

The Critical Importance of Implementing a Fair and Impartial Policing Culture

By Gene King, Law Enforcement Action Forum Coordinator



Every law enforcement agency needs to adopt a Fair and Impartial Policing Culture!

For the purposes of this discussion, culture is an internal control system of beliefs and behavior norms that establish the agency expectations for how the department does business. Every officer must know the agency expectations and demands. The agency needs to reinforce clearly that officers are to follow the law and treat every person with respect, decency and fairness.

Many could say: “It goes without saying! Everyone knows that’s what a police officer must do!”

When an officer is hired and in order to be licensed, he/she must swear to uphold the Constitution of the United States, the State of Michigan and depending on the agency, the ordinances of a municipality. Many departments also add requiring compliance with the Law Enforcement Code of Ethics! In one oath, officers commit to uphold the law, act ethically and behave appropriately by doing right.

Assuming that everyone knows what “doing right” means is a false belief. Each person’s decision-making is based on his or her individual beliefs, biases, frame of reference and life experience. Without defining department expectations of on the job behavior, officers will fill in their own interpretation of respect, decency and fair play. Even with good intentions, the outcome of allowing officers the discretion to do that can be quite disastrous!

This edition of the LEAF Newsletter explains why every department needs a Fair and Impartial Policing Policy to set parameters and establish expectations for behavior. The Newsletter promotes the importance of training to the policy with a focus on how an officer’s past experience drives decision making and how they can use this knowledge to influence their decisions so their behavior will not jeopardize their or the department’s reputation and the public’s confidence.

Brief Discussion Of How We Humans Make Decisions

During an MCOLES Curriculum Advisory Meeting, Wayne Carlson, Manager of Career Development, presented information from his extensive research in how humans think as well as how we use experience,

observation and knowledge to make decisions. Carlson and MCOLES Staff are using the research in their efforts to update the Police Academy Training Curriculum in the never-ending endeavor to keep training current with the ever-evolving needs of Law Enforcement. Taking advantage of MCOLES' work, we offer this brief explanation of how officers think and choose a course of action. This process sets the foundation of why officer actions may not align with the expectations of a department or the community.

People have two systems for decision-making. One is the intuitive system, which is unconscious, reflexive, instinctual, emotional and impulsive. This uses implicit associated bits of information to form a decision. Decisions rely on the embedded data stored in the brain organized by accumulated knowledge and experiences. This implicit data is the source of the hunches, gut feelings and educated guesses that are so hard to define. This system is not consistent between people and is only as reliable as the data that has been embedded in each person.

The other is the analytical system, where the brain is reflective, reasoned, deliberative and logical. This system is considered controlled and focused on the data available, resulting in a calculated decision. This system keeps the intuitive system in check by removing the emotion and impulse. This system is explicit, or clear, in using knowledge that is written or verified.

Most people spend their day using the intuitive decision making process when selecting a course of action. The analytical system is a lot of work and takes a conscious decision to get it working. It is much easier to default to the intuitive system, which is always active and can automatically handle the gazillion small details encountered every day with little effort.

Both decision-making systems use information, knowledge and experiences that people gather throughout their life. Bits of data are filed away in their brain and filtered based on the way one perceives the world, understands and interprets events, and assigns meaning to new information. With identification and interpretation of past strategies, a pattern of recognition develops that helps improve intuitive decision-making.

A term used for the organizing process is a person's mental frame of reference. As information is incoming, the intuitive mind matches it against the frame of reference experiences, and then sends it to the analytical mind for determination of what to do. The more experience and knowledge the person has, the wider their frame of reference, which allows more information to guide decision-making. If the person has been exposed to a wide variety of experience and knowledge that is true and accurate, the better the decision making.

When confronted with situations requiring a sudden or rapid response under extreme pressure, the person with the best experience and broadest range of knowledge with successful outcomes will generally make good decisions of what to do. In rapidly evolving incidents, the person's brain is going to unconsciously align the actions in the incident, along with their perception of it, and consider all the information within their mental frame of reference to determine a course of action.

For a police officer, having had a wide range of life experience is beneficial. It is also helpful to have a broad spectrum of training and experience with properly handled law enforcement critical events that were brought to a successful conclusion. The probability the officer will handle a sudden emergent incident successfully, in line with training and within the parameters of departmental expectations, improves with well-established frames of reference.

Without officer training and experience in successfully handling incidents, we are back to assuming that the officer's life experience through their adult years are in line with department ethics, philosophy and mission statement. We also assume the experience officers' have gained since entering law enforcement were all

successful and in line with department policy, rules and expectations for behavior. If that were true, we would need no policy, procedure, rules or to supervise. Everyone would naturally do the right thing and life would be good, with little conflict.

Well that is not the way it is. Officers need supervision, training and feedback to ensure they do what is expected of them. Most every officer, in his or her heart, tries to do the right thing but, most importantly, officers are driven to get the job done, survive and remain uninjured. How they do that is based on their life and professional experiences, which forms the basis for their decision-making. If the base of knowledge and frame of reference is out of sync with the Department's expectations and demands, the outcome can be damaging and even tragic.

For tools that help demonstrate these brain processes, use the following in a web search engine:

- The Stroop Test
- The Ebbinghaus Illusion:
- Go to www.implicit.harvard.edu and perform one or two of the demos.

Without Training, Guidance and Feedback

If officers default to their own intuitive system, individual experiences and personal knowledge as opposed to department policy and the procedures learned from training, it is only a matter of time before an incident goes badly and everyone will wonder how that could have happened. This behavior is called the “normalization of deviance”, which was discussed fully in the July 2015 LEAF Newsletter entitled *The Normalization of Deviance and Officer Created Jeopardy; Two Terms To Remember When Auditing Department Activity*.

Normalization of deviance is generally described as the gradual process through which unacceptable practice or standards become acceptable. As the deviant behavior is repeated without catastrophic results, it becomes the social norm for the organization. Given that we understand how people think, the behavior occurring through the normalization of deviance becomes one of the frames of reference that guide decision-making.

In law enforcement, behaviors that deviate from departmental policy, procedures and rules frequently are not perceived to be extreme if the outcome is successful. As time passes and officers continue to do what they want without a negative outcome or management intervention, the more quickly actual standards become irrelevant and the less impact an occasional negative outcome has. Officers start to recognize that things go wrong occasionally but as long as they remain below the radar, the job got done and nobody cares.

Symptoms of deviant thinking and activity are beyond the discretion officers normally have to take action that may be outside of policy or training but necessary to control an incident. Examples of deviant norms are excessive speed or careless operation of a vehicle. It could be forcing their way in a door or searching a vehicle or occupant without reasonable suspicion. It could be rushing to confront an armed subject, crowding to force a confrontation, or arresting for contempt of cop or failing to take responsibility for the wellbeing of a subject in custody. Some of this behavior is considered “officer created jeopardy”, which occurs when officers do not follow established tactics, policies or training, needlessly placing themselves or others at significant risk of harm. It exists because of flawed thinking and decision making by the officers involved but the ramifications of the behavior cast a wide shadow on the entire department.

There are a number of law enforcement events that have occurred around the country that when analyzed were identified as the result of flawed thinking by officers and a failure of the municipal entity to ensure the operation met current law and/or industry standards. Events in Ferguson, MO, Baltimore, MD and Memphis,

TN, are all potential examples of normalization of deviance and the command staff failing to identify or remedy problems and ensure their officers did right. An analysis of the incidents shows an inertia at all levels that allowed the status quo to grow until the norm was separate from established policy.

This Is Where The Rubber Meets The Road

Having a Fair and Impartial Policing policy affects how officers make decisions and even helps them make good decisions. The Policy will define the expectations of management and set the parameters for behavior when dealing with the public. After the policy is developed, the next phase is to provide training to officers to help them understand how their experiences and knowledge drives their decision-making. Officers must learn to recognize their personal biases and cultural conflicts and not allow them to interfere with their decision-making.

Audrey Forbush, LEAF Legal Advisor and Partner at Plunkett Cooney PC was asked how a department can identify if they are suffering from or are the victim of officers who exhibit deviant or biased behavior. She said the best way to determine whether the department is performing as required is to audit the activity to evaluate performance. Forbush went on to say that, departments require officers to give an accounting of their activity through reports, video recordings, radio communication, email and text communication and telephone recordings. All this information is kept by a department for fixed periods and represents an ever-growing mountain of data that provides a profile of how the department and their officers do business. On top of that, almost all the data collected includes identifying information of people the officers met as they did their job tasks.

Forbush said that all that information and data, with a little effort, would provide a good snap shot of how the department operates and the behavior of the officers. Should an incident occur, the media and plaintiffs' bar will be mining the data through FOIA and by subpoena to find the same information. Reviewing a random 15 minutes of video or surveying a random sampling of people the officer had contact with over a thirty or sixty day period will provide a snap shot of the officer's behavior and generally will reflect how citizens feel they are treated.

Using an early identification and intervention program to help identify successes and problems, supervisors should be made responsible to audit recorded data. While reviewing the audit, supervisors can also evaluate the actual behavior of the officer while performing their job tasks. If a problem is exposed, the officer can be referred to an Employee Assistance or other program to help resolve conflicts or coach them to recognize how they get themselves into problems. If necessary, if the officer's behavior is egregious or threatening, formal action can be taken. If successes or extraordinary behavior is found, officers should be properly rewarded.

Forbush was adamant that with the intense focus being placed on law enforcement officer behavior and their actions, every executive officer should be evaluating their department to ensure it is operating within the law, industry standard, the expressed parameters and expectations of the governing body and the department's own published policy, procedures and philosophy. The evaluation should be of the entire operation, including effectiveness of top command and supervision in leading the department and establishing its culture as well as the actual performance and actions of the officers. Forbush said it is management's responsibility to perform an evaluation process to ensure the department is operating efficiently, with fair and impartial treatment to all.

Should there be a civil rights complaint lodged against the department, Forbush opined that one of the first things the U.S. Department of Justice or Michigan Department of Civil Rights is going to ask for is the department's policy on Fair and Impartial Policing, training records and what the department is doing to

ensure the officers are following the law. She went on to say that not being able to provide the information requested will not bode well in the investigation of the complaint and may lead to a cause of action against the complained upon department.

Forbush opined that top executives should take action to not only adopt a Fair and Impartial Policing policy (sample found in the MML Law Enforcement Action Forum's Law Enforcement Risk Control Manual at mml.org) and train officers to the expectations of the department and the action they must take to meet those expectations. Officers should also be trained to understand that all people have biases, to recognize their own, and not allow those biases to influence their decision-making. She continued that placing officers in situations of repeated positive exposure to people or situations that challenge identified bias will help establish a positive frame of reference and reduce the bias, if not eliminate it. Forbush said that using positive community policing opportunities in various ethnic or cultural situations would go a long way to establish officers' gaining understanding and tolerance.

Forbush Comments Do Not Just Focus On Officers

Forbush mentioned that so far we have talked a lot about how the officers think and make decisions that can unconsciously cause them to react in a manner that may be perceived to be biased, unfair or plain wrong. Forbush commented, an issue that has not been discussed is the internal culture of a department and its strategies to handle incidents, fight crime or take action.

Like officers, individuals in the community also have a frame of reference. A factor in each of the Cities cited earlier was that the public had no confidence that the officers or the department were being fair and impartial in the enforcement of the law or the treatment of particular groups of people. This behavior can happen not only from the normalization of deviance and failure to audit the activity of the department; it can also be spawned by a well-meaning enforcement philosophy, strategy or technique adopted by a department.

Forbush summarized many of the stressors on police; we have a war on drugs; a war on terrorism; zero tolerance in domestic violence, drunk driving, guns in school zones and misbehavior in schools. Law enforcement has practiced data driven policing and profiling for years. Guns are mainstream and officers have to figure out if the person with the gun is a good guy or not. We practice rapid entry but also contain, control, communicate and call SWAT. Departments use data driven policing to do selective enforcement, stop, frisk, identify, and arrest low-level criminals. Prisons have reduced their population and community corrections are the norm. Mental Health treatment facilities have no beds and community health programs are not funded resulting in police officers dealing with those who are drug addicted, alcohol dependent and the mentally ill with no help. Questionable stops and searches, contempt of cop arrests and rapid use of electronic controlled weapons. Despite all of these stressors and more, police officers are expected to practice community policing and build good relationships with the community.

Forbush questions if these conflicting social issues and enforcement strategies on top of the public's caretaking demands, have not created frustration and confusion for officers trying to figure out which hat to wear. Remember, she said, officers are taught that if all else fails, take command and control and resolve an incident. This action tends to lead to escalating aggression on all sides and that often leads to the use of force. Forbush lamented that she thinks the public is also confused on their expectations of a police officer's role.

The point being, according to Forbush, departments need to look at the big picture and the message they are sending to the officers when doing the audit. Top command needs to ensure there is no actual or unintentional institutional bias as the unintended consequences of establishing an enforcement practice, data driven response or action taken because of external political factors, which are intended to solve a problem.

Forbush cautioned that when establishing enforcement practices, clearly define goals, set expectations and define rules of engagement so as not to compound frustration or confusion and to identify potential abuses. She said, if not structured, police officers who are generally given wide latitude in discretion and decision-making, would rely upon their intuitive system, drawing from their life experience, historic frame of reference and biases to guide their actions, which may not be in line with expected outcomes.

Forbush's Bottom-line!

Establish a Fair and Impartial Policing policy. Train to the policy and management expectations for behavior. Educate officers in how they make decisions, how bias can affect those decisions and how to avoid making bad decisions. Audit the activity of the department and give praise where you should or take remedial actions as identified.

Are you a MML Insurance Program Member?

Go to the League's online Law Enforcement Risk Control Manual, [now compatible with any browser](#), to establish a new account using the streamlined login process. Go either to <http://www.mml-leaf.org/> or <http://www.mml.org>, under the Insurance tab/LEAF. Click the green Member Login box. At the Login screen click "Don't Have an Account". To add to the ease of use, the manual now contains a complete keyword search function.

LEAF continues to develop policies and resource documents designed to help Law Enforcement Executives manage their risk exposure. Do not hesitate to contact the Michigan Municipal League's, Loss Control Services at 800-482-2726, for your risk reduction needs and suggestions.

While compliance to the loss prevention techniques suggested herein may reduce the likelihood of a claim, it will not eliminate all exposure to such claims. Further, as always, our readers are encouraged to consult with their attorneys for specific legal advice.

LAW ENFORCEMENT ACTION FORUM (LEAF) is a group of Michigan law enforcement executives convened for the purpose of assisting loss control with the development of law enforcement model policy and procedure language for the Manual of Law Enforcement Risk Reduction. Members of the LEAF Committee include chiefs, sheriffs, and public safety directors from agencies of all sizes from around the State.

The LEAF Committee meets several times yearly to exchange information and ideas relating to law enforcement issues and, specifically, to address risk reduction efforts that affect losses from employee accidents and incidents resulting from officers' participation in high-risk police activities.

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