

BEST PRACTICES IN POLICING

**THE DISCIPLINE MATRIX:
An Effective Police Accountability Tool?**

CONFERENCE REPORT

Prepared by

Samuel Walker

*Police Professionalism Initiative
University of Nebraska at Omaha*

January 2003

INTRODUCTION

On October 16-17, 2003 the University of Nebraska at Omaha and the Oakland, California, Police Department co-sponsored a small working conference in Oakland to discuss the concept of a discipline matrix as a police accountability measure.

The conference originated with a request for assistance from the Oakland Police Department. The department is currently operating under a consent decree, one provision of which mandates the development of a policy to ensure consistency of discipline.¹

The purpose of the conference was to discuss the concept of a discipline matrix and determine if it is an effective instrument for achieving consistency in discipline and one that should be recommended as a best practice in police accountability.

Very quickly, the discussions at the conference highlighted the point that a disciplinary matrix cannot be discussed apart from a number of larger issues related to policies and practices related to discipline. Consequently, this report addresses these larger issues along with a discussion of the specific issues related to a disciplinary matrix.

The discipline matrices from the Phoenix Police Department and the Los Angeles County Sheriff's Department served as points of reference for the discussions [See Appendix].

NOTE: *The ideas expressed in this report are those of the author and do not necessarily reflect the views of any other participants or the official views of the Oakland Police Department.*

Contact Information

Professor Samuel Walker
Department of Criminal Justice
University of Nebraska at Omaha
Omaha, NE 68182-0149

402-554-3590
402-554-2326 (fax)

samwalker@unomaha.edu

Police Professionalism Initiative

www.policeaccountability.org

THE CONCEPT OF A DISCIPLINE MATRIX

A discipline matrix is a formal schedule for disciplinary actions, specifying both the presumptive action to be taken for each type of misconduct and any adjustment to be made based on an officer's previous disciplinary record.

The primary purpose of a discipline matrix is to achieve consistency in discipline: to eliminate disparities and ensure that officers who have been found to have committed similar forms of misconduct will receive similar discipline.

Lack of consistency in discipline is a special problem in large agencies where responsibility for discipline is decentralized among commanders at the precinct level. In many departments, this issue is a major concern among rank and file police officers. The perception of inconsistency arises from two different factors. In some instances, there is the perception that certain officers are treated more favorably than others.² In a number of departments there have been allegations of racial disparities in discipline, with African American officers alleging that they are disciplined more severely than white officers. In some other instances, the perceived inconsistency is a result of different standards on the part of command officers responsible for discipline. Some captains are seen as very tough on misconduct, or particular kinds of misconduct, while others are more lenient.

The concept of a discipline matrix is very similar to the sentencing guidelines that have been used in both the federal criminal courts since 1987 and about 20 state criminal courts.³ The relevance of the sentencing guidelines experience is discussed in more detail later in this report.

As with sentencing guidelines, a police discipline matrix involves a grid, with offense seriousness on one axis and prior disciplinary history on the other axis.

Illustration

In the Phoenix Discipline Matrix (see Appendix), for example, "Failure to terminate a pursuit on the order of a supervisor" calls for a written reprimand [Class B misconduct; level 2 discipline at Step 1].

If there are three prior disciplinary actions in the same class, the disciplinary action rises to the next higher class. In this case, it would be a Level 4 Discipline which involves a 40 to 120 hour suspension.

Progressive Discipline

Many law enforcement agencies have adopted the idea of progressive discipline. A system of progressive discipline explicitly describes the range of disciplinary action, from the least to the most serious, with the understanding that a disciplinary action should be appropriate to the officer's misconduct.

A discipline matrix carries the basic idea of progressive discipline to another level by specifying the exact level of discipline that is appropriate for each form of misconduct, and also by incorporating an officer's past disciplinary history into the calculation.

THE NATURE AND FUNCTION OF DISCIPLINE

Early in the conference several participants pointed out that it is impossible to discuss a discipline matrix without a broader consideration of the nature and function of discipline within a law enforcement agency.

The term "discipline" has several different dimensions. Most important, it means more than just "punishment."

Punishment has the general purpose of penalizing an officer for misconduct, and also to deter future misconduct, both by the individual in question (specific deterrence) and other officers (general deterrence). A system of discipline includes –or should include– practices designed to correct officer performance. These practices include coaching, advising, and instructing –actions that are not considered "discipline" in a traditional sense.⁴ These actions are appropriate for less than satisfactory performance that does not rise to the level of formal misconduct. Ideally, these actions will reduce or eliminate performance problems that might eventually require formal discipline.

Illustrations

A. Los Angeles Sheriff's Department

The Los Angeles Sheriff's Department Guidelines for Discipline hold that "Not all inappropriate behavior will require imposition of discipline. In some cases non-disciplinary action, such as counseling accompanied by documentation in a performance log may be more appropriate. ... The purpose of non-disciplinary action is to inform the employee of a potential problem which may result in discipline if it continues; and to help correct the problem before it becomes significant and/or to advise the employee of expected behavior."

B. Phoenix Police Department

In the Phoenix discipline matrix Level 1 discipline involves Supervisory Counseling. It is reserved only for Class A misconduct which includes "minor violations of policy."

GOALS OF A DISCIPLINE SYSTEM -AND THE ROLE OF A DISCIPLINE MATRIX

Discussions at the conference clarified the point that a discipline system in a law enforcement agency has several different goals.

(1) *Communicating the values of the agency.* The first goal of a discipline system is to communicate the values and performance standards of the agency.⁵ (To be sure, the discipline system is not the only way an agency communicates its values, but it is certainly one of the most important.)

One of the major problems with police discipline is that practices are shrouded in secrecy, rumor and myth. Most people outside of policing do not know what kind of discipline results from a particular act of misconduct. Particularly problematic is the perception that officers are regularly not disciplined or otherwise held accountable for their actions.⁶ At the same time, many people within law enforcement agencies often do not know what discipline has actually been imposed. The result is rumor, much of erroneous or even deliberately distorted, that has a dysfunctional impact on the organization.

A discipline matrix addresses this goal. As a formal document specifying the range of disciplinary actions for particular kinds of misconduct, a matrix goes a long way toward communicating the values and practices of the agency.

(2) *Ensuring accountability by specifying minimum discipline.* A second goal of a discipline system is to ensure accountability on the part of all employees. Accountability in this context means that misconduct will not be overlooked by the agency and that any and all forms of identified misconduct will result in some kind of official response.

A discipline matrix directly promotes this objective by clearly specifying the minimum discipline for particular acts of misconduct.

(3) *Ensuring appropriate discipline.* A third goal of a formal discipline system is to ensure appropriate discipline for particular acts of misconduct. Appropriate discipline means that the nature of the punishment is reasonably related to the seriousness of the misconduct.

A discipline matrix has the potential to further this goal, but its achievement is not inherent in the matrix itself. The matrix specifies what the agency has determined to be the appropriate discipline for each act of misconduct. It is not clear, however, whether the agency's standard is appropriate, either from the stand point of what other departments do or with reference to some abstract standard of justice. This issue is discussed in more detail in the following section.

(4) *Ensuring consistency in discipline.* A fourth goal is consistency in discipline. Consistency means that similar acts of misconduct will be treated in a generally similar way, and that there will be no favoritism based on rank, race or ethnicity, gender, seniority, rank or personal relationships.

A Report to the Los Angeles Police Commission following the Rampart scandal recommended that "The Department should ensure that discipline is applied consistently and fairly throughout the department."⁷

A discipline matrix furthers the goal of consistency in discipline by requiring all supervisors to follow the same schedule of disciplinary actions.

(5) *Ensuring fairness in discipline.* A fifth goal of a formal discipline system is to ensure fairness in discipline. Fairness encompasses consistency (see above) and in this context also means that a particular disciplinary action should take into account all of the relevant circumstances, including both aggravating and mitigating factors.

A discipline matrix may help to ensure fairness in discipline. To the extent that it ensures consistency in discipline, it eliminates unfairness arising from unequal treatment. Several conference participants argued that fairness should also reflect any aggravating and mitigating

circumstances surrounding an incident and the officer involved. This is an extremely complicated issue that was not resolved at the conference. It is discussed in more detail in the following section.

(6) *Ensuring accountability for command officers.* One prevalent concern among rank and file officers in many departments is the perception that command officers are not held to the same standards as they are, and that serious misconduct by an officer at the sergeant, lieutenant or captain rank will be treated leniently or overlooked altogether.

A discipline matrix can help to overcome this problem by incorporating misconduct by supervisors. The Phoenix discipline matrix, for example, specifies acts of misconduct by supervisors and the appropriate penalties.

ISSUES RELATED TO A DISCIPLINE MATRIX

The Problem of Conflicting Goals

Two of the goals discussed above create a tension. As mentioned in the previous section, several conference participants pointed out is that absolute *consistency* in discipline does not always result in *fair* outcomes. A particular incident may have aggravating or mitigating circumstances that should be taken into account. Similarly, there may be aspects of an officer's performance history that are not a formal part of the matrix that should be taken into account.⁸

In short, fairness may involve taking into account specific circumstances. As the discussion in a later section explains, sentencing guidelines have wrestled with the tension between consistency and fairness.⁹

Discussions at the conference did not explore the full range of possible aggravating and mitigating circumstances and how they might be applied. As is explained later, a similar tension between the principle of consistency and the principle of individualized treatment has been a major issue in criminal sentencing for thirty years and has not been fully resolved by the device of sentencing guidelines.

The Veil of Secrecy Surrounding Discipline

Few people object to the principle that discipline should be appropriate to the misconduct in question. Discussions at the conference touched on, but did not explore in detail, the underlying question of what is the appropriate discipline for various forms of misconduct.

This issue highlights the fact that police discipline is shrouded in secrecy. A comparison with criminal sentencing is instructive in this regard. In every jurisdiction, statutes specify the possible range of punishments for a criminal act. Additionally, sentences by criminal courts are a matter of public record. The sentence received by a convicted offender for a particular crime is public record. Finally, there is extensive research that provides good data on sentencing patterns at both the national and state levels. Thus, it is possible to determine whether a particular sentence was consistent with the general “going rate” for the crime in question.

By comparison, however, there is little public information about police disciplinary practices. Except for those departments that have a formal and public discipline matrix, the public has no way of knowing what the discipline is supposed to be for a particular act of misconduct (e.g., a sustained complaint of a racial epithet). Nor is it possible to determine what the actual going rate is for discipline in a department. Compounding this problem is the fact that some collective bargaining agreements forbid the department from releasing information about particular disciplinary actions.

Illustration

The Phoenix Police Department and the Los Angeles Sheriff's Department impose very different levels of discipline on an officer for failing to terminate of pursuit when directed to.

** The LASD imposes a 10-15 day suspension for “Remaining in a cancelled pursuit.”

** The Phoenix matrix specifies a written reprimand for “Failure to terminate a pursuit on the order of a supervisor.”

Which is the appropriate level of discipline? What standards exist in other law enforcement agencies? Is there a national norm?

The illustration above raises the issue of the lack of consistency of discipline among law enforcement agencies. This leads to the question of whether it would be appropriate for law enforcement professional associations to develop recommended levels of discipline for particular acts of misconduct.

The Audiences for a Discipline Matrix

As a formal statement of policy, a discipline matrix has several different audiences.

(1) *Rank and file officers.* A discipline matrix communicates the values and expectations of the department. Ideally, this eliminates the mystery and guess work about performance expectations, and resulting morale problems.

(2) *Command officers.* Perhaps even more important a discipline matrix provides specific guidance to command officers about the appropriate disciplinary actions they should take in particular situations.

(3) *The community.* The community is an important but often neglected audience for a discipline matrix. One aspect of police-community relations problems is a deep lack of trust in the police among some segments of the community, particularly racial and ethnic minority communities. Many members of these communities believe that officer misconduct is not punished, including even acts of serious misconduct such as use of excessive force that results in injury to a citizen. There is a deep distrust of internal police investigation systems.

Contributing to this distrust is the near-total secrecy surrounding police discipline practices, mentioned earlier.¹⁰

Commentary

There was some discussion at the conference about whether a published discipline matrix would help to build community confidence by clearly communicating to the public the department's standards.

There was also some discussion at the conference of whether there would be some value in having community input in developing and refining a disciplinary matrix. One participant pointed out that many community residents would be shocked to learn that use of marijuana calls for immediate termination in his department but that use of excessive force does not.

Would opening up discipline standards to the public enhance public confidence in the police and improve community relations? Would community input have some beneficial impact on the disciplinary standards themselves.

The Reporting of Alleged Officer Misconduct

Several conference participants argued that you cannot separate the formal discipline system –including a discipline matrix– from the surrounding administrative process by which allegations of misconduct are reported.

One important part of this process involves the intake of citizen complaints. A department cannot discipline an officer or take informal corrective action for inappropriate behavior it does not know about. Since citizen complaints are one (but hardly the only) source of information about officer conduct, it follows that departments should maintain open and accessible complaint systems. In this approach, citizen complaints should be seen as an important form of “management information.” They are an important performance indicator in all Early Intervention (EI) systems.¹¹

The U.S. Justice Department report on Principles for Promoting Police Integrity defines open and accessible complaint systems as one of the essential best practices.¹²

Equally important is the internal reporting of misconduct, both by officers themselves –e.g., use of force– and by other officers who have knowledge about the incident. It is essential that a department have a comprehensive use of force reporting policy, encompassing all uses of force, and that the department take steps to ensure that officers fully comply with the reporting requirements.¹³

Creating A Fixed Ceiling?

One conference participant expressed concern that a formal discipline matrix might freeze disciplinary practices at the then-current stage. What would happen when the values and priorities of the department change? What would happen when public expectations about police or other criminal justice issues change? (The classic example is the radical shift in public expectations and criminal justice practices related to domestic violence over the past thirty years.)

Would a department be able to revise its disciplinary matrix to reflect changing values and priorities? Or would a formal matrix create an unchangeable set of standards?

Commentary

Given a department's commitment to seeking the highest standards of professionalism, there is no inherent reason why a formal matrix should become permanent and unchangeable.

There are several possible solutions to this problem. First, the matrix could include a statement that it will be subject to review and possible revision in the future. Second, the process of revision could become the occasion for discussions within the department about discipline and disciplinary standards. Most important, there is no reason to assume that an initial matrix will be perfect in all respects. Revision is probably inevitable in any case. It is worth noting that virtually all of the statutory criminal sentencing guidelines currently in existence include sentencing commissions charged with reviewing and possibly revising the guidelines (see the next section).

The revision process could involve comparisons with other departments, and many departments may discover that their standards are unacceptably low. While there will undoubtedly be pressure from the rank and file to lower the schedule of penalties, the revision process can also involve proposals to raise the current penalties. In the end, no outcome is inevitable; it all depends on the commitment to accountability on the part of the department's leadership.

LEARNING FROM OTHER CRIMINAL JUSTICE AGENCIES

In principle, a discipline matrix appears to be a valuable tool for promoting accountability within law enforcement agencies. The experience of other criminal justice agencies, particularly the use of sentencing guidelines by the courts, suggests that successfully implementing a discipline matrix is not a simple matter.

The Case of Sentencing Guidelines

The obvious model for police discipline matrices are the sentencing guidelines used in the federal criminal justice system and in about 20 state criminal courts.¹⁴

Sentencing guidelines originated for several different reasons:

- (1) to ensure consistency in punishment;
- (2) to promote public confidence in the courts and the sentencing process. One of the specific goals of the federal sentencing guidelines is to promote “truth in sentencing.”¹⁵
- (3) to achieve specific policy goals. The Minnesota Sentencing Guidelines, for example, exist to limit the use of incarceration.¹⁶ The Federal Sentencing Guidelines, on the other hand, were established to ensure punishment of offenders.

With respect to the implementation of sentencing guidelines, the picture is very mixed.

Data on the Minnesota Sentencing Guidelines suggest that they have been generally successful in achieving their intended goals. The judges comply with the guidelines and apply the presumptive sentence at a fairly high rate. When they do depart from the guidelines, they are as likely to impose a harsher sentence as they are a lighter than presumptive sentence. Also, the guidelines appear to have been reasonably successful in limiting the use of imprisonment in the state.¹⁷

The Minnesota experience suggests that a carefully developed set of guidelines for punishment or discipline can successfully achieve its intended goals.

The implementation of the Federal Sentencing Guidelines, on the other hand, has been filled with controversy. The advent of the guidelines has been accompanied by an increase in imprisonment of convicted federal offenders. To the extent that the stated purpose of the guidelines is to ensure punishment, this can be regarded as a successful implementation.

At the same time, however, there is much controversy over compliance with the guidelines on the part of judges. When the guidelines were first developed, many federal judges protested that they unreasonably limited their discretion in sentencing. It is now evident that many judges have found ways of departing from the prescribed sentences. The principal avenue for evading the intent of the guidelines is the official provision allowing downward departures where a convicted offender has provided “substantial assistance” to the prosecution.¹⁸

In 2003, tensions between the intent of the Guidelines and federal judges erupted into public controversy when Attorney General John Ashcroft first requested a list of federal judges giving “lenient” sentences, and later issuing an order severely limiting the use of plea bargains by U.S. Attorneys.¹⁹

As noted in the previous section, virtually all of the existing sentencing guidelines statutes provide for a sentencing commission charged with the responsibility of evaluating the

implementation and impact of the guidelines and proposing revisions where appropriate.

This process provides a model for police disciplinary procedures, with the matrix serving as the focal point of research and evaluation of existing disciplinary standards.

Commentary

The case of the federal sentencing guidelines raises some troubling questions about the possibility of successfully implementing a discipline matrix in a law enforcement agency. A worst case scenario might be that supervisors will actively resist controls over their power to impose discipline, with the result being continued disparities and the matrix itself becoming a controversy within the department.

There are several possible ways to resolve this issue. It is possible that the problems of compliance with the federal sentencing guidelines are closely related to the nature of those guidelines. As already noted, the guidelines were greeted with considerable opposition from federal judges from the start. It is possible that the implementation process was deeply flawed, and that judges were not provided proper orientation prior to implementation. Another possibility is that punishment-orientation of the guidelines was too far out of step with the values of many federal judges. Another possibility is that in practice, judges are more closely attuned to the human and social impact of the guidelines than were the drafters of the guidelines. The guidelines do not take into account the impact of sentences on prison populations, for example.

This report is not the place for resolving what is a major public policy issue regarding the implementation of the federal sentencing guidelines. Nonetheless, the case of the federal guidelines should serve as a red flag, indicating that the implementation of any formalized discipline system in law enforcement agencies could encounter serious problems. Careful planning is needed to anticipate and head off potential problems.

The Case of Bail Guidelines

Many (perhaps most) court systems have developed formal guidelines for determining bail. These bail schedules embody the same principles as both sentencing guidelines and police discipline matrices. They correlate the seriousness of the offense with other relevant factors such as current probation or parole status, community ties, employment, and so on.²⁰

Further study of bail guidelines might yield lessons relevant to the development and application of a police discipline matrix.

DEVELOPING A DISCIPLINARY MATRIX

One of the important aspects of the development of the Phoenix Police Department discipline matrix was the involvement of the rank and file and the police union. For many outsiders, it is remarkable that management and labor could work together cooperatively and reach an agreement on a policy as sensitive to all concerned as the resulting discipline matrix.

The interests of the rank and file arose from their concern about a lack of consistency in discipline.

The involvement of the rank and file and the police union in the development of the discipline matrix is a potentially important model for the issue of police accountability in general. With rare exception, accountability measures have faced opposition from police unions, often to the point where issues are grieved or litigated. There is no record, for example, that police unions have actively supported the development of greater use of force reporting, or the development of early intervention systems, or more open and accessible citizen complaint procedures.

One conference participant raised the question of whether involving rank and file officers would convert the issue of a discipline matrix into a subject for mandatory collective bargaining. This should not be the case. At present, basic disciplinary standards are a management prerogative. A disciplinary matrix would fall within that framework. (The investigation of alleged misconduct is a procedural issue that is often covered by statutory or contractual police officers' bill of rights. These procedural issues, however, are separate from the substantive disciplinary standards.)

Rank and file officers have an interest in consistent and fair discipline. They also have an interest in having accurate knowledge about what the penalty is for specific acts of misconduct. In theory, they also have an interest in ending misconduct by other officers that bring controversy and discredit to their own professional-level efforts. In theory, they have an interest in separating from the department any officer whose performance record indicates consistent inability to meet professional standards. In theory, they have an interest in effective Early Intervention (EI) systems that can help officers correct performance problems in an informal manner. One of the challenges in the future of police accountability is in mobilizing these rank and file interests into the development of reasonable and effective accountability measures. The development of the Phoenix discipline matrix suggests that this is not a completely far-fetched idea.

THE ROAD AHEAD

Basic Conclusions

Discussions at the conference permit us to draw three preliminary conclusions about the concept of a discipline matrix.

(1) A discipline matrix is a potentially useful toll for enhancing accountability within law enforcement agencies;

(2) A properly designed matrix has the potential for ensuring greater consistency in discipline, a result that is in the interest of both management and rank and file officers;

(3) The successful implementation of a discipline matrix is by no means guaranteed. Many of the precise details of an ideal discipline matrix need to be worked out. This includes both the substantive content of a discipline matrix and the process for implementing and maintaining a discipline system based on a matrix.

Information Needs

At the same time, there is much that we need to learn about discipline matrices and their operation.

(1) How prevalent are discipline matrices in American law enforcement agencies?

(2) How do they compare in terms of (a) levels of discipline for particular acts of misconduct?; (b) increasing the level of discipline based on an officer's prior discipline history? (c) considering other aggravating or mitigating factors?

(3) How do commanders and rank and file officers feel about the use of the discipline matrix in their departments?

(4) What problems have been identified with either the substance or the implementation of discipline matrices, and what are the possible solutions to these problems?

Issues for Discussion

Several issues merit further discussion among law enforcement professionals and other stakeholders in the area of police accountability.

- (1) What is the appropriate level of discipline for particular acts of misconduct?
- (2) What increases in discipline are appropriate based on an officer's prior disciplinary history?
- (3) What mitigating or aggravating factors, if any, should be considered in determining the appropriate level of discipline in a particular case?
- (4) Is it appropriate for the law enforcement profession to recommend the concept of a discipline matrix as a best practice?
- (5) Would it be appropriate for the law enforcement profession to develop recommended levels of discipline for particular acts of officer misconduct?

Action Issues

- (1) The law enforcement profession should undertake a consideration of the concept of the discipline matrix as a possible best practice. This consideration should involve a series of conferences and workshops devoted to the issue.
- (2) The U.S. Justice Department should provide assistance to professional associations and state and local agencies regarding the development of discipline matrices.
- (3) The academic community should support the development of discipline matrices through research on the prevalence, nature, and impact of discipline matrices.

REFERENCES

1. *Allen v. Oakland*, Settlement Agreement, provides, “X. Personnel Practices B. Consistency-of-Discipline Policy. OPD shall revise and update its disciplinary policy to ensure that discipline is imposed in a fair and consistent manner.”
2. A report to the Los Angeles Police Commission following the Rampart Scandal found arbitrary and inconsistent discipline to be a major problem. Los Angeles Police Commission, *Report of the Rampart Independent Review Panel* (Los Angeles, November 2000), pp. 97, 105.
3. Bureau of Justice Assistance, *National Assessment of Structured Sentencing* (Washington, DC: Government Printing Office, 1996). Robin Lubitz and Thomas W. Ross, *Sentencing Guidelines: Reflections on the Future* (Washington, DC: U.S. Justice Department, 2001). Available at www.ncjrs.org, NCJ 186480.
4. See, for example, the Madison, Wisconsin, Police Department *Police Policy Manual*, Section 4-1400 ADMINISTRATION OF SANCTIONS/DISCIPLINE. “Some of the primary tasks of supervisors are encouraging, counseling and, if necessary, disciplining or correcting the behavior of employees. The purpose of this is to direct individual effort into effective and productive action.” Available at www.ci.madison.wi.us/police
5. Virtually all police department Use of Force policies today begin with the statement that the primary goal of the agency is the protection of life. See, for example, the Kansas City, Missouri, Police Department Use of Force Policy: “This department recognizes and respects the value and special integrity of human life. Available at www.kcpd.org.
6. Criticism of police departments’ handling of citizen complaints has been reported by numerous commissions since the Kerner Commission Report in 1968. National Advisory Commission on Civil Disorders, *Report* (New York: Bantam Books, 1968). Among the more recent criticisms on this point, see Los Angeles Police Commission, *Report of the Rampart Independent Review Panel*, pp. 82-84.
7. Recommendation 4.7. Los Angeles Police Commission, *Report of the Rampart Independent Review Panel*, p. 105.
8. The National Center for State Courts (www.ncsconline.org) has wrestled with this issue with regard to court practices. See:

“Standard 3.3: Court Decisions and Actions

“Trial courts give individual attention to cases, deciding them without undue disparity among like cases, and upon legally relevant factors.

“Commentary. Standard 3.3 requires that litigants receive individual attention without variation due to judge assignment or legally irrelevant characteristics of the parties, such as race, religion, ethnicity, gender, sexual orientation, color, age, handicap, or political affiliation. Persons similarly situated (e.g., criminal defendants faced with or found guilty of similar offenses and having similar criminal histories) should receive similar treatment. The standard further requires that court decisions and actions be in proper proportion to the nature and magnitude of the case and to the characteristics of the parties. Variations should not be predictable due to legally irrelevant factors, nor should the outcome of a case depend on which judge within a court presides over a hearing or trial. The standard refers to all decisions, including sentences in criminal cases, the conditions of bail, the amount of child support ordered, the appointment of legal counsel, and court-supervised alternatives to formal litigation.”

9. The best review of the issues in sentencing policy is Michael Tonry, Sentencing Matters (New York: Oxford University Press, 1996).

10. The author of this report pointed out at the conference that each month he is able to read newspaper reports of disciplinary actions taken against doctors and other health care professionals by the Nebraska Department of Health and Human Services. The reports include the names of the individuals disciplined, the nature of their offenses, and the discipline imposed. Publication of similar details about police department disciplinary actions are forbidden by the police union contract.

11. Samuel Walker, Early Intervention Systems for Law Enforcement Agencies: A Planning and Management Guide (Washington, DC: Department of Justice, COPS Office, 2003). Available at www.cops.usdoj.gov, or www.ncjrs.org. NCJ #210245

12. U. S. Department of Justice, Principles for Promoting Police Integrity (Washington, DC, 2001). Available on the web at www.ncjrs.org NCJ # 186189.

13. The “code of silence” and the failure of witness officers to report misconduct by other officers has been consistently identified as a major problem in police accountability. For one example, see Los Angeles Police Commission, *Report of the Rampart Independent Review Panel*, pp. 100-103.

14. Cassia C. Spohn, *How Do Judges Decide: The Search for Fairness and Justice in Punishment* (Thousand Oaks, CA: Sage Publications, 2002).

15. The federal sentencing guidelines state explain that “To achieve this end, Congress first sought honesty in sentencing.” *Federal Sentencing Guidelines*, Chapter I, Part A. Section 3.

16. The Minnesota Sentencing Guidelines state that “Because the capacities of state and local correctional facilities are finite, use of incarcerative sanctions should be limited to those convicted of more serious offenses or those who have longer criminal histories. To ensure such usage of finite resources, sanctions used in sentencing convicted felons should be the least restrictive necessary to achieve the purposes of the sentence. The guidelines are available at www.msgc.state.mn.us.

17. Information on the Minnesota Sentencing Guidelines is available on the Sentencing Guidelines Commission web site: www.msgc.state.mn.us.

18. The federal sentencing guidelines provide that “Upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense, the court may depart from the guidelines.” Chapter 5, Part K, Section 1.1.

19. Ashcroft, Memo, July 28, 2003. Ashcroft, Memo, September 22, 2003. “Ashcroft Limiting Prosecutors' Use of Plea Bargains,” *The New York Times*, September 23, 2003.

20. The National Center for State Courts (NCSC) has a recommended standard for bail setting. It is available on the NCSC web site: www.ncsconline.org.