

Police Officer Discipline – Standards to Consider



Legal Officers Section
International Association of Chiefs
of Police



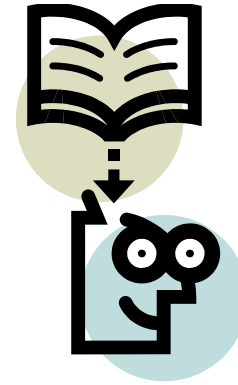
Orlando, FL 2014

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Program Description



Part One – Craig Ferrell

- Establishing ethical norms and expectations

Part Two – Karen Kruger

- Reacting when correction is needed

Part Three – Jeff Noble

- Determining what discipline is appropriate

Part One - Setting the Standards

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Craig Ferrell

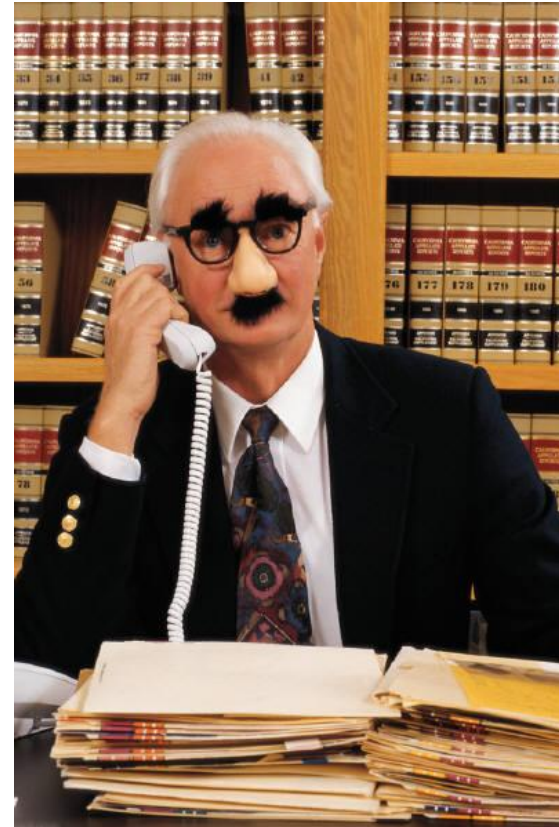
Why attend this class?

1. *Need to get 1.5 hours of training*
2. *Need to let my Chief think I'm really motivated*
3. *I need a nap*
{YOU'RE IN THE WRONG CLASS }
4. *Remind us of some of the basics*
5. *Look at some recent case law*
6. *"Man has a natural aptitude for virtue; but the perfection of virtue must be acquired by man by means of some kind of training."* St. Thomas Aquinas



Legal Disclaimer ☺

- **This is training, not legal advice**
- **For advice regarding specific facts patterns, suggested actions, or ongoing cases, please consult with your legal counsel**



Why go over the basics?

Trying to Resist Arrest



By the Discipline Police ...

Well...Because Police Officers Occasionally Do _____?





IS IT LOADED??

HOLD ON...
LET ME TAKE A LOOK

Ethical Standards

1. All police chiefs want to communicate to their employees some sort of ethical standard.
2. But how does a chief create a culture that not only embraces ethics and professionalism but also establishes these principles in an infrastructure that will be in place long after the chief leaves?
3. This is one of the most vexing problems chiefs face at the start of their careers and throughout their tenures as leaders.

- Unfortunately, most policies are written by lawyers, for lawyers. For the average officer, this generally means that these policies are far too long and wordy to remember.
- Yet most lawyers want to make sure that a department's policies will not only conform to constitutional mandates but, in the case a police officer is challenged in court, will also convey and convince a jury that the city is following best practices consciously and deliberately sensitive to an officer's training and supervision needs.
- So how does one meet this seemingly conflicting problem of keeping policies simple, clear, and concise while also maintaining policies that will survive the challenges of litigation?

Where to Start?

The first step in creating an ethical behavior policy is to review your department's current policies and procedures and determine if they are *updated, relevant, and have been reviewed recently* by the city attorney.

After Your Review is Complete and Modifications Are Made

Begin by preparing an attention grabbing message that explains that you are pleased overall with the guidelines currently in place to assist employees in understanding their assigned tasks and the department's expectations.

Your message must go on to remind employees of the department's dedication to the concepts of community oriented policing and its strong philosophy concerning individual ethics.

Let Officers Know You Understand the Demands They Face

August Vollmer, a pioneer in police professionalism, once said that The public expects police officers to have the:

1. “wisdom of Solomon;
2. the courage of David;
3. the strength of Sampson;
4. the patience of Job;
5. the leadership of Moses;
6. the kindness of the Good Samaritan;
7. the strategic training of Alexander the Great;
8. the faith of Daniel;
9. the diplomacy of Lincoln;
10. the tolerance of the Carpenter of Nazareth;
11. and, finally, an intimate knowledge of every branch of the natural, biological, and social sciences.”

So the Public Wants Perfection

BUT

Police Officers, like everyone else, are human and thus make mistakes.

So give them a foundation that is based on the ethical principles you want them to follow.

They Must Be:

CLEAR, CONCISE, & EASY TO REMEMBER

The Houston, Texas, Police Department did this a few years ago by coming out with a training bulletin that simply stated:

*No Lying, Cheating,
or Stealing*

By putting the rules in clear, concise, everyday English, you will construct the department's best known and most easily recited rule.

When an officer is interviewed by your local news media or is on the stand in court and is asked what policy covers ethical guidelines, he or she can simply say:

“I don't remember the exact policy number, but you're talking about our 'rule against lying, cheating, and stealing.' ”

Ethics remains the greatest training and leadership challenge facing police administrators today

With such high societal expectations, whenever and wherever chiefs can summarize a policy in five to seven words (as was done in Houston), they should do so.

This will help you create a Climate of Integrity and a Culture Based on Ethical Standards that Officers will Accept, Know and Won't Forget

Famous Saying: “Keep It Simple Stupid”

Often, the longer and more legalistic a policy is, the more likely the officers will look for a way to justify their actions as falling within the policy.

On the other hand, when a policy is simpler, the troops are more likely to buy in and hold themselves and fellow officers accountable.

FBI's Three Steps to Integrity (Modified Some by Instructors)

- 1. Teach What is Right**
- 2. Do What is Right
(Even when it costs you)**
- 3. Do it in the Open for Everyone to See**

(Remember you are the representative for your agency of all the traditions, the accomplishments, and the very reputation of your Police Department)

Further Progress through Expanded Training

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Basic law enforcement training requirements were established in the 1950s. Today, every jurisdiction mandates peace officer standards and training (POST) or POST-like programs, although the requirements vary considerably from state to state. What seems to be emerging is that each state either has or is now incorporating ethical training mandates into such training programs.

As several IACP articles have stated in the past that ethics training has been integrated into most law enforcement training programs, and calls for expanded training in police ethics are being heard from many corners. A comprehensive resource for enhancing awareness for law enforcement ethics, called ***the Ethics Toolkit***, is available from the IACP and the federal Office of Community Oriented Policing Services at: <http://www.theiacp.org/Ethics-Toolkit>



Recruit
Training

Field
Training
Officer

Roll-Call
Training

In-Service
Training

Achieving Buy-in

One of the easiest means to gaining an officer's acceptance of the policy is to **explain how and why it is in an officer's best interest to follow the ethical standard.**

Start by explaining the obvious: An officer being sued is a reality and ending up in the courtroom is an occupational hazard in U.S. law enforcement.

If an officer does not follow departmental policy he will often times not be eligible for the defense of Qualified Immunity.....and have to pay \$\$\$\$\$\$\$\$\$\$\$\$\$\$

Training Nugget

If you treat others the way you would want them to treat you if your roles were reversed, then even if you don't happen to remember your department's rules or how you've been trained to handle a matter, you will be dealing with the situation in a legally defensible manner.

So follow the Golden Rule found in Luke 6:31 and "Do unto others as you would have them do unto you."

If officers act in this way, they will be entitled to qualified immunity in any civil rights lawsuit (and thus not be personally liable for injuries or damages even for a mistake made in the way the situation was handled, as the officer would have been acting in an objectively reasonable manner with the good faith belief that the action was both lawful and proper).

Discipline That Works

Explain

**Rules and
Regulations**

General Orders
Rules & Regulations
Supervision

Focus

FACTS

- 1. Who**
- 2. What**
- 3. When**
- 4. Where**
- 5. Why**
- 6. How**

Golden Rule

ETHICS



**Treat People
Ethically**

Part Two - Purpose of Discipline

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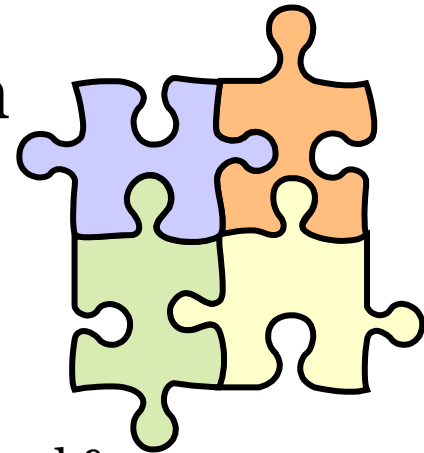
Karen J. Kruger

Workplace Discipline

- *“Many managers believe the word discipline has to do with punishment. Actually, it doesn't. Discipline pertains to improving employee performance through a process of assisting the employee (at least at first) to learn so he or she can perform more effectively.”*
- ***Five Sins Of Discipline* by Robert Bacal**

Bacal's Issues

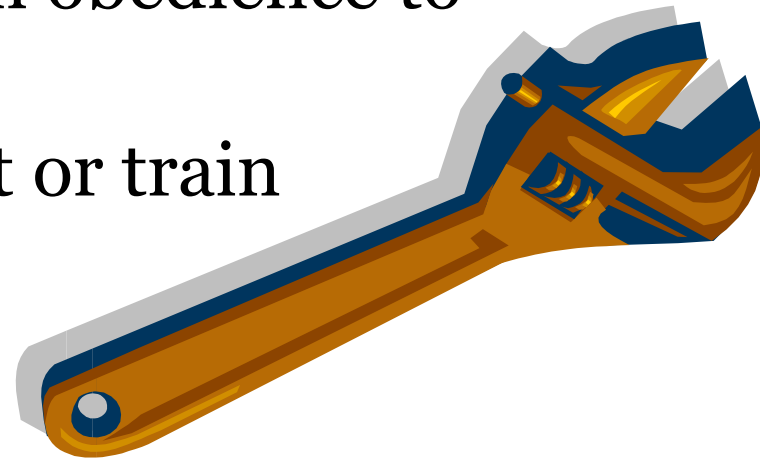
- Error #1: Discipline As Punishment
- Error #2: Discipline As An I-You Confrontation
- Error #3: Too Late, Too Late
- Error #4: A Non-Progressive Approach
- Error #5: Missing Root Causes



- The Performance Management & Appraisal Help Center –Bacal & Associates

Definition

- Training intended to elicit a specified pattern of behavior or character
- Behavior that results from such training
- A condition of order based on obedience to authority
- Punishment meant to correct or train



Progressive v. Corrective

- Expectation that negative consequences will lead to positive results
- Negative sanctions will only succeed when:
 - the employee values what is taken away or fears what is threatened;
 - the employee sees the sanction as fair, and consistent with the "offense;"
 - the employee acknowledges and respects the right of the manager to impose the sanction.

Discipline as punishment

- Unless these three elements are in place, employees respond to punishment with resentment, and counter-attacking, either covertly or overtly.



Corrective Discipline

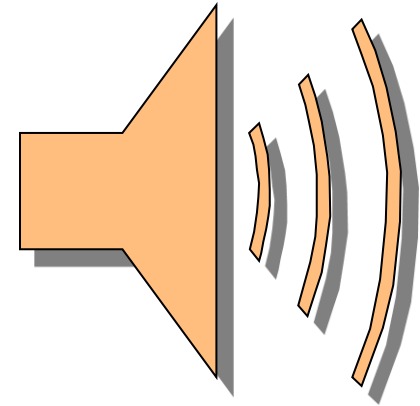
- Individual values systems are set
- Supervision can provide (1) decision-making tools and moral support and (2) deterrence from fear of reprisal
- Discipline, in this approach, focuses on what the employee must learn in order to bring his/her behavior in line with the needs and expectations of the organization. (Bacal)

Seeking to Improve Behavior

- Some managers see discipline as something done TO an employee, not something done *with* an employee
- Work with employee to identify causes of problematic behavior, and to take action to correct those problems.
- Be aware that discipline involves use of supervisory power over employee

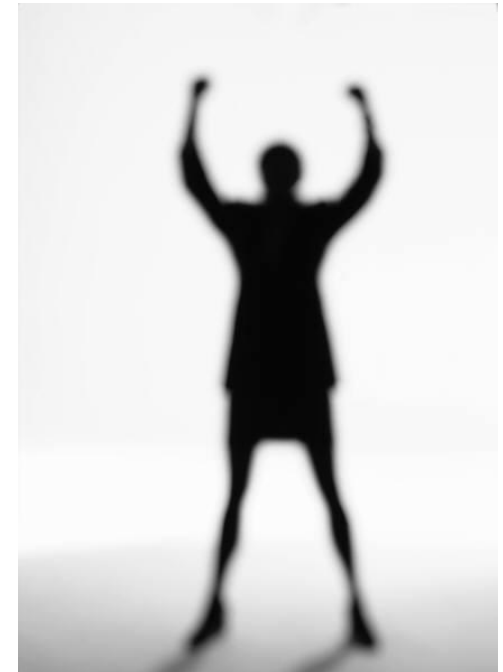
Precursors of Misconduct

- Overinflated egos, arrogance
- Unchecked sexual harassment
- Financial problems
- Poor personal work ethics
- Substance abuse
- Time & attendance abuse
- Family tensions
- Willingness to deceive



Other Concerns

- Nature of peer pressure in law enforcement workplace
- Culture of the agency
- Generational differences



Failing to Put Employees on Notice

- Delay in addressing misconduct is problematic in that it sends a message that undesirable behavior will be accepted or even not noticed.
- Makes constructive interaction more difficult.
- It is only fair to put employees on notice of inappropriate behavior or actions in the workplace.

Recognizing Root Causes

- Institutional Ethics
- Personal Work Ethics
- Personal Ethics
- Lack of training
- Character Flaws
- Personal problems: substance abuse, financial problems, family tensions, medical concerns



Other Causes

- Employee lacks skills or training.
- Employee has personal psychological/medical problems.
- System in which s/he works is not set up to engineer success, e.g. wrong person/wrong job.

Career Saving Tools

- Do's and don'ts versus why and how to make decisions.
- Peer pressure awareness & avoidance.
- Institutional support – training, mentoring, providing good examples.
- Communicating personal limits.
- Engage in critical thinking.
- Awareness of consequences.

Institutional “Branding”

- Establish pride in employees in being part of the agency and want to protect reputation.
- Take meaningful measures:
 - Prevention
 - Fair and prompt resolution of problems
 - Support and assistance when needed
 - Deterrence measures in place

Part Three - Determining the Level of a Disciplinary Action

Jeff Noble

Elements to Consider

1. The severity of the offense
2. The status of the employee (officer-supervisor-manager)
3. The employee's prior disciplinary history
4. The employee's work record (length of service, performance)
5. The employer's past practice of dealing with similar infractions

Elements (Continued)

6. The impact of the employee's conduct on the organization
7. Whether warnings were given
8. The impact of the employee's actions upon the reputation of the agency
9. The consequences of the employee's conduct
10. The potential for the employee's rehabilitation

Aggravating Factors

1. Pattern of misconduct
2. Prior warnings or discipline for same or similar misconduct
3. Officer refused to acknowledge the wrongfulness of his/her acts
4. Officer did not fully cooperate with the investigation
5. The violation occurred or was repeated over a significant period of time (even if minor)

Aggravating Factors (Continued)

6. The act committed was deliberate, willful or reckless
7. Degree of risk of harm to others
8. High level of vulnerability of the victim
9. Officer used his/her position to engage in the misconduct
10. There was a pecuniary gain or self-benefit to the officer

Mitigating Factors

1. Mistakes
2. Apology/accepts responsibility
3. Absence of willful or reckless misconduct
4. Minimal or no demonstrated harm
5. Potential impact of remedial measures
6. Absence of prior misconduct
7. Isolated incident
8. Fully and completely cooperated with the investigation

Conclusion

- All police officers will make mistakes
- Management must evaluate each officer, each incident on its own
- Penalty matrices may be inconsequential or misleading
- Management must provide due process and exercise rational discretion in imposing punitive measures
- Some offenses render officer unfit for service