



What we wish would be the Chief's New Year's resolution

Starting a new year always inspires everyone to look back at the old year and try to evaluate what went right, what went wrong and what can be done to improve our lives in the coming year. Improvements usually take the form of New Year's resolutions.

Looking back at last year on the officers' rights front reveals one disaster after another coming from the Department, chiefly Internal Affairs (mostly management decisions, the overwhelming majority of IA investigators in the trenches do a good job). For those of you who do not know how hard the League fights for your rights, I will give a short recap. Unfortunately, some things I cannot mention because they have not yet lost their confidentiality.

Conditional Official Reprimands began to be imposed on officers even though they did not agree with the conditions ("Warning Bells," *Thin Blue Line*, February 2011), thus depriving the officers of a meaningful hearing. The League has filed a lawsuit over this issue. Internal Affairs then refuted the "gotcha policy" as outdated Bratton rhetoric ("Warning Bells," *Thin Blue Line*, March 2011). There were multiple instances of Internal Affairs refusing discovery and blocking employee representatives from doing their job of representing officers. The League filed another lawsuit against the Department for interfering with officers' rights ("Warning Bells," *Thin Blue Line*, June 2011).

Even when League representatives won motions in Board of Rights and administrative appeal hearings, Internal Affairs would bring motions to reconsider the decision with the result that the decisions would be reversed, or in one case when the Board stuck to its guns, the Chief overruled them ("Warning Bells," *Thin Blue Line*, July 2011). This resulted in the League filing two more legal actions in court. Because of the repeated interferences by Internal Affairs in the hearing process, the League negotiated civilian hearing officers with the belief, or at least the hope, that it would be more difficult for the Department to influence the hearing officer's decisions ("Warning Bells," *Thin Blue Line*, August 2011). This, too, has now gone to a hearing because the League contemplated downgrade hearings to be part of the agreement, but the Department disagrees.

And finally, League attorneys were barred from Boards of Rights to represent officers who had been ordered to appear to testify by Internal Affairs even though their testimony could lead to misconduct charges. And yes, another lawsuit was filed by the League ("Warning Bells," *Thin Blue Line*, December 2011). These articles are available for review at www.warningbells.com if you missed them.

In short, it was not a good year for officer representation. It was a good year for the legal profession, however, since half a dozen lawsuits had to be filed. And guess what? Even if the League cannot get a judge to interfere with the discipline process and make things right, the fight will go on. Just because the Department has the power to do something does not mean that it should be done! The process should be fair. Period. And when it isn't, the Chief of Police and the Police Commission should be upset. After all, it is their employees who are being abused and those employees should be able to look to them for protection. The League will fill that vacuum when necessary, and judging from the preceding paragraph, it is more than necessary.

Why is this happening? Power play, I guess, but I really don't know. This appears to be the playbook. Rule No. 1: When the Department decides you are guilty, you are guilty. Rule No. 2: When you are not guilty, see Rule No. 1.

I believe that problems are increasing because the lack of respect for the right to representation apparent in the upper ranks of the Department is filtering down through the ranks. That is why we are having incidents where personnel complaint investigators are ordering officers in for interviews with no regard for the schedule of the representative and refusing to move the interviews (even for two hours, in one case) to allow the officer the representative of his or her choice. That is why uncivil conduct occurs in some interviews. That is why discovery is denied to officers who are trying to defend themselves in hearings.

There is a solution. The Chief of Police has to take charge and announce that he believes in a fair discipline system in writing. Let the lower ranks know that fairness is something that he will enforce and that the right to representation is inherent to fairness. Chief Gates issued such a statement in 1980 concerning defense representatives. Of course, if Internal Affairs is discounting Bratton's policies already, it goes without saying that Gates' utterances are toast. But officers need the assurance from their leader that when he disciplines someone, he is concerned that he is right and, therefore, does not fear their testing of the evidence.

I would propose something similar to the below list. It balances the value of the disciplinary system with a respect for the officer's rights. Yet, it also recognizes the Department's right to investigate and arrive at a prompt decision.

The Chief *should* say this to the officers of the Los Angeles Police Department:

1. For almost 80 years, members of the Los Angeles Police Department have enjoyed, and often taken for granted, the protection of the Los Angeles City Charter and similarly the Public Safety Officers Procedural Bill of Rights in the Government Code. These pieces of legislation strive to ensure that your treatment under the discipline system will be fair. I embrace this concept. I believe that a strong discipline system is necessary for the proper functioning of the Department, but a fundamental part of that system must incorporate fairness to the officers involved as well as to the public.

2. As the Chief of Police, I want the officers of this Department to know that the discipline system is aboveboard and fair. As required by law and ethics, personnel investigations will be thorough and fair both to the public and to the officer. After the facts are in, the dispositions will be well-thought-out and equally fair, and it is important that the officer and the public believe this is true. Proper discipline stimulates harmony and consistency within an organization and facilitates the coordination of effort. It is lubrication for the machinery of Departmental organization. Officers must know that they will receive encouragement and approval for acting correctly, as well as just criticism and penalties for acting wrongly. To that end, the officer should have access to the documents concerning the investigation when defending himself or herself to the widest latitude consistent with protecting the safety of confidential sources of information.

3. An important part of the disciplinary system is the right to representation. The Department has long recognized this right and appreciated its effect on an officer's favorable view of the necessity and value of the disciplinary system. With the exception of the usual provisions under *Miranda* in criminal investigations, investigators are not obligated to inform officers of their right to a representative. However, in the interest of saving time and appearing fair, it's a good practice to remind officers that they are entitled to a representative when called to make the interview appointment; this is especially true for new officers who might not know of their right to representation. An officer should never be told that he or she doesn't need a representative, or that he or she doesn't have a right to a representative. Strive within the necessities of the investigation to accommodate an employee's right to representation.

4. It is the position of the Chief of Police that those who participate as employee representatives are to be given positive recognition for their key role in the disciplinary system, rather than being dissuaded or penalized in any way for their participation. Representatives should not be interfered with, restrained or discouraged when exercising their

duties in representing an officer. That being said, the Department has an equal right to conduct a prompt and fair investigation and a representative does not have the right to improperly interfere with that process.

5. It is important that personnel complaint investigations be promptly done. The goal is to accomplish the interview within 10 days of the officer getting notice that he or she needs to contact the investigator. Typically, upon receiving this notice, the officer will contact the League and obtain an attorney/representative. Personnel complaint investigators can facilitate the scheduling of a mutually convenient interview by dealing directly with the attorney/representative because it is the investigator and the attorney who have the most complicated schedules. However, if there are indications that either the officer or the attorney/representative are not dealing in good faith, then an ordered interview at a specific date and time is appropriate with instructions to the officer that he or she is responsible for bringing an available representative. Similarly, even when not operating out of bad faith, an attorney/representative may not be available for more than two weeks, and the investigator would have the option of forcing the interview at an earlier time if that is important to the investigation.

6. The location of the interview also sometimes becomes an issue. Generally, the goal when interviewing an officer is to have him or her feel at ease. Consequently, conducting the interview at a reasonable location of the officer's choice should be considered. This may be the officer's division, the attorney/representative's office, the League or at an Internal Affairs office location. Investigative demands may make a particular location preferable, but in the interest of appearing fair, the convenience of the investigator should be subordinate to the general rule of accommodating the officer's preference. Again, if there are indications of bad faith in dealing with this issue by the officer or the attorney/representative, then a location must be selected and the officer ordered to appear at a specific date and time.

7. Recognize that the duties of a representative are listed in the Memorandum of Understanding (MOU) and that MOU sections are to be complied with. Article 10.2 of the MOU lists the representative's duties as conducting a pre-interview consultation with the employee to ascertain if the employee understands the allegations and to be present during the interview for purposes of consultation, advice, clarification, ensuring procedures are followed and ensuring the employee's rights are not violated. Interviews should start on time, but be aware that if the allegations or documents are not given to the officer or his/her representative in advance, expect that time will have to be taken for the representative to comply with the mandates of the MOU. If the allegations and documents you wish to use in the interview are provided to the officer in advance, it would be reasonable for the personnel complaint investigator to expect the officer to arrive at the interview prepared to start at the agreed upon time.

These pronouncements would go a long way toward reducing the clashes at the investigative level of personnel complaints and lessening an officer's natural fear of the disciplinary process. Furthermore, discovery disclosure often results in fewer hearings, either from the officer being convinced that the Department is right, or the Department recognizing that there has been an error in the decision to find the officer guilty. Either result is a win for both the officer and the Department.

If the chief makes the New Year's resolution to announce and enforce the above principles in writing, I will have nothing to write about in 2012 (well, about Internal Affairs anyway).

Be legally careful out there.