim Resource Officer position was created because the relatives of murder victims and fatal motor vehicle crash victims, along with severe assault victims, made complaints/suggestions that they were left with questions while investigators were doing their jobs. They wanted to be kept apprised of the status of the investigation. From this complaint/suggestion, the Victim Resource Officer position was created. The Victim Resource Officer works with the families to keep them informed on the progress of the investigation, advises family members about how to retrieve personal effects from the Police Department, and, if needed, how to make funeral arrangements.



Those complaints/suggestions are important but are different from what is typically envisioned with complaints concerning police activity. They are different from what is suggested in recommendation one.

We are recording complaints that serve some business purpose to record. We do not record complaints that merely seek information.

The action of publishing the surveys is disappointing. You and I, along with City Manager Eric Anderson, talked about the "1996 Survey" in your office. The survey had been conducted on complaints filed with the Des Moines Police Department from 1992 to 1995. Dr. Selzer, the professional pollster you hired for this effort, was also present. She advised you and all present that the survey was not valid because of the low response rate, yet here it is in this report without mention that it was not a valid test.

In that same conversation you indicated an interest in refining the survey and surveying all people that filed complaints against the Des Moines Police Department in 1996. Mr. Anderson informed you that the internal complaint process had been significantly modified by adding another review step conducted in his office. We discussed the value in conducting a survey of an obsolete process. At the conclusion of the meeting you said you would consider the new information Mr. Anderson had provided. This survey titled the "1997 Survey" is used as a basis for criticism of the department, yet it is measuring a process no longer used.

I think it appropriate to point out that the "1997 Survey" is the product of the 48 people that responded to the questionnaire. These were people who had filed complaints regarding the manner of treatment by the Des Moines Police Department. These complaints arose from arrests; they arose from not being able to give the person the result they wanted whether it was investigating a crime or arresting someone that was bothering them; or they arose from traffic matters--issuing traffic citations and determining who is at fault in an accident. In any regulatory enterprise there will be people that do not like the effect of the regulation. In any given year we arrest 10,000 people, we issue about 6,500 speeding citations, we take 58,000 reports, we handle 250,000 calls for service, we impound 9,000 dogs and cats, and we tow in over 9,500 automobiles. In 1996, ninety people were dissatisfied to the extent they filed a complaint. That is a very small number compared to the number of people that came in contact with the department.

I am troubled with this assertion in the background section:

...the Ombudsman began receiving complaints about OPS. Included were allegations of rude and dismissive treatment as well as poor or incomplete investigations.

The Ombudsman encouraged these people to complain to Chief Moulder. But many said they would not. Some said they felt intimidated or threatened. Others believed it would not make any difference.

Over the past six years the Ombudsman's Office has conducted only one investigation of a complaint against the Des Moines Police Department other than the Milton case. Your conclusions in both investigations support the conclusions reached by the department.

The Ombudsman's Office has made inquiries regarding specific investigations during the same period. Our response to those inquiries has been noted by your office as candid and complete.

Since in the last six years we have never been given any example of "rude" or "dismissive treatment," and no examples of "poor or incomplete investigations" or cases where persons felt "intimidated or threatened," I am shocked to see these allegations.

The Iowa Code that creates the Ombudsman's Office establishes your authority to investigate those complaints. What investigations have you done to provide a foundation for these allegations?

This brings me to a final matter. There is no way to judge the result of the survey even if it was believed to be a valid instrument. All of us want to serve the public well. This survey does not speak to how well we served the public.

First, it stands alone. There is no other survey of any other police department in Iowa, only the Des Moines Police Department. There is no other survey of any other police department in the country, only the Des Moines Police Department.

The Ombudsman's Office function is similar in many respects to the police internal investigation function. Both are concerned with investigating complaints of poor service from government. There is no survey of how well your office served the public. There is no survey of any Ombudsman's Office in the country that is brought forth for comparison.

William Angrick  
28 December 1998  
Page 6

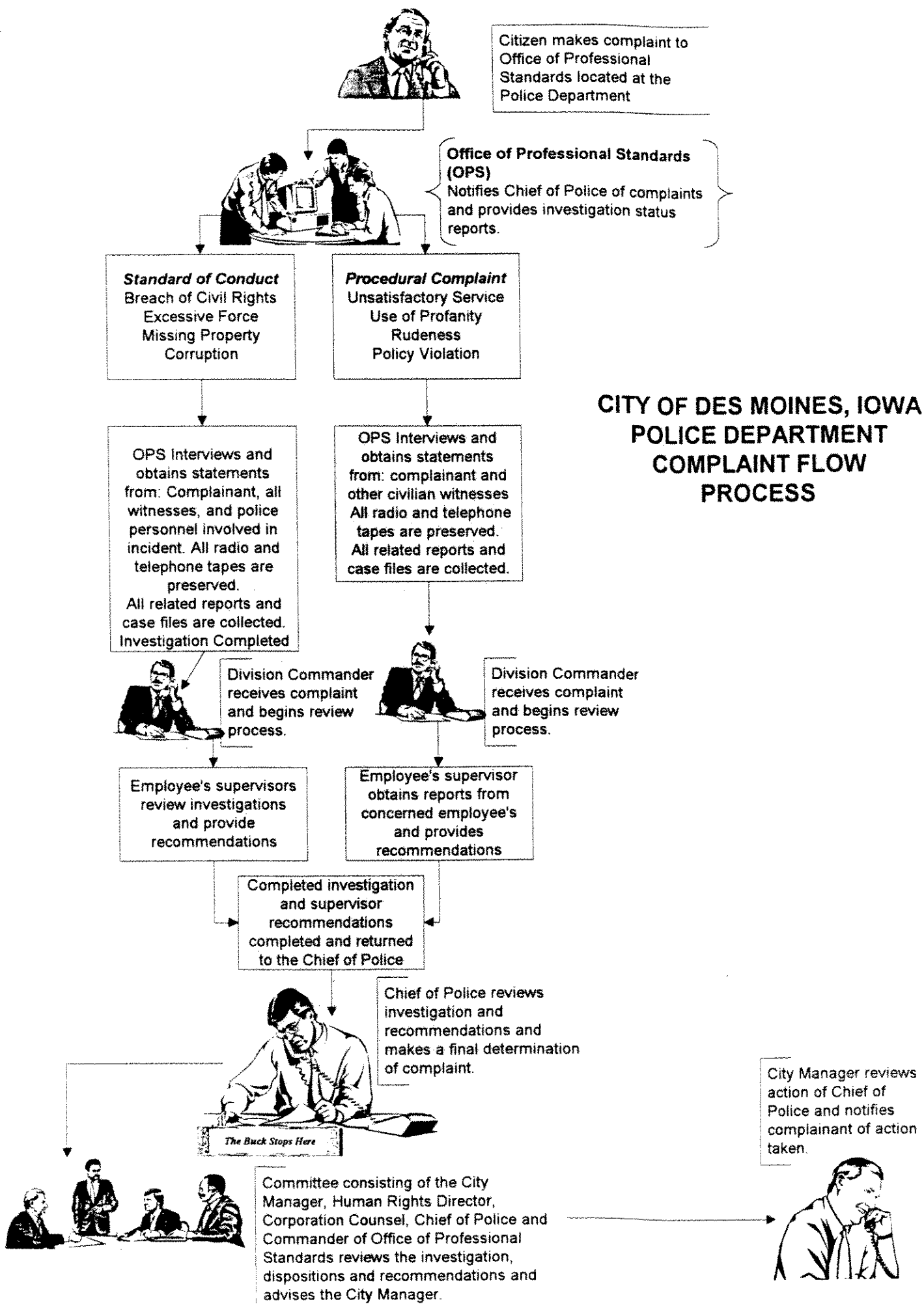
This survey is an attempt to measure dissatisfaction. We can agree that people that file complaints are dissatisfied.

Sincerely,

A handwritten signature in black ink, appearing to read "William H. Moulder". The script is cursive and fluid, with the first and last names being more prominent.

William H. Moulder  
Chief of Police

ak  
cc: Eric Anderson  
Staff



### *Ombudsman's comment to Police Chief's reply*

**directly** *adv* ... without any intervening agency or instrumentality or determining influence: without any intermediate step....

Chief Moulder pledges allegiance to the concept of internal affairs units reporting *directly* to the chief of police. He writes, "We do that." And he notes the concept of direct reporting is prescribed by two independent law enforcement organizations, CALEA and IACP.

But he then defends a practice whereby OPS reports *indirectly* to him, through the "chain of command." And he asserts this is the intent of IACP.

To simplify the issue, let's take a closer look at two sections from IACP's policy paper (attached as Appendix B). First, consider the section which Chief Moulder references:<sup>1</sup>

The model policy provides that upon completion of an internal investigation of alleged officer misconduct, recommendations shall be made to the chief executive officer concerning the probable veracity or falseness of the charge and suggested disposition....

The majority of agencies route case findings from the internal investigation to the supervisor of the officer under investigation. The supervisor reviews the report and forwards it through the chain of command to the chief executive officer, with comments by all intervening officials as to agreement or disagreement with the findings. Recommendations for disposition of the case usually emanate from the supervisor, with little or no input from the investigators.

This section is *descriptive*. It reports the process used by "the majority of agencies." However, it does not evaluate that process in either a negative or positive light.

Second, consider the section referenced in a previous section of this report:<sup>2</sup>

The nature of the complaint review process, however, and the distinct duties of the chief executive officer, argue for placement of the internal investigations authority under the direct control of the chief.

The chief executive officer is responsible for developing and implementing a philosophy to guide departmental operations. Part of this philosophy is generally to provide efficient law enforcement services to all citizens in a fair and impartial manner. Evidence of officer misconduct may be a signal that the implementation of this philosophy has somehow broken down. There may be a weakness in policy, training or supervision that must be corrected. *The process of self-correction of the departmental philosophy and mission could be slowed down when the chief receives allegations of misconduct only through indirect channels. [emphasis added]*

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<sup>1</sup> This section can be found in Appendix B, beginning in the last paragraph on page 43.

<sup>2</sup> This section can be found in Appendix B, beginning in the last paragraph on page 34.

... The integrity of internal investigations into allegations of officer misconduct is protected by requiring that the internal investigations authority report directly to the chief executive officer.

This section is *prescriptive*. It prescribes a particular process and provides a number of reasons why it is favored over all others.

Since only the second section is prescriptive, there can be no doubt that IACP's policy paper recommends that internal affairs units report *directly* to the chief of police, without the intermediary involvement of the chain of command.

Further, the Ombudsman contacted the same IACP official who Chief Moulder conferred with (Phil Lynn, Manager of IACP's National Model Policy Center). Mr. Lynn confirmed to us the intent of the policy is for internal affairs units to report directly to the chief of police, without the intermediary involvement of the chain of command.

If any doubt remains, consider the fact that Chief Moulder did not attempt to argue the interpretation of CALEA's standard on this issue, which states:

The sensitivity and impact of internal affairs on the direction and control of an agency *require* that the agency's chief executive officer receive all pertinent information *directly*. [*emphasis added*]

As a result, the Des Moines Police Department clearly is not in compliance with the aforementioned standards on the issue of "direct reporting," contrary to Chief Moulder's assertions.

Regarding the 1996 survey, Chief Moulder referenced Dr. Selzer and wrote:

She advised you ... that the survey was not valid because of the low response rate, yet here it is in this report without mention that it was not a valid test.

Again, Chief Moulder appears to be creating confusion where none existed. While the Ombudsman's report includes a section concerning the 1996 survey, it includes Dr. Selzer's comments regarding the low response rate (see the last four paragraphs of page six).

Further, because of the low response rate to the 1996 survey, the Ombudsman's analysis and conclusions regarding the surveys (pages 11-13) almost exclusively rely on the 1997 survey data. The only reference in those sections to data from the 1996 survey involves *favorable* responses concerning office hours and similar issues.

As a result, Chief Moulder's implication that the Ombudsman's inclusion of the 1996 survey data is incomplete and inappropriate is without merit.

Regarding the 1997 survey, Chief Moulder claims it measured an "obsolete process" because the review by the City Manager had been subsequently added. The Ombudsman sees that change as merely a modification which did not render the process as obsolete.

Chief Moulder then claims only 90 people filed a complaint about his department in 1996, "a very small number compared to the number of people that come into contact with the department."

But by the department's own admission, it does not record "countless" informal contacts it receives each day. It only records those who follow through with a "formal" complaint. In 1996, for example, it kept records of 90 such contacts.

As a result, there is no record of how many people actually filed complaints in 1996, contrary to Chief Moulder's implication that the number was only 90.

Finally, Chief Moulder takes issue with the Ombudsman's statement that in the years following 1992:

... the Ombudsman began receiving complaints about OPS. Included were allegations of rude and dismissive treatment as well as poor or incomplete investigations.

The Ombudsman encouraged these people to complain to Chief Moulder. But many said they would not. Some said they felt intimidated or threatened. Others believed it would not make any difference.

Chief Moulder then wrote:

Since in the last six years we have never been given any example of "rude" or "dismissive treatment," and no examples of "poor or incomplete investigations" or cases where persons felt "intimidated or threatened," I am shocked to see these allegations.

The Iowa Code that creates the Ombudsman's Office establishes your authority to investigate those complaints. What investigations have you done to provide a foundation for these allegations?

The investigation presented in this report was initiated in response to citizens' allegations about OPS. Because of the number and variety of complaints about OPS, the Ombudsman decided to conduct a "customer satisfaction" survey to objectively measure the public's experience with and perception of OPS.

Obviously, this investigation did not involve the review of specific complaints by specific individuals. For this reason, the section which reported on the Ombudsman's receipt of such allegations *did not* evaluate them in either a positive or negative light.

As a result, Chief Moulder's implication that these allegations are unfairly presented simply misses the point as to why they were presented in the first place: They provided the impetus for the investigation presented in this report.