The Failure of Supervision: Is It The Cause of Officer Failures?

Description

Ensure Supervisory Ideals are Practiced as Well as Preached

The death of Tyre Nichols on January 7, 2023, is a tragedy that resulted from being severely beaten by five officers from the Memphis Police Department. The tragedy is compounded by the fact that it was entirely preventable. From the outside looking in, the question that should be asked is 'were there any failures within the Memphis Police Department that allowed these officers to act unchecked and unrestrained, creating an atmosphere ripe for misconduct?' Despite the actions of the identified few, we all know that there are hundreds of Memphis officers who follow their Oath of Office every day.

The encounter with Mr. Nichols began as a traffic stop for alleged 'reckless driving.' An initial altercation led to Mr. Nichols fleeing on foot and resulted in a horrific attack at the hands of the five officers, who were all members of the Memphis Police Department's SCORPION unit. As a result of the attack and subsequent death of Mr. Nichols, the officers have been charged with second-degree murder, aggravated assault, two charges of aggravated kidnapping, two charges of official misconduct, and official oppression. The officers were fired by the department for violating Memphis Police Department policies, including the use of force, the duty to intervene, and the duty to render aid.

The Memphis Police Department's SCORPION Unit (Street Crimes Operations to Restore Peace in Our Neighborhoods) was composed of three teams of 30 officers who targeted violent offenders in areas with a high-crime rate. These units are often referred to as 'saturation units' or 'hot spot policing,' where departments focus on specific geographical areas plagued by chronic crime in an effort to reduce overall crime and violent offenses. The most basic purpose of the unit is to decrease or deter crime in that particular area through visibility. Surging homicide rates within the City led to the creation of the SCORPION Unit in November 2021. On January 29th, the Memphis Police Department announced that it would "permanently deactivate" its SCOPRION Unit.

Historically, we have seen issues surrounding these units when officers within such units are allowed to act unsupervised and there is no accountability. Unfettered policing tactics allowed within a specialty unit, or anywhere within the department, often leads to the creation of separate 'rules' and 'codes of conduct,' which may result in the concept of 'street justice,' resulting in continued occurrences of unconstitutional acts against citizens. Over the past week, various publications have cited examples of specialized units where such outcomes were found. The Detroit Police Department's STRESS Unit (Stop the Robberies, Enjoy Safe Streets), introduced in 1971, deployed undercover teams for surveillance and decoy operations to deter street crime, but was disbanded when it was determined that the Unit was unjustly targeting black individuals. In the 1990s, it was found that various members of the Los Angeles Police Department's CRASH Unit (Community Resources Against Street Hoodlums), initiated to combat gang-related crime, were involved in corrupt behavior, including stealing and selling drugs. It was determined that the CRASH Unit had developed a culture of its own, exhibiting actions similar to the very gang activities they were tasked to eradicate. This was able to occur because the members of this unit were able to insulate themselves from supervision. In 2017, eight members of the Baltimore City Police Department Gun Trace Task Force (GTTF) were charged with racketeering,

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robbery, extortion, and overtime fraud.

One primary reason for the occurrence of unconstitutional actions against citizens is the lack of supervision and leadership oversight within our police agencies. When departments become complacent and careless in their oversight of their members, often because the members' actions result in successful outcomes (such as more arrests and a decrease in crime in the area), the units may create their own set of rules with the mentality that "the end justifies the means". Although a nationwide officer shortage, including a shortage of supervisors, has created a recipe for disaster, it cannot be used as an excuse for a police department's failure to actively and appropriately supervise its members.

All law enforcement agencies must ensure close and effective supervision of their members. As this firm has repeatedly stated, 'Your police department is only as strong as your weakest supervisor.' This means that if supervisors are not holding officers accountable in their day-to-day operations, the atmosphere becomes one in which misconduct is allowed to thrive. There cannot be a disconnect between the department's written policies and its supervisors enforcing those policies. When officers are left unchecked, an environment of widespread and consistent unconstitutional policing may ensue. When officers lack supervision, certain officers may begin to believe that the supervisors tacitly approve of their actions, the school of thought that clings to the concept that their actions are justified.

Close and effective supervision has never been more important than it is today. As states pass police reform legislation, often creating new policies or stricter policies, supervisors must ensure their officers understand and follow all department rules and regulations and are held accountable for any violation of department policies. Departments must ensure that their supervisors are properly supervising and disciplining their officers, that all complaints or allegations of misconduct are properly investigated, and that departments regularly and properly train their officers and supervisors. We find affirmative links between the inaction on the part of the supervisor and the constitutional deprivation suffered by citizens.

Over a decade ago, the Department of Justice provided the following parameters for 'close and effective' supervision. These DOJ parameters require supervisors to: (a) respond to the scene of certain arrests; (b) review each arrest report; (c) respond to the scene of uses of force; (d) investigate each use of force; (e) confirm the accuracy and completeness of officers' written reports; (f) respond to each complaint of misconduct; (g) ensure officers are actively working to engage the community and increase public trust and safety; (h) provide counseling, redirection, and support to officers as needed; and (i) ensure supervisors are held accountable for performing each of these duties. (See *United States v. Town of East Haven*, et al., Case No. 3:12-cv-1652 (AWT), Agreement for Effective and Constitutional Policing dated 11/20/2012, ¶ 165)

Close and effective supervision should be focused on all members of the department, including members of created specialty units. Attorneys Ben Crumb and Antonio Romanucci, attorneys for the Nichols' family, released the following statement: 'We hope that other cities take similar action with their saturation police units in the near future to begin to create greater trust in their communities.' . . . 'We must keep in mind that this is just the next step on this journey for justice and accountability, as clearly this misconduct is not restricted to these specialty units. It extends so much further.'

Having conducted Supervisory Liability training and written multiple articles[1], my experience has led to the conclusion that supervision is the key ingredient to ensure effective constitutional policing. The challenges in recruitment and retention are multiplying the risk faced by the law enforcement industry.

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Just ask yourself: Are your supervisors properly trained to handle their responsibilities? There were many suggestions to fix some of the supervision issues within law enforcement, but the overarching themes are simple. There needs to be more consistency in supervision, better training for future supervisors, and the need to slow down the promotion process so that supervisors have time to be properly trained before rushing through the ranks. Many entities, including Daigle Law Group, provide supervisory training to enhance the skillsets and capabilities of those we rely on to ensure officers are doing things correctly. Have you invested in ensuring your supervisors are ready for the challenges they face daily?

[1] Your Department Is Only as Strong as Your Weakest Supervisor – DLG Learning Center

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