

INTERNAL INVESTIGATIONS



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INTERNAL INVESTIGATIONS

A Practitioner's Approach

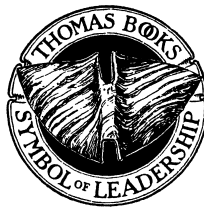
By

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Justice Systems Solutions, LLC

With a Foreword by

Dr. Richard C. Lumb



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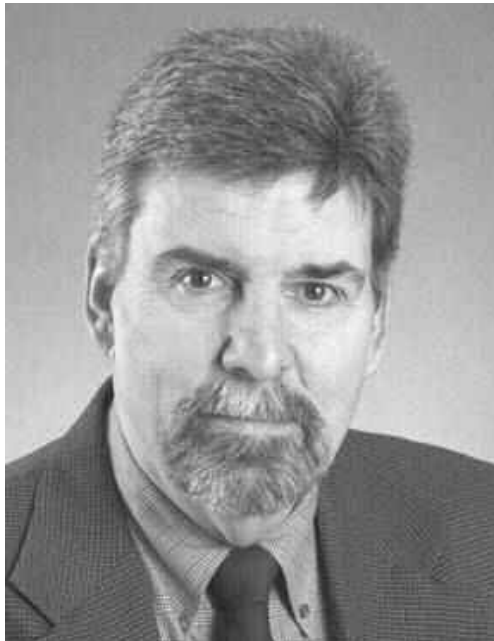
For you dad. Your memory will always live on in your loving son.

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FOREWORD



Competing demands for social justice, police ethics, and police community service often meet in conflict at the door of a police Internal Affairs unit. Policing, by its very nature, is controversial and can evoke deep emotion. Police officers are tasked with an often impossible expectation that demands they keep us safe, provide top quality service, follow the rules, do no harm, and remove undesirable people from causing social mischief or committing a crime. Executing these duties, the officer frequently encounters people who have little regard for the law, social norms, the outcome, or impact of committing a crime, or the plight of victims. When dealing with a person who is agitated, fleeing from the police, or willing to resist being arrested, even to the extent of killing, police officers are in a very traumatic and difficult situation.

People who disagree with police action or behavior have the right to file a complaint against the officer and expect that justice will prevail. When a com-

plaint is filed it initiates an internal police activity that seeks the truth of events leading to a decision of the appropriate outcome. All parties to this action are apprehensive, defensive, and there is anticipation that they will be vindicated. At the end of the day, one or more parties will be unhappy and experience feelings they were judged unfairly. The complexity of the investigative process, the absolute demand for impartial and thorough investigation of all complaints against a police officer is the foundation of trust by citizens of our police.

For many years, Frank Colaprete practiced the police profession, rising to the rank of Lieutenant. He served in a number of capacities and those experiences provide a wealth of knowledge and examples that he applies to the practice and performance of police officers in today's society. This book combines common sense approaches to policing that are grounded in both empirical research and proven practice.

In his book, Dr. Colaprete explores the issues and process of conducting proper and thorough internal investigations. He carefully examines the intricacies of this important police function and throughout the book illustrates the importance of knowing how and understanding why it is important to be complete, respect all parties to the complaint, represent the police organization with the utmost integrity of purpose, and remain sensitive to the individuals involved.

Dr. Colaprete has combined his education, experience, and practical wisdom in writing this book. If we accept the underlying organizational philosophy and guiding principles of conducting an internal investigation, then this book will serve as an invaluable source of information. Dr. Colaprete's approach emphasizes common sense, best practices, the need for unyielding ethical behavior, and a depth of empathy for both the complainant and the officer.

This text is a valuable contribution to policing and community justice. The final product is a book that should be read by every police executive, internal affairs officer, and others in the criminal justice system that have responsibility for maintaining social cohesiveness. It is a book of immense value with immediate and future application.

Dr. Richard C. Lumb

PREFACE

Throughout the history of law enforcement, the internal investigation process has held the most negative connotation of any investigation conducted by law enforcement personnel. Formalized procedural edicts were formed in many large organizations during the late sixties and early seventies. They were the result of horror stories such as Serpico and the like that had cast an imposing as well as everlasting shadow upon the law enforcement community's ability to police its' own. Questionable and criminal activities within police organizations have given rise to such investigative bodies as the Knapp Commission, the Mollen Commission, and the Christopher Commission, just to name a few. Despite the venerable history of law enforcement in the United States, it pales in comparison to the actions of an insignificant number of officers who engage in misconduct that sadly, has a negative impact on the entire institution.

The insertion of independent civilian review boards has been identified by many police administrators, politicians, and communities as a means of checks and balances in the system. Even though these quasi-investigatory and judicial bodies have proven effective in maintaining the delicate balance needed to police a free society, most review boards are perceived by special interest groups as being a "rubber stamp" of vindication for eons of perceived and real police injustice.

The mission of this book is to demonstrate the need for proper and complete internal investigations as well as to teach the entry level and tenured police supervisor the form and function of the internal investigations process. Throughout the text you will find a model for conducting internal investigations of police personnel that will allow you as a police supervisor or commander to conduct investigations in a thorough, legal, and equitable manner. This book is also designed to meet the needs of attorneys who litigate cases involving allegations of police misconduct as well as representatives of collective bargaining groups who represent police personnel in similar actions. Those who are involved as members of investigative groups such as a civilian review board will also find this text helpful in understanding the unique and

complex nature of the task of investigating law enforcement personnel complaints.

As we progress through the new millennium, the task of efficient and effective law enforcement services and practices grows ever more critical. As law enforcement officials, the job becomes evermore complex as new and more demanding restrictions are placed on our ability to police an even more complex society than when most first entered the police service. Sensitivity to civil rights as well as media exploitation of newsworthy events further adds to the insurmountable task of effectively policing a free society. This book is designed to foster and engender an understanding of effective tactics and practices of internal investigation that protects the rights of the complainant, the organization, and the involved personnel realizing that each entity's interests are tantamount to the others. The internal investigator does not have to be "pro-cop," "pro-administration," or "pro-community" to complete the internal investigation properly. The internal investigator must however, be "pro-investigation" to achieve this noble outcome.

The leadership and change management begins with you!

Dr. Frank A. Colaprete

ACKNOWLEDGMENTS

Throughout developing this project, I was faced with the fascination of discovering new and varied methodologies in the internal affairs process that was ultimately balanced against the agony of such a monumental writing project. Amidst all of these painful efforts I found the motivation from those who were supporters of this work. A work that I am hoping adds value and positive change to the concept and practice of internal investigations. I would be remiss though, if I didn't acknowledge those who have been such an integral part of this worthy process.

My first gratitude goes to Michael P. Thomas of Charles C Thomas • Publishers Ltd. as without his encouragement and trust, this project would not have been as meaningful or successful development in a critical area of law enforcement. His staff and his personal professionalism have added much to the final product.

As for the people behind the scenes, I credit much of my success in life and my profession to those who have so graciously given me the gifts of knowledge and wisdom as I have navigated life's path. They are most likely humbled by my comments, however they deserve the highest recognition for their generosity and their deeply felt love of true friendship: Dr. Richard C. Lumb, Professor Rand Gee, Captain Joseph J. Davis, Lieutenant Michael VanRoo, Officer Jonathan Northrup, and last, but certainly not least, Officer Emre Arican, who is not only a close and trusted friend, but also worked diligently and tirelessly in editing the manuscript and assisting in the photography. I am eternally grateful to those who have contributed to my professional and personal development throughout the years.

A special thanks also is afforded to Chief Dan Varrenti and Sergeant Mark Philippy of the Brockport Police Department for their assistance in the illustrations for this book. In line with this, several media groups and companies provided materials and copyrights that made this text a comprehensive and contemporary review of the discipline. In addition, Diann Henry of CNN provided invaluable assistance in her research and advocacy for the use of many of the photographs of high profile cases that added depth and reality to this review of the topic.

And finally, to my dearly departed father, Frank Louis Colaprete, who has been my guiding light throughout my life. Even in death, he is still there for me lighting the path. To my wife Katherine, there are no words that will ever compensate her for the sacrifices she has made for me throughout our lives together. Her patience, understanding, and unselfish love for me allow me to produce these works that may benefit the field and save the lives and careers of those who serve in the most noble of professions.

Dr. Frank A. Colaprete
Justice Systems Solutions, LLC

CONTENTS

Foreword by Richard C. Lumbvii
Prefaceix

Chapter

1. The Purposes and Practical Implications of Internal Investigation3
 Introduction3
 The Purposes of Internal Investigation3
 The Driving Forces4
 ALLCOP = Quality Customer Service5
 The Practical Implications of Internal Investigation6
 Corruption v. Misconduct7
 Living the Company Line7
 Contemporary Issues8
 Complaint Statistics10
 Summary12

2. Pitfalls of Conducting Internal Investigations13
 Introduction13
 The Function of the Internal Investigator13
 Common Assumptions and Myths15
 The “Rat” and “Witch Hunt” Mentality16
 The Political Backlash17
 The Media18
 Information the Media Needs19
 Developing a Protocol20
 Negotiated Media Agreements21
 The Community22
 Breaking the News to the Boss22
 Summary23

3. Ethics and Leadership24
 Introduction24
 Accountability and Ownership26
 Ends v. Means and Results-Based Approaches26

	Cultural Indoctrination	28
	Investigator Integrity	28
	The Stepping Stone to Promotion	30
	An IA Code of Ethics	30
	Leadership	31
	Summary	31
4.	Police Officer Stress	33
	Introduction	33
	Stress Disorders and Traumatization	34
	Physiological Responses to Stress	35
	Diminished Capacity	36
	Memory Loss and Distortions	36
	Post-Traumatic Stress Disorder	37
	Fatigue and Lack of Sleep	38
	Correlating Stress and Questionable Behavior	38
	Critical Incident Stress Debriefing	39
	Critical Incident Defined	40
	Symptomatic Responses to Critical Incident Trauma	40
	The Value of Critical Incident Stress Debriefing	41
	Legal and Procedural Issues	41
	The Steps in Critical Incident Stress Debriefing	42
	Police Suicide	42
	Policy Considerations	43
	Investigative Considerations	43
	Employee Assistance Programs	44
	Summary	46
5.	Definitions and Terminology	47
	Introduction	47
	Civil Service Terminology	47
	Types of Complaints	47
	Types of Internal Investigations	48
	Types of Responses	50
	Case Findings	51
	Summary	53
6.	Legal and Labor Issues	54
	Introduction	54
	The Principles of Due Process	54
	Deprivation of a Property Interest	55
	Deprivation of a Liberty Interest	55
	The Principles of Just Cause	56
	General Disciplinary Sanctions and Progressive Discipline	56
	Civil Service Law	57

Statute of Limitations	58
Civil Rights Law	58
Human Rights Laws	59
Civil Liability: Definition and Lawsuits	60
The Concept of Negligence	61
Industry Standards	61
Qualified Immunity	62
Vicarious Liability	63
Liability for Failure to Disclose Exculpatory Information	63
Liability Through a Pattern of Indemnification	63
Investigative Considerations	64
Federal Civil Rights Violations	64
Case Law: Criminal	64
Self-Incrimination in Criminal Investigations	65
Self-Incrimination in Administrative Investigations	66
Truthfulness in Administrative Investigations	68
Truthfulness in Federal Criminal Investigations	68
Disclosure of Exculpatory Evidence	69
Case Law: Use-of-Force	70
Deadly Force	70
The Reasonableness and Justification of Force	70
Police Control of Persons and Situations	71
Case Law: Civil	71
Law Enforcement Training Issues	71
Liability Through Policy, Practice, and Custom Issues	73
Liability Through Police Use of Tactics	74
Case Law: Labor Law	75
The Right of Representation for Union Members	75
Privileged Communications for Union Members	76
Due Process Rights of Public Employees	76
Abusive and Coercive Interviews	77
Collective Bargaining Agreements and Unions	78
Police Officer Bill of Rights	79
Records Retention Law	79
Records Release and the Right to Privacy	80
Summary	81
7. Investigative Techniques and Procedures	83
Introduction	83
Fundamental Perspective	83
Agency Policy Development	83
Complaint Intake	85
Alternative Strategies	86

Medical Attention . . . . .	.87
Case Planning and Strategy . . . . .	.87
Multifaceted Case Investigation . . . . .	.88
Hierarchy of the Process . . . . .	.88
Interview Procedures and Techniques: General . . . . .	.89
Providing for the Physical Needs of the Interviewee . . . . .	.91
Supporting Depositions and Affidavits . . . . .	.92
Stenographic, Video, and Audiotaped Statements . . . . .	.92
Telephone Interviews . . . . .	.94
Oral Synopsis . . . . .	.94
Administrative/Special/Intra-Departmental Reports . . . . .	.94
Jail (Inmate) Interviews . . . . .	.96
Law Enforcement Interviews . . . . .	.96
Interview Procedures and Techniques:	
Complainants/Witnesses . . . . .	.97
Interview Procedures and Techniques: Law Enforcement	
Personnel . . . . .	.98
Investigative Conduct in Employee Interviews . . . . .	.102
Reference Materials . . . . .	.104
Neighborhood Canvass . . . . .	.105
Case Notes/Investigative Action . . . . .	.106
Case Investigative Findings . . . . .	.106
The Preponderance of the Evidence Standard . . . . .	.106
Police Discretion . . . . .	.107
Thorough Investigations and Exculpatory Information . . . . .	.107
Anonymous Complaints . . . . .	.108
Dealing with False Complaints . . . . .	.109
Satellite/Ancillary Issues . . . . .	.110
Remedial Training . . . . .	.111
Identifying Departmental Policy and Training Issues . . . . .	.112
Documenting the Investigation . . . . .	.112
Summary . . . . .	.113
8. Incident Investigations: Crimes and Use-of-Force . . . . .	.114
Introduction . . . . .	.114
Color of Law Investigations . . . . .	.114
Criminal Investigations . . . . .	.115
Use-of-Force . . . . .	.116
Policy and Training Considerations . . . . .	.119
Force Continuums and Matrices . . . . .	.121
Subject Considerations . . . . .	.122
Force Sustained by an Unintended Third Party . . . . .	.123
Use-of-Force Reporting Procedures . . . . .	.124

Report Writing Procedures	124
Proper Terminology and Contents	126
The Review Process	128
Less Lethal/Non-Lethal Deployment	129
Research Methodology and Liability	131
Terminology	133
Impact Instruments	134
Kinetic Energy Devices	135
Chemical Agents	137
Taser	139
Carotid/Lateral Vascular Neck Restraint	140
Summary	141
9. Critical Incident Investigations: Deadly Physical Force and In-Custody Death	142
Introduction	142
Critical Incident Scene Management	142
The Criticality of Legal Advisors	143
Report Review and Consistency	143
The Family of the Deceased	144
Critical Incident Investigation Teams	144
Police Involved Shootings	145
Deadly Physical Force	148
Considerations for the Officer Interview	149
Visual Impairment	151
Fatigue	154
Threat Indicators from the Suspect	154
Tactical Disarmament of Suspects	155
The Debate Over Warning Shots	156
Questionable Shootings	156
Recommended Question Format	157
Scene Management and Responsibilities	159
Post-Incident Debriefings and Comprehensive Reports	159
Accidental Discharges	161
Victim-Precipitated Suicide	162
Victim-Precipitated Suicide Defined	163
Legal Considerations	163
Offender Considerations	164
Officer Considerations	165
Investigative Considerations	165
Death by Indifference	166
In-Custody Deaths	167
Positional Asphyxia	167

Legal Issues of Positional Asphyxia	168
Investigative Considerations	169
Summary	171
10. Special Investigations	172
Introduction	172
Fleet Vehicle Accidents	172
Legal Considerations	172
Policy Considerations	174
Investigative Considerations	174
Pursuits	176
Legal Considerations	177
Policy Considerations	178
Investigative Considerations	178
SWAT Issues	179
Canine Issues	180
Legal Considerations	180
Policy Considerations	181
Investigative Considerations	181
Substance Abuse	181
Hostile Work Environments and Sexual Harassment	182
Hostile Work Environment	182
Sexual Harassment	183
Legal Issues of Sexual Harassment	183
Supervisory Issues	184
Policy Issues	185
Investigative Considerations	186
Domestic Violence	186
Legal Issues	187
Officer Considerations	188
Family Considerations	188
Policy Considerations	188
Investigative Considerations	189
Workplace Violence	190
Legal Issues	190
Policy Issues	190
Racial Profiling	191
Operational Issues	192
Research and Statistics	192
Legal Considerations	193
Policy Considerations	193
Investigative Considerations	193
Summary	195

- 11. Issues in Administrative and Civil Claims Investigations196
 - Introduction196
 - Insubordination196
 - Untruthfulness197
 - The Clarity and Ambiguity of Untruthfulness197
 - Zero Tolerance for Untruthfulness198
 - Fact v. Fiction in Truthfulness198
 - Practical Implications of Truthfulness in Law Enforcement . . .199
 - Strategies to Abate Untruthfulness202
 - Discourtesy Complaints202
 - Sick Leave Investigations204
 - Off-Duty Jobs204
 - Fitness for Duty Evaluations205
 - Legal Issues205
 - Procedural Issues206
 - Officer Considerations206
 - Protocol and Policy Development206
 - Free Speech Issues207
 - Federal Oversight and Consent Decrees208
 - General Employee Type Actions208
 - Americans with Disabilities Act208
 - Worker’s Compensation Claims209
 - Arbitration in Employee Claims209
 - Property Seizures210
 - Considerations in Policy Development210
 - Court Opinions on Policy211
 - The Need for Contemporary Policy211
 - Purpose, Research, Structure, and Implementation of
Policy212
 - The Danger of Unwritten Rules213
 - Considerations in Training Program Development213
 - Legal and Liability Issues214
 - Training as an Organizational Priority215
 - Realistic Training215
 - Combining Defensive Tactics, Firearms, and Tactical
Communications Training216
 - Handcuffing217
 - Legal Issues217
 - Procedural Issues218
 - Safety Issues218
 - Investigative Issues219
 - Stopping People and Vehicles219

Searching People, Vehicles, and Locations . . . . .	.221
Line of Duty Deaths . . . . .	.222
Civil Claims Investigation . . . . .	.224
Summary . . . . .	.224
12. Evidence Identification, Evaluation, and Collection . . . . .	.226
Introduction . . . . .	.226
Evidence Defined . . . . .	.226
The Admissability of Evidence . . . . .	.227
Witness Classification . . . . .	.228
Testimonial Evidence . . . . .	.229
Evidentiary Documents . . . . .	.230
Expert Testimony . . . . .	.231
Legal Issues . . . . .	.231
Identifying and Managing Expert Witnesses . . . . .	.233
Types and Examples of Expert Witnesses in Internal Investigations . . . . .	.234
Medical Records . . . . .	.236
Physical Evidence . . . . .	.237
Photographic Evidence . . . . .	.238
Types of Photography . . . . .	.239
Existing Photographs and Videotape . . . . .	.239
Subject Photography . . . . .	.240
Scene Photography . . . . .	.240
New and Follow-Up Photography . . . . .	.240
Booking Photographs and Mugshots . . . . .	.241
Medical Photography . . . . .	.241
Videotaping Scenes and Subjects . . . . .	.241
Authenticating Photographic Evidence . . . . .	.242
Photographic Arrays of Personnel . . . . .	.242
Measuring, Sketching, and Diagramming Scenes . . . . .	.243
Polygraph Protection Act and Voice Stress Analyzation . . . . .	.244
Summary . . . . .	.246
13. Case Investigation Summary and Package . . . . .	.247
Introduction . . . . .	.247
Case Investigative Summary . . . . .	.247
Recommended Format . . . . .	.247
Introductory Paragraph . . . . .	.248
Findings Section for Specific Allegations . . . . .	.248
Incident Synopsis . . . . .	.248
Evidence to Support the Allegations . . . . .	.249
Evidence to Refute the Allegations . . . . .	.249
Identify and Address Each Allegation . . . . .	.249

Miscellaneous Section for any Ancillary or Satellite Issues . . .	.251
Word Usage and Terminology . . . . .	.251
Expert and Lay Opinions . . . . .	.251
Reference Materials . . . . .	.252
Case Preparation and Presentation . . . . .	.253
Case Preparation . . . . .	.253
Case Package Assembly . . . . .	.253
Case Presentation . . . . .	.255
Case Review . . . . .	.256
Case Completion . . . . .	.257
Summary . . . . .	.258
14. Case Review Process . . . . .	.259
Introduction . . . . .	.259
Investigative Peer Review . . . . .	.259
Command Review . . . . .	.259
Legal and Labor Issues Review . . . . .	.261
Citizen Review . . . . .	.261
The Concept of Civilian Review . . . . .	.262
Civilian Review Programs . . . . .	.262
Mediation Programs . . . . .	.263
The Ombudsman Concept . . . . .	.264
Program Development Considerations . . . . .	.264
Reviewing the Employee’s Disciplinary Record . . . . .	.265
The Sustained Finding . . . . .	.266
Determining the Appropriate Penalty . . . . .	.267
The Concept of Discipline . . . . .	.267
The Affects of Discipline . . . . .	.268
Mitigating Factors in Imposing Discipline . . . . .	.268
Alternative Methods of Discipline . . . . .	.269
The Discipline Coordinator/Advocate . . . . .	.270
End of Review Stage Procedures in Contemplating Discipline . . . . .	.270
The Opportunity to be Heard . . . . .	.271
Serving the Formal Charges and Plea Agreements . . . . .	.272
Hearings and Arbitrations . . . . .	.273
Post-Disciplinary Action Monitoring . . . . .	.273
Record Confidentiality and Storage . . . . .	.273
Legal Issues . . . . .	.274
Procedural Issues . . . . .	.275
Rethinking Traditional Wisdom . . . . .	.275
Employee Access to Personnel Files . . . . .	.276
Summary . . . . .	.276

15. Risk Management .....	.277
Introduction .....	.277
Law Enforcement Risk Management .....	.277
Needs Assessment .....	.278
Early Warning/Early Intervention Systems .....	.279
Indicators and Performance Thresholds .....	.280
Nice to Know v. Need to Know .....	.283
Tacit Skills and Knowledge of Supervisors .....	.283
The Risk Manager Position .....	.284
Proactive Risk Management Strategies .....	.284
Summary .....	.285
16. Training and Managing Internal Investigators .....	.286
Introduction .....	.286
Curriculum Development .....	.286
Common Training Needs .....	.287
Communication and Conflict Resolution Skills .....	.287
Ethical Awareness .....	.288
Managing the Unit .....	.288
Unit Policy .....	.289
Performance Evaluations .....	.290
Summary .....	.290
17. Future Trends in Internal Investigations .....	.291
Introduction .....	.291
Litigation Involving Internal Investigators and Chiefs .....	.291
Training Priorities .....	.292
A National Model of Internal Investigation .....	.292
Certification .....	.293
Reaching the Point of Trust .....	.293
Summary .....	.293
<i>Appendix A: Investigative Summary Template</i> .....	.295
<i>Bibliography</i> .....	.305
<i>Index</i> .....	.317

INTERNAL INVESTIGATIONS

Chapter 1

THE PURPOSES AND PRACTICAL IMPLICATIONS OF INTERNAL INVESTIGATION

INTRODUCTION

The purposes and practical implications of the internal investigation process must be understood at the outset for the internal investigator and law enforcement administrator to appreciate the need. While the text addresses the legal and procedural issues, the reader must also understand the reasons why the internal investigation is an integral part of the entire context of law enforcement service delivery.

THE PURPOSES OF INTERNAL INVESTIGATION

The purposes of the internal investigation are multitudinous. While perceived by most as only for the purpose of discipline, the process must evolve into an orientation of continuous improvement activities. From this orientation, police administrators, the community, collective bargaining units, and most importantly, the officers themselves may understand why the process is critical to progressive law enforcement services. Absent

this orientation, as a profession, we forego our ability to police ourselves and the opportunity to continue to improve on the quality of services that we offer our respective communities.

The internal investigation process in many organizations has led to the identification of not only misconduct, but criminal behavior on behalf of law enforcement personnel. In addition, these outcomes have served the purpose of protecting the community from rogue officers while demonstrating the image that an organization can effectively rectify its own mistakes in hiring, retention, and monitoring practices. The investigation of personnel complaints can also lead to several positive outcomes, for example, the need for new, modified, or improved and innovative training. Because of emerging case law and technology, the process can lead to the development of new and innovative policies, procedures, and practices that meet the needs of contemporary society. The internal investigation can also lead to the identification of several other issues such as problem employees and the initial steps to remedial or disciplinary action, as well as the potential for civil liability claims that can be abated or at least mitigated. Of paramount importance is the

identification of personnel who are justified in their actions and supported by a credible and unbiased process of inquiry and review. There are numerous advantages to the internal investigation process that are lost in the reflection of media frenzy, politics, poor leadership, and inadequate investigative process. The most crucial point of this text is to affirm that the driving forces of the process should not taint the process.

One final point is the need for law enforcement administrators to grasp a lucid understanding that they must always manage for the rule and not the exception. A parody in many law enforcement organizations is the attachment of a single officer's name to a new rule, policy, or procedure. Police administrators must always avoid the alarmist approach to policy development. When personnel make legitimate mistakes, the best route to take to the high road is to understand a concept based in the legal realm; that of the "totality of the circumstances" of an event. As such, objective review of an incident must include this concept and a measure of the true need for reinventing policy. Care must always be taken in changing a rule in place subsequent to an incident as the question will then be, "Why wasn't the rule changed before the incident, thus the incident may have been avoided?" The courts of this land recognize and wholly embrace the fact that policing is an inexact science and as such, measure an incident not so much by strict rules, but by the reasonableness of the law enforcement officer's actions. This orientation is critical to delivering a fair finding to any case investigated.

Internal or administrative investigations serve numerous purposes. Many are obvious, some are not so obvious, and many are misunderstood. An honest and fair investigative process should be viewed as an opportunity to: (1) reestablish credibility in a department's internal investigation process, (2) defend offi-

cers who are the subject of false allegations, and (3) allow the chief executive officer to evaluate the current level of training and equipment available to the officers in the department (Stine, 2001). In addition, internal investigations serve several other purposes such as:

1. *Protection of the Involved Officer*: Only a small percentage of all complaints filed result in a sustained finding, therefore, the overwhelming majority of complaints filed are either baseless, emanate from a misunderstanding of police procedure, or are false and initiated by individuals who are seeking retribution for some negatively perceived police actions.
2. *Protect the Community*: Although infrequent, occasions present themselves when an officer has violated policy, procedure, or engaged in police misconduct.
3. *Protect the Department*: Protect against baseless or unfounded complaints and the subsequent civil claims filed against the organization and its members (e.g., vicarious liability, poor press, etc.).
4. *Removal of Unfit Personnel*: Infrequently, unfit personnel enter the ranks and are discovered because of aberrant behavior, criminal behavior, corruption, misconduct, and the like. These situations mandate that the department take appropriate remedial or even disciplinary action to correct behavior and prevent future complaints and exposure to liability.
5. *Correction of Procedural Problems*: Occasionally, a policy is discovered to be outdated or personnel have not received adequate training in the policy in question. The discovery during the internal investigation provides the department the opportunity to review and revise the policy to meet contemporary needs. (Garmire, 1982, p. 281)

The Driving Forces

The internal investigation process involves several driving forces. These forces will have a significant impact on a case dependent upon the influence or amount of force

applied. Politics and community outcry have had a profoundly negative impact on the internal investigation process. The subsequent damage caused to law enforcement organizations because of incomplete or biased investigations, have led to unjust actions taken against law enforcement personnel. In addition, communities that lose confidence in a department's administrative investigation process may redirect their complaints to municipal administrators and civilian review boards (Thurnauer, 2002).

ALLCOP = Quality Customer Service

A conceptual argument for the driving forces of the process can be made from the most prominent entities that influence the process. They can be considered as part of the acronym ALLCOP, which means:

- Administrative requirements
- Legal requirements
- Liability risks
- Community expectations
- Organizational expectations
- Personnel/employee satisfaction

ALLCOP = Quality Customer Service and is discussed as follows:

Administrative, Legal, and Liability Requirements: These three considerations must overcome the politics, community, and other subsequent forces. If politics or community pressure forces unjust or premature disciplinary actions, the case may be lost, and the process, the administration, and the community will all suffer the consequences. Legal and procedural requirements must be followed without deviation along with the adherence to collective bargaining agreements and administrative law. Failure to provide these most basic due process rights will leave the rank and file with the validated opinion that their rights are less important

than the hardened criminals they arrest. Civil liability is inexorably linked to these issues as litigation often follows such violations of legal or administrative requirements.

Community Expectations: The community is the customer and as such has the right to efficient, effective, and ethical law enforcement services. However, this is lost when the rank and file believes that a law enforcement officer was disciplined unjustly and they themselves respond by failing to provide the highest quality service possible because of numerous reasons. In addition, the return of an unethical officer to the service because of illegal investigative practices of the law enforcement organization also impacts the quality of service to the customer. While many organizations laud a "customer service first" mission statement, absent the first two components in priority order, quality customer service will be rendered impossible.

Organizational Expectations: This will be the most difficult concept for the administrator to grasp. Organizational expectations in this equation are last in line. This concept emerges from the premise that supported and satisfied law enforcement personnel will act ethically and legally and thus satisfy the community. The byproduct is that the organization's expectations will be met at the conclusion of the process, not the beginning. Many law enforcement organizations have adopted an inverse relationship with customer service; the chief and not the community being the customer. Organizational members move quickly to satisfy the chief at the exclusion of all other factors. This exclusion unfortunately leads to significant gaps in real quality customer service.

Personnel/Employee Satisfaction: Personnel need to believe that they are contributing to the organization, are appreciated, and are growing within their positions. They are the first and not subsequent, or last link in the customer chain. Ensuring that they are sub-