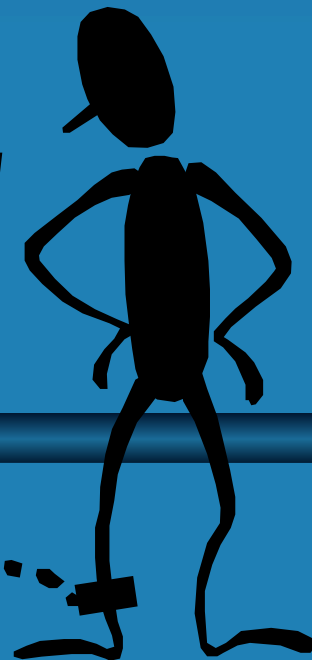


**AVOIDING EMPLOYMENT LAW  
LIABILITY.....REALLY**



**LEGAL OFFICERS SECTION PRESENTATION  
IACP ANNUAL CONFERENCE 2005  
MIAMI, FLORIDA**



# **Presenters**

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**Jack Collins , General Counsel,  
Massachusetts Chiefs of Police  
Association**

**Jody Litchford, Deputy City Attorney, Orlando,  
Florida**

**Martin Mayer , General Counsel, California  
Police Chiefs Association**

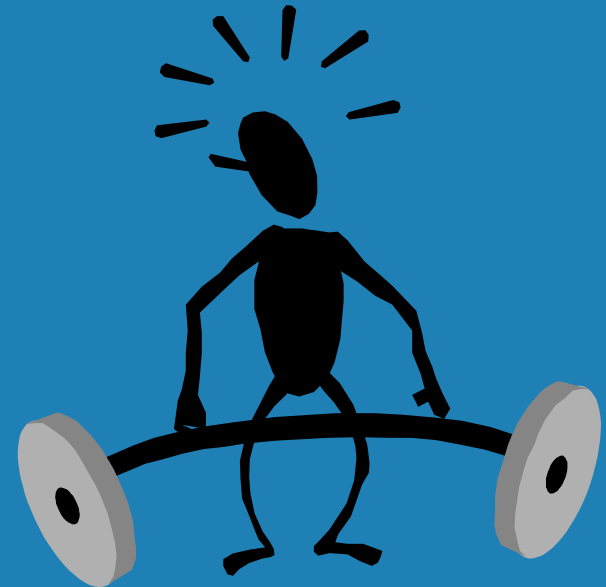
**Beverly Ginn, Legal Advisor, Tucson Police  
Department**

# **JACK SAYS: RECRUITMENT AND TESTING**

**USE STANDARD, VALIDATED FORMS AND TESTS.**

**GET THEM APPROVED BY YOUR STATE AGENCY  
WHENEVER POSSIBLE.**

**USE AN ASSESSMENT CENTER.**



# **JACK SAYS: DISABILITY LEAVE**

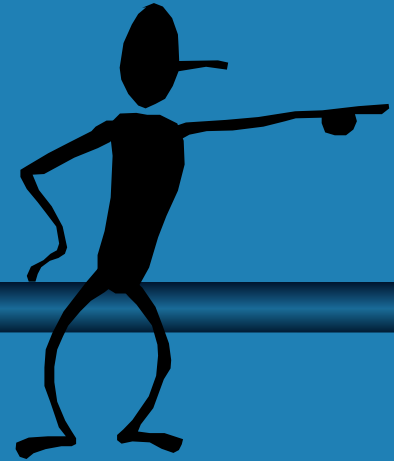


**LEAVE POLICIES SHOULD HAVE UNION BUY-IN AND STATE AGENCY APPROVAL (IF POSSIBLE).**

**HAVE MATERNITY, REASONABLE ACCOMODATION AND FMLA POLICIES IN PLACE.**

**KNOW WHAT THE LAW REQUIRES BEFORE YOU SPEAK.**

# **JACK SAYS: RETALIATION**



**KNOW WHAT THE WHISTLEBLOWER  
PROTECTIONS ARE IN YOUR JURISDICTION**

**WHEN AN EMPLOYEE DOES SOMETHING TO  
WHICH YOU HAVE A NEGATIVE REACTION,  
COUNT TO ONE HUNDRED BEFORE YOU SPEAK  
OR ACT.**



# **JACK SAYS: SEXUAL HARASSMENT**

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**TRAIN EVERYONE.**

**ADOPT AND USE A SEXUAL HARASSMENT POLICY.**

**INVOLVE THE UNION.**

**PRACTICE MANAGEMENT BY WALKING AROUND**



# **JODY SAYS: Fair Labor Standards Act**

## **Properly classify your employees**

- Review sergeants and lieutenants**
- Review discipline policies**

## **All work “suffered or permitted”**

- Review offsite work**
- Policy alone is insufficient**



# **JODY SAYS: FLSA (continued)**

**Include “safe harbor” language in your policies to ensure that you continue to meet the salary basis for exempt employees.**

**- places employees on notice**





# **JODY SAYS: Due Process Issues**

**DISCIPLINE PROCESSES**

**WHENEVER THERE IS A PROPERTY OR LIBERTY  
INTEREST**

**AN OUNCE OF PREVENTION...**



# **MARTIN SAYS:**

## **Administrative Investigations**

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**Remember the basic due process requirements**

**Meeting the just cause requirement**

**Implement and use an early warning system**

**Remember *Brady v. Maryland* when making disciplinary decisions**



# **MARTIN SAYS: Training obligations**

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**Deliberate indifference**

**Electronic and/or impact weapons**



# **BEV SAYS: APPLICATION PROCESS**

**MAKE SURE EACH APPLICANT SIGNS A RELEASE  
AS PART OF THE APPLICATION PROCESS.**

**MAKE SURE THE RELEASE PERMITS YOU TO SHARE  
WHAT YOU FIND WITH THE CURRENT  
EMPLOYER.**



# **BEV SAYS: PERFORMANCE EVALUATIONS**

**EITHER DON'T DO AN EVALUATION, OR DO IT  
HONESTLY**

**ADD A SIGNATURE BLOCK THAT STATES THE  
EMPLOYEE IS 1) AWARE OF EEO AND  
HARASSMENT POLICIES AND COMPLAINT  
PROCEDURES AND 2) HAS NO CURRENT EEO OR  
HARASSMENT COMPLAINTS.**



# **BEV SAYS: TRAIN YOUR SUPERVISORS**

**DO NOT ALLOW A PERSON TO WORK, EVEN A  
SINGLE DAY, WITHOUT SUFFICIENT TRAINING  
TO:**

**RECOGNIZE EMPLOYMENT LAW  
ISSUES AND KNOW WHEN TO ASK  
FOR HELP.**



**BEV SAYS:  
ACTUALLY MANAGE YOUR PEOPLE**

**CAN ANYONE IN YOUR ORGANIZATION HONESTLY  
SAY:**

**“OH, HECK, EVERYONE KNEW THAT OFFICER SO  
AND SO WOULD BE TROUBLE ONE DAY...”**



# And the moral of the story is...

- **When an employee threatens to “make a federal case out it,”**
  - **They probably can.....**