
SUPERVISION OF POLICE PERSONNEL
THE DISCIPLINARY PROCESS

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(03.26)

NOTICE

I am NOT an Attorney. We will discuss laws, court decisions and interpreting case-law. Please consult your Attorney prior to taking any action.

Please Pick ONE

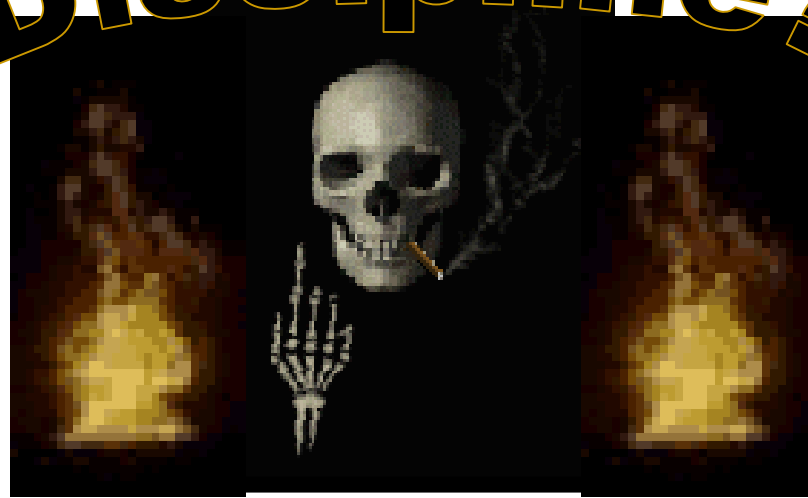
- Please answer one of the following questions:
 1. The problem with the disciplinary system in my state is.....
 2. The problem with discipline in my agency is.....
 3. The problem with discipline in this “other” “hypothetical” agency is.....

The Disciplinary Process

Objectives

- Differentiate between positive and negative discipline.
- Know the elements of the “Hot Stove Rule”
- Understand the importance of evaluating performance (behavior) over personality.
- Identify the limitations placed upon supervisory authority in disciplinary matters.
- Understand the need for effective, legal documentation and the criteria for “just cause”.
- Recognize the common pitfalls in administering discipline.

What is **Discipline?**



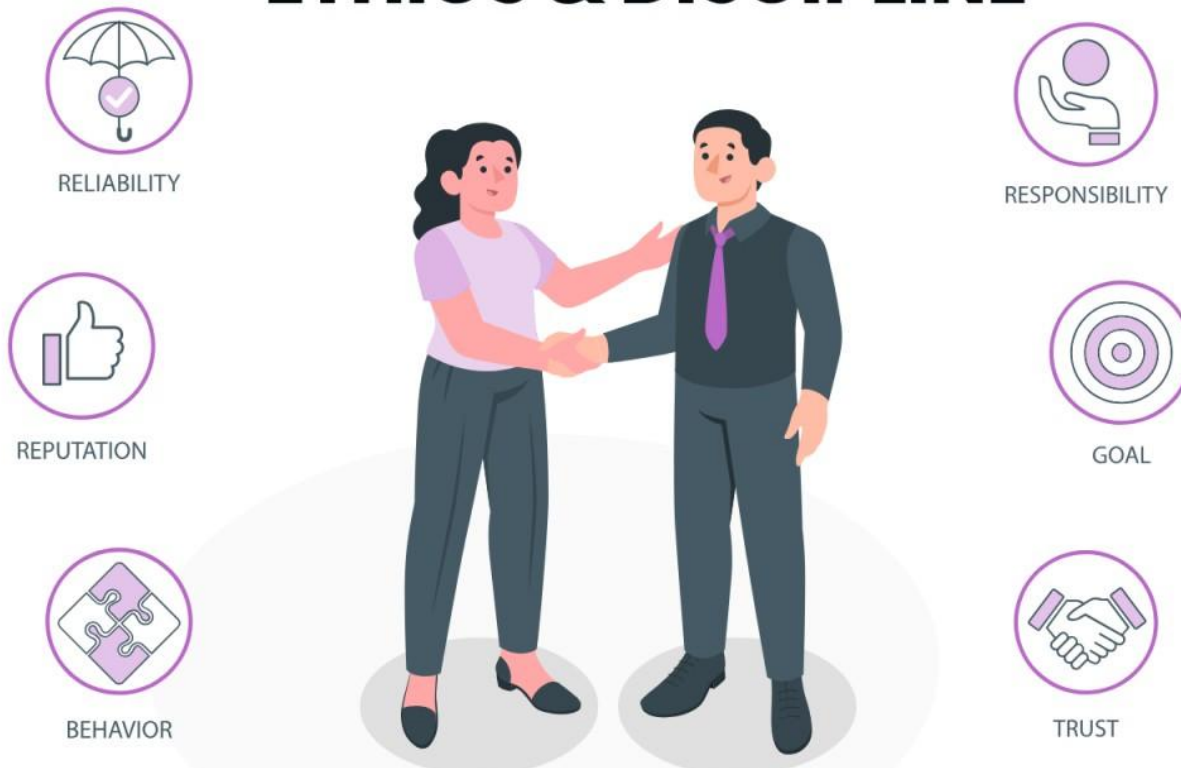
The goal of discipline is...
to produce desirable behavior

Assumptions - This we KNOW

- Policing is as real as it gets
- High Stakes
- Responsibility – Accountability – Power
- Dangerous (Hurt / Killed)
- Take a life
- Save a life
- Protective custody of their children
- Lock people up (for years?)
- Enter their home
- Seize money, cars, property

- Police discipline (self-discipline, self control, accountability & punishment) is directly tied to ETHICS !

ETHICS & DISCIPLINE



?QUESTION?



- The public thinks the police run wild, are not held accountable, and there is not enough “discipline”.
- The police think they are punished too frequently, too harshly, and there is too much “discipline”.
- Why the disconnect?
- Same in other fields?
 - Postal service
 - Teachers
 - Nurses
 - TV personalities

Why?

- Management has the right (and responsibility) to set clear, reasonable goals for work performance in exchange for salary.
- Such goals need to be spelled out in writing via policy manuals, training, and/or on the server.
- Management should expect compliance with policy, job descriptions, contracts & past practices-----sets the organizational “culture”

Legal

- Most law enforcement cannot “strike”
- Therefore contested discipline often can go to **ARBITRATION**



Discipline

What is the perception?

The root *meaning* of the word discipline is...

*“To teach or mold”

The receiver of discipline is a “disciple” of the instructor/leader/supervisor

How does that fit our current perception of discipline?

Self Discipline vs. Organizational Discipline

Self Discipline

Organizational Discipline

-The condition of the individual

-The condition of the organization

ORDERLINESS

Is there a connection?

Are the expressed values and expectations of the agency important to maintaining discipline?



Self Discipline

- ★ Positive Self Discipline is the regulation of ones own behavior out of self interest.

Which is based upon...

- ★ The normal human tendency to do what needs to be done, to do one's share and follow reasonable standards of behavior.

Self Discipline

Behavior / Performance / Ability / Appearance

- Do we put out non-verbal signals?
- We remember
 - 10% of what we Hear
 - 60% of what we See
 - 90% of what we Do
- DiSC traits?*



Low

Medium

High

Perception?

Discipline

Recognizing officers with good self discipline

What do they have in common?

- They have mastered street skills and understand the community
- They understand what performance is expected
- They understand the rationale of the expectations
- They understand the Department's mission as it relates to function and perception
- They demonstrate a willingness to conform and participate in a manner consistent with the agency's objectives.

Discipline

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So... Those without these characteristics have poor self discipline

Self Discipline; What is your Perception?

Good Self Discipline

Poor Self Discipline

- One critical mistake we make is to TOLERATE inadequate documentation of employee performance even when the employee exhibits negative performance which is CHRONIC in nature.
- NOBODY likes to evaluate
- If you're going to do it – do it right



Self Discipline & Effectiveness

Organizational discipline is considered an essential part of an agency's overall effectiveness.

Supervisors who routinely tolerate employees who lack self-restraint and professionalism (self-discipline) are likely to see inconsistent and/or declining performance outcomes.

Supervisors: *Positive self discipline needed in you!*



WARNING:

Before the disciplinary process can be effective
it must be constructed on a firm,
steady foundation of *PROFESSIONALISM and*
Any internal disciplinary system should be based on
ESSENTIAL FAIRNESS
(Procedural Justice)

Discipline

In Law Enforcement Organizations...

(Organizational Discipline)

POSITIVE discipline is:

Employees generally following organizational rules, meeting standards, and honoring agency values—which are the foundation for operations.

They receive re-enforcement (reward) for doing good



Incentives

- Financial
 - Can you pay them more?
 - Can they get bonuses?
 - Is their evaluation tied to their increases in salary?
- Praise
 - Do you have...
 - “Employee of the Month”
 - “Officer of the Year”
 - How much does it cost?
 - “The things that get rewarded get done.”

Discipline

In Law Enforcement Organizations...

NEGATIVE discipline is:

*When the organization's rules or regulations are being broken or its goals are not being met and...
action (**punishment**) is necessary!*



Disciplinary Action

SO...what do we do when positive disciplinary tactics (i.e. encouragement) fails?

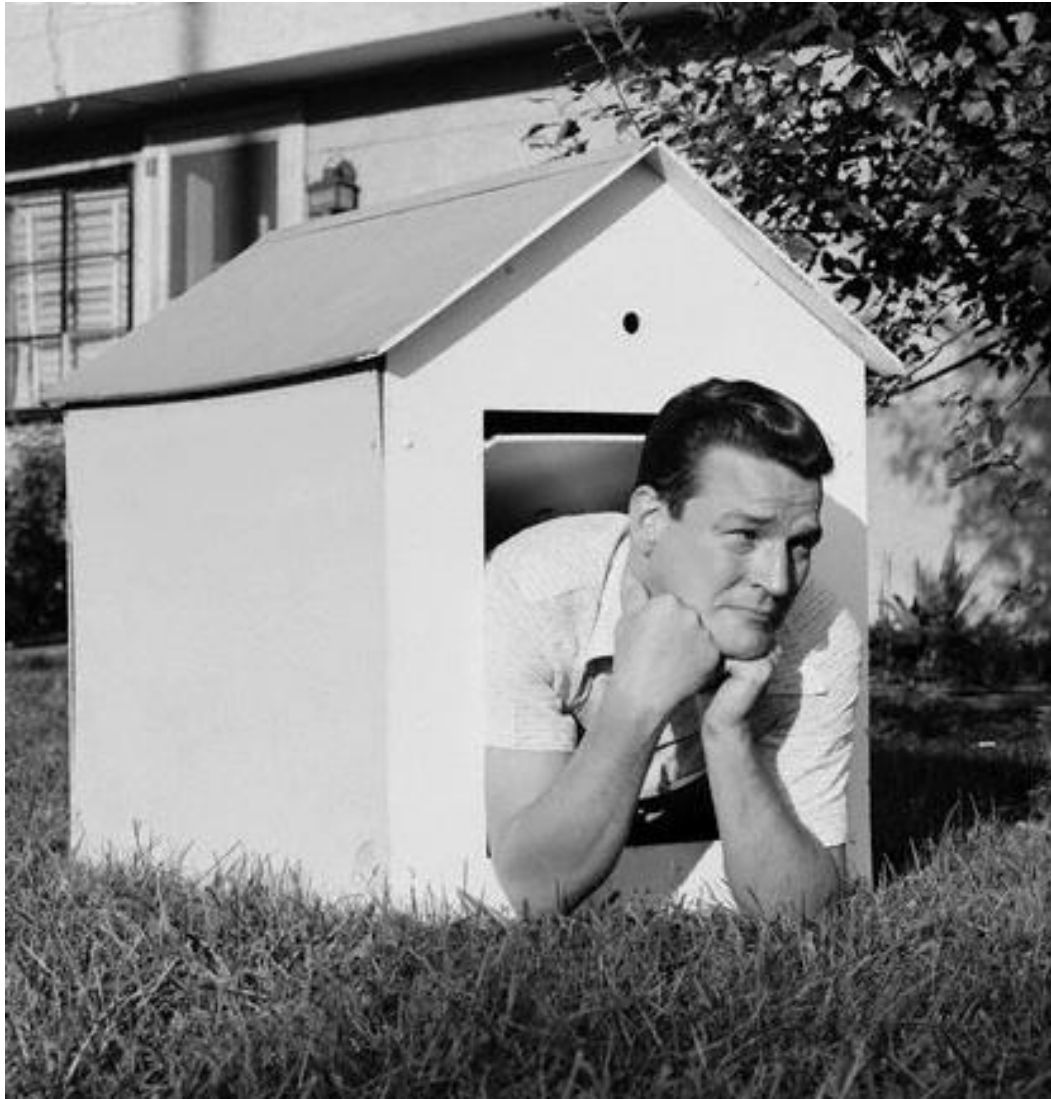
What are the Goals of Disciplinary Action?

- 1. Reform the individual offender (improve performance)***
- 2. Deter similar misconduct by others***

Positive (carrot) / Negative (stick) or.....



Only room for one at a time



- 1) Know anyone with a brick on their career?
- 2) Isn't it hard enough to swim?



No problem writing tickets



Disciplinary Action

The P.R.I.C.E. Protocol

- ❑ *Pinpoint : Pinpoint performance problems that merit attention.*
 - ❑ *It's never "EVERYTHING"*
- ❑ *Record: Record and quantify the current performance level of those having problems*
 - ❑ *Be able to MEASURE*
- ❑ *Involve: Involve the employee in planning the best way to deal with the problem*
 - ❑ *what coaching strategies are to be used;*
 - ❑ *how to monitor progress;*
 - ❑ *rewards and punishments.*

Disciplinary Action

The P.R.I.C.E. Protocol

- ❑ *Coach: Implement agreed upon strategies*
 - ❑ *Observe performance*
 - ❑ *Provide Timely advice*
 - ❑ *Give encouragement*
 - ❑ *Give positive reinforcement*
 - ❑ *Give retraining if needed/necessary*
- ❑ *Evaluate: Provide feedback and assess if goals have been achieved.*
 - ❑ *Follow-up and monitor*

The Foundation and Importance of Discipline

Poor Motives = Poor outcome

Reform/improve/deter = Improved performance

Revenge/Retribution/
Favoritism = No Improvement + Anger,
uncertainty, complaint...

Caution:

What is the natural result of evaluating personality
over performance?

How do we find out?

1. Self observed
2. Told by superior
3. Told by peer
4. Told by subordinate
5. From victim, witness, suspect - member of public
 - **Anonymous complaints should be tracked and investigated, they cannot be ignored.**
 - Discipline based on anonymous complaint is another story.

Identifying and Responding to Disciplinary Situations

Testing Your Stripes

- Officers that are consistently late, absent
- Failure to follow “minor” rules
- Inappropriate radio traffic
- Excessive force incidents
- Impaired officers—fitness for duty
- Bad performance / reports / decisions
- Bad attitude

Problem behavior
RARELY EVOLVES
FROM a
personality conflict
between
supervisor and
subordinate.

Red Flags (on-duty or off)

1. Felony Crimes
2. Theft
3. Violence / Weapons
4. Domestic Violence
5. Drunk Driving Crash
6. Alcohol, Drugs
7. Falsified documents or Lying
8. Sexual Harassment
9. Race Issues
10. Insubordination

Lying is Fatal

“You Lie – You Die!”



Brady / Giglio

Under the law, **prosecutors must disclose any evidence that could call into question the credibility of an individual testifying in trial or impede an investigation.** This constitutional requirement applies to all witnesses, including law enforcement officers, in order to ensure a defendant gets a fair trial.

Solid Case Law

- Brady v Maryland, 373 U.S. 83 (1963)
- United States v. Giglio, 405 U.S. 150 (1972)



Brady V. Maryland

- 1963 Capital Murder case
- Government had a duty to disclose exculpatory evidence
- Failure to do so violated due process
 - where the evidence is material to guilt or innocence
- There is no regard for good or bad faith of the prosecutor

- Under the Constitution, due process requires the prosecution to turn over evidence favorable to the accused and material to his guilt or punishment.
- This requirement includes evidence that may be used to impeach the prosecution's witnesses, including police officers.

United States V. Giglio

Brady rule includes evidence that could be used to impeach a witness.

■ When the reliability of a given witness may be determinative of guilt or innocence, non-disclosure of evidence affecting credibility falls within the rule regardless of whether withheld in good faith

Examples

■ Government's obligation to disclose evidence under Brady covers not only exculpatory evidence, but also information that could impeach ANY prosecution witness

- Agreements exchanging testimony for money or favorable treatment
- The fact the witness suffers from hallucinations
- Efforts by one witness to improperly influence the testimony of other witnesses
- History of untruthfulness
- Conflicting statements made by witnesses

- Prior inconsistent statements of key witnesses
- Witnesses had previously filed a false report
 - What IS a “police report”?
 - Offense report, crash report
 - Affidavit for S/W, arrest warrant, phone records
 - Payroll records, daily run sheet, equipment sheet
 - ANYTHING wet-signature, initialed or electronic
- I/A finding that officer made a false or misleading report or statement
- I/A finding that officer covered up or attempted to cover up
- I/A finding of staying silent (not disclosing)

Untruthfulness

The term refers to ANY false statements, false reports, or intentionally incomplete statements and reports.

The false statements involve all aspects of the job, not just enforcement and criminal investigations.

- See: Dreary v. Gloucester, 9 F.3d 191 (1st Cir. 1993) reference a 10 year-old disciplinary finding that an officer falsified overtime records (admitted for impeachment purposes)
- See: United States v. Williams, 1997 WL 335794 (D.D.C. 1997) reference a new trial ordered because the FBI failed to disclose that an agent (who was a witness at trial) had received a letter of reprimand for forging an informant's signature on a receipt and lying about the forgery under oath

- ✓ Lying during administrative investigations
- ✓ Falsifying reports/making misleading reports
- ✓ Planting evidence
- ✓ Theft of evidence in police custody
- ✓ Failed polygraphs
- ✓ Inappropriate records checks
- ✓ Any history of lying in the process of testifying or preparing affidavits under oath
- ✓ Evidence that a proposed witness has a racial, religious, or personal bias against a defendant individually or as a member of a group.

Occupational Deviance

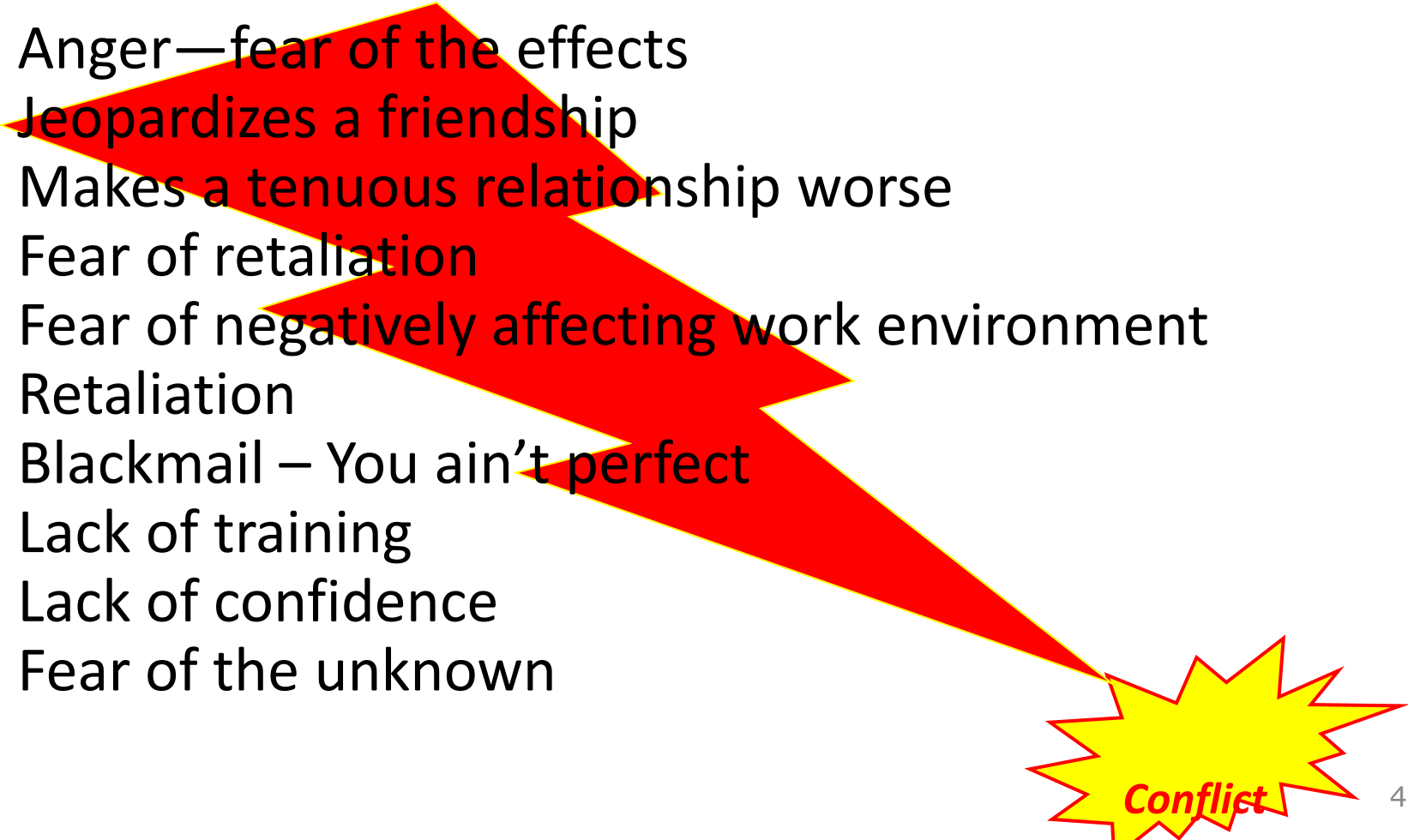
Can be broken down into three general categories:

1. Non-Feasance – Failure to take appropriate action as required by law or department policy.
2. Mis-Feasance – Performing a required and lawful task in an unacceptable, inappropriate or unprofessional manner.
3. Mal-Feasance – Wrongdoing or illegal conduct that depends on or is related to the misuse of legitimate authority.

Confronting Subordinates in Disciplinary Situations

Confrontation can be difficult--Why?

- Human nature—it's uncomfortable
- Anger—fear of the effects
- Jeopardizes a friendship
- Makes a tenuous relationship worse
- Fear of retaliation
- Fear of negatively affecting work environment
- Retaliation
- Blackmail – You ain't perfect
- Lack of training
- Lack of confidence
- Fear of the unknown



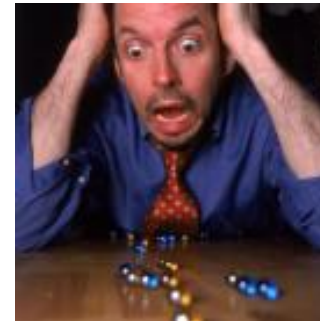
Conflict

Confronting Subordinates in Disciplinary Situations

Assessing the situation is critical

Does this situation require immediate response?

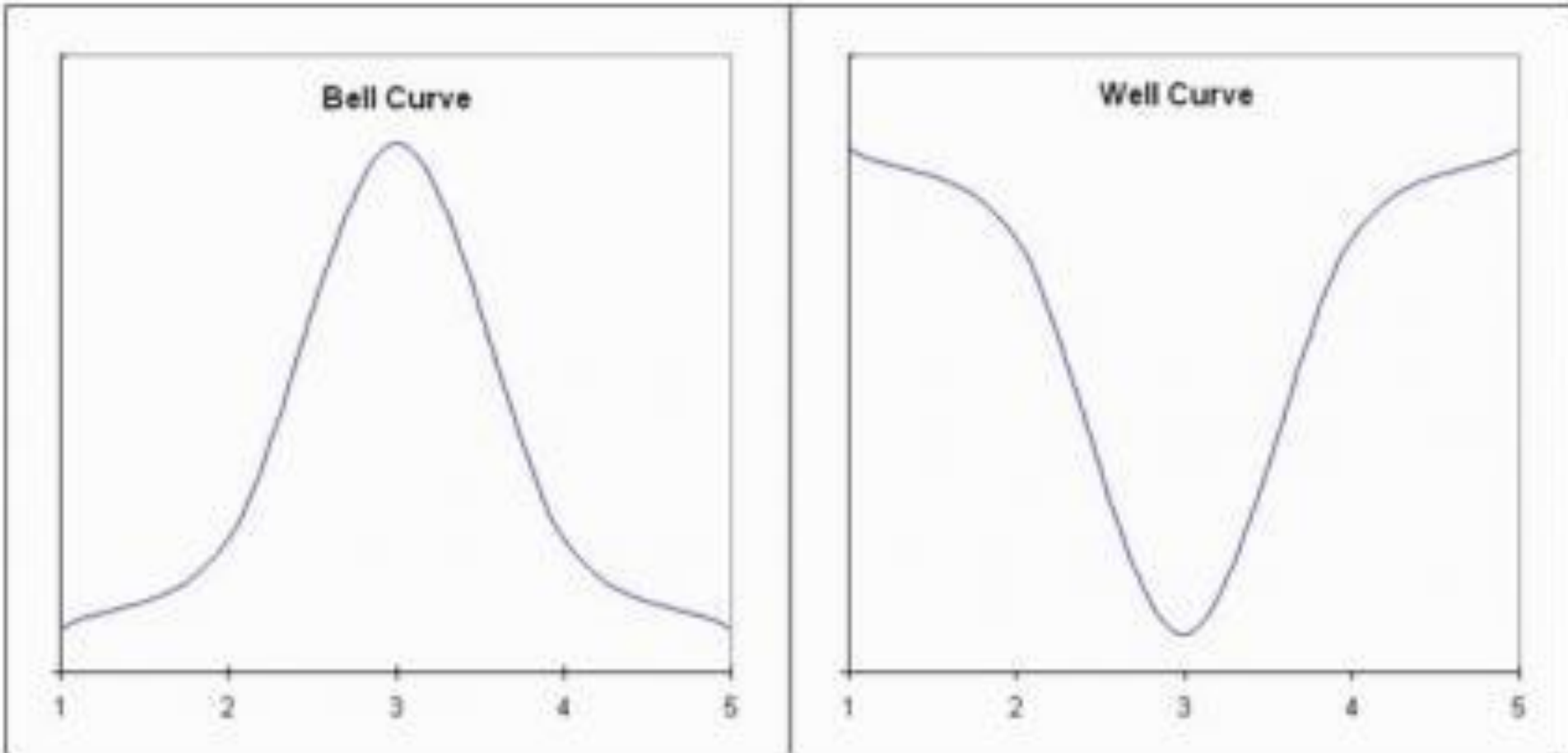
- Officer Safety
- Open insubordination
 - “closed door insubordination”
- Violation of *standard operating procedures* related to evidentiary material or rule of law
- Will failure to immediately respond be seen as tacit approval for unacceptable behavior?



So.....How do we confront?



HIGH - Low - HIGH



Confronting Subordinates in Disciplinary Situations

APPROACH:

- Remain calm—Professional
- Appeal to honor, integrity, professionalism
- Compliment SOMETHING
- Control the conversation's direction
- Don't confront from behind a desk
- Door to door? Go on a follow-up?
- If the situation dictates, include another supervisor
- No four-letter words, parental fingers, name calling, avoid use of generalities
- Be well prepared for the interview
- It's not about you – how hard this is for you

Confronting Subordinates in Disciplinary Situations

CONFRONT:

- Repeat the reason/rationale for the confrontation and ensure it's understood.
- Ensure the measures taken to correct the deviation are understood.
- *Regardless of the employee's perception...* discipline is “outcome based”.
- Keep all discipline confidential.

Confronting Subordinates in Disciplinary Situations

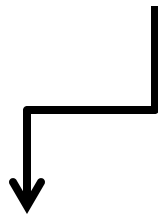
CLOSE:

- Allow an explanation of the behavior or poor performance and *limited, reasonable “venting”*
- Allow the employee to *“save face”*
- *Explain clearly* unmet expectations and a time frame for the employee to meet them
- End by acknowledging the employee’s skills and *recognition of his/her value* to the agency (if true).

Confronting Subordinates in Disciplinary Situations

Negative effects are normal

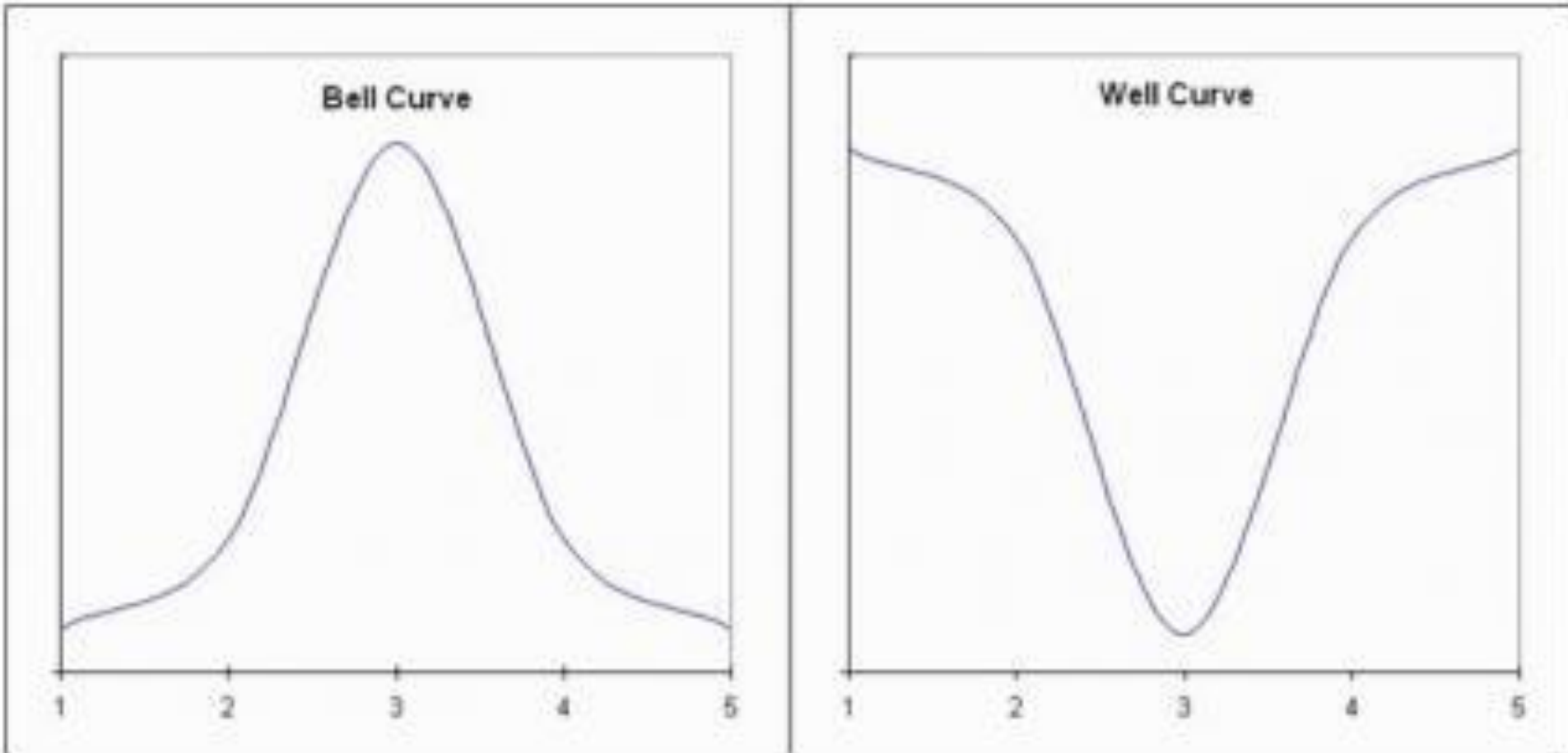
resentment, interpersonal conflict, lowered morale...



But are reduced if confrontation is

- ✓ *intelligent*
- ✓ *fair*
- ✓ *predictable*
- ✓ *attributable to poor performance/conduct*

HIGH - Low - HIGH



Internal Investigations Related to Disciplinary Action

AVOID THE PITFALLS

Investigations Should:

- Be carefully planned
- Remain confidential (as much as possible)
- Be complete and thorough
 - Interview all witnesses and involved parties
 - Never assume motive
- Be timely
- Be objective
- Challenge the parties involved if necessary
- Avoid conclusion based on speculation or conjecture

**Why is Discipline
Reduced or
Overturned
in Arbitration?**

Disproportionate Punishment

Insufficient Evidence

Due Process Violations

Procedural Errors

**Other Mitigating Circumstances
(including Positive Performance
Evaluations in the Past)**

Due Process

- Two kinds---you can be technically correct and follow all the “rules” yet still be accused of not affording due process
- “Substantive” (basic fairness---“spirit” of the law)
 - Benefit of the doubt
 - Bend over backwards
 - Professional courtesy
 - Chance to tell their side
 - Right to a full inquiry / investigation PRIOR to judgment
 - Avoid allegations of dislike/vendetta
- “Procedural” (“letter” of the law)
 - Technicalities
 - Time limits
 - Notifications (24 hour notice)
 - Proper service, copies, UPODA, lawyers

Weingarten Rights

- Federal Law 5 USC 7114 (a) (2) (b)
- The Union shall be given the opportunity to be represented at “any examination of an employee” ...if “the employee reasonably believes that the examination may result in disciplinary action” and “the employee requests representation.”
- This could be a Union Rep or Attorney
- The Agency does NOT have to inform the employee of rights or stop if employee does not request a rep.
- Reasonable time to get rep or attorney on scene (reasonable professional courtesy)
- If the agency continues questioning after employee invokes – any evidence/information “may” be inadmissible?

Administrative Interviews

During a PURELY administrative interview, supervisors MAY deny an Officer's request for an attorney. (but why would you?)

- Fundamental Fairness
- Procedural Justice
- Union Contracts
- Due Process
- What if it ceases being "administrative" and crosses into "criminal"?
- Argument about waiting for attorneys for every little thing (form of harassment?)

Investigations Related to Disciplinary Action

Union Representatives in Investigatory Interviews

Control the Interview!

Can:

- Be A Witness
- Advise the employee
- Clarify employee questions
- Provide relevant information
(related to process)

Can't

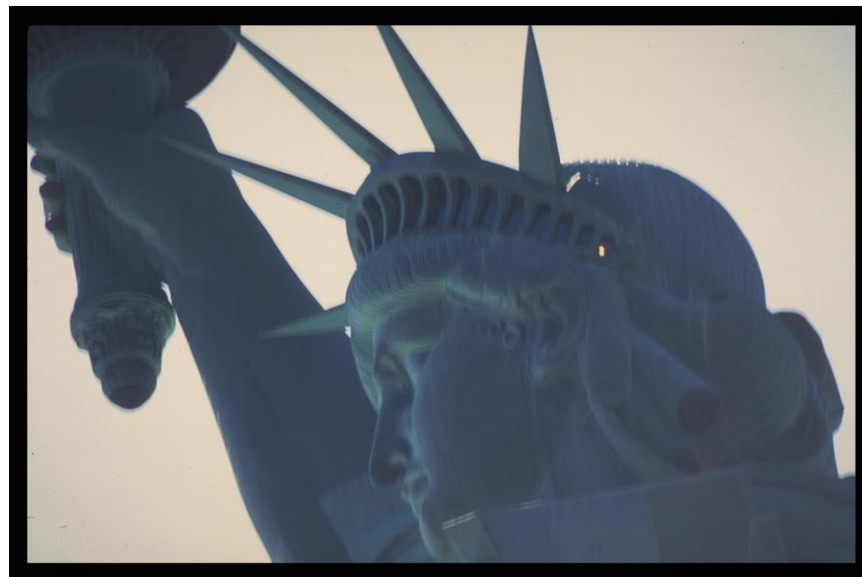
- Negotiate a plea
- Answer questions for the employee
- Threaten, or be abusive

Just Cause for Disciplinary Action

When discipline is challenged, the questions will be:

Was the employee given his/her “due process” as granted by the Fifth and Fourteen Amendments?

Was there *Just Cause* for the action?



“Just Cause”

“A standard for disciplinary action requiring tests of fairness and elements of normal due process such as proper notification, investigation, sufficient evidence, and a penalty commensurate to the nature of the infraction”

*In 1964, Arbitrator Carroll Daugherty established a single standard to determine if the discipline or discharge of an employee can be upheld as a just cause action.

The eight (8) tests for “Just Cause”

- 1. Are the rules and standards known (notice)?*
- 2. Was the rule or order reasonable?*
- 3. Was there an investigation?*
- 4. Was the investigation fair and objective?*
- 5. What did the investigation reveal (proof)?*
- 6. Is everyone treated the same?*
- 7. Does the punishment fit the crime?*
- 8. Is there documentation?*

1. Did the employer give the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct?

Are the rules and standards known?

Prior to being disciplined, employee must have notice of rules and expectations.

Establish through:

- ✓ *New employee orientation*
- ✓ *Orientation checklists*
- ✓ *Receipts for departmental handbooks*
- ✓ *Periodic reinforcement/coaching.*

Just Cause

2. Was the employer's rule or managerial order reasonably related to:
 - (a) The orderly, efficient, safe operation of the company's business and;
 - (b) What performance should the employer expect from the employee?
- ✓ *Was the rule or order reasonable?*
- ✓ *Can not be inconsistent with collective bargaining agreement(s).*
- ✓ *Can not be arbitrary or capricious.*

Just Cause

3. Did the employer try to discover if the employee did *in fact* violate of disobey a rule or an order of management?

- *Was there an investigation?*
- *Must be thorough; consider all evidence, pro & con.*
- *Must be timely:*
 - *Immediacy vs. Rush to judgment?*
 - *“Justice delayed is justice denied”*
- *Double jeopardy might attach—once disciplined*
- *Give accused opportunity to respond (Due Process)*
- *Allow union representation. (Weingarten rights)*
- *Administrative leave (with pay) pending decision*

Just Cause

4. Was the employer's investigation fair and objective?

Example: If an incident happened does the employer interview everyone present or only management people who were present. If the employer refuses to interview non-management workers then the investigation may not be fair.

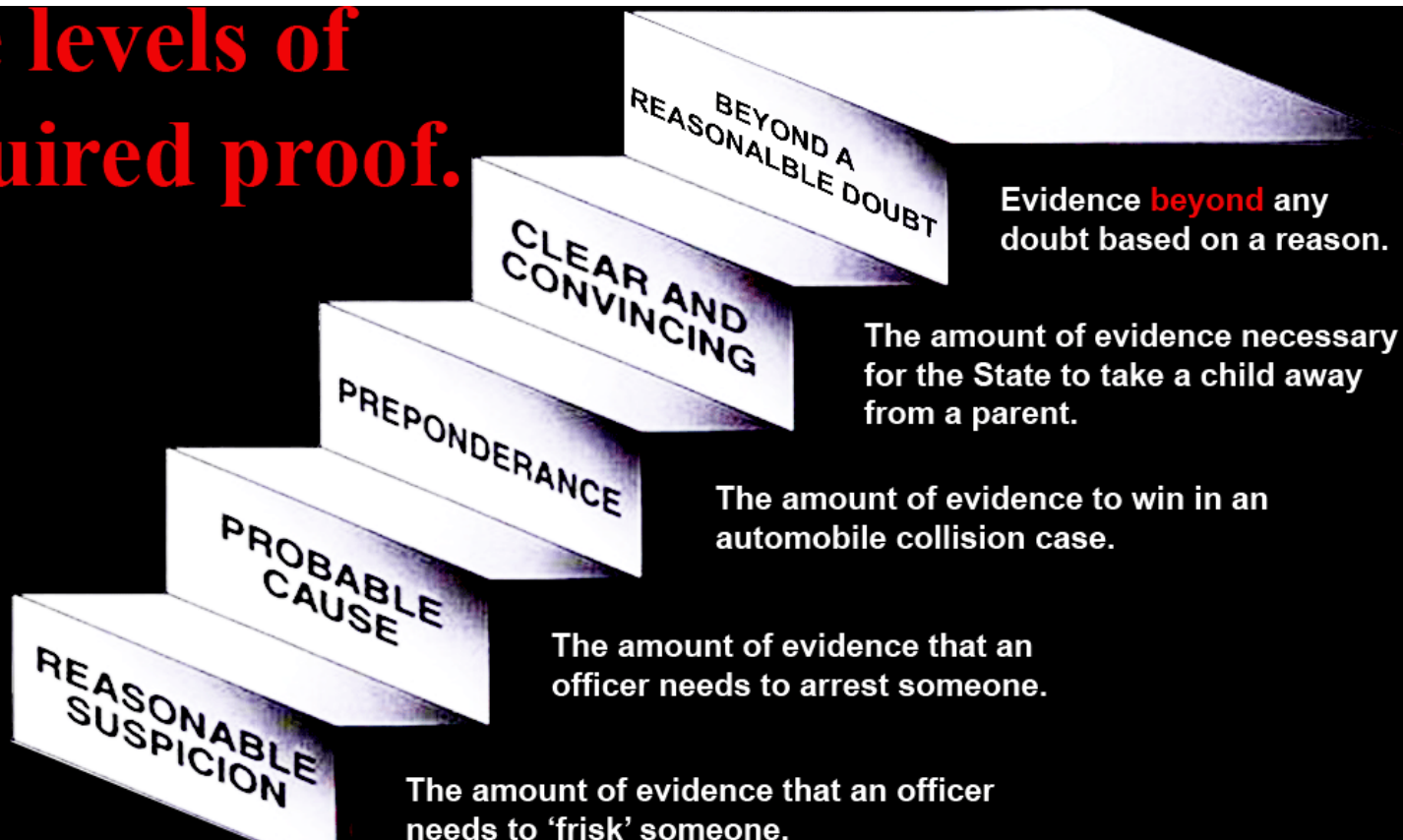
- Perception is reality
- “Appearance” of impropriety sometimes more important than any real impropriety
- Nepotism (have someone else do discipline)

Just Cause

5. Did the investigation reveal substantial evidence or proof that the employee was guilty as charged?
- *What did the investigation reveal?*
 - *Level of proof is normally “substantial evidence.”*
 - *(clear & convincing) – more than preponderance, less than beyond a reasonable doubt*
 - *Greater proof required for more serious allegations.*



The levels of required proof.



51%

Just Cause

6. Has the employer applied its rules, orders, and penalties evenhandedly and without discrimination to all employees?

Is everyone treated the same?



If enforcement has been lax in the past, management cannot suddenly “find religion” and reverse course by beginning to crack down without first warning employees of its intent.

Example: An employer decides to suspend Mary for taking too long at lunch, but lets the employees who eat lunch with a supervisor take extra time every day. This would not hold up. However, if the employer tells everyone that starting on Monday employees will be disciplined for taking too long at lunch and on Tuesday Mary comes back late and everyone else has been on time, she may be disciplined.

Just Cause

7. Was the degree of discipline administered by the agency in a particular case reasonably related to:
- (a) The seriousness of the employee's proven offense
 - and; (b) The service record of the employee

Does the punishment fit the crime?

(Fair Vs. Equal)

If employee A's past record is significantly better than that of employee B, the employer properly may give employee A lighter punishment than employee B for the same offense.

Example: The classic example is two employees get in an argument and shove each other. One has 25 years service with a clean record. The other has 3 years service with lots of warnings and discipline. Based upon the workers seniority and records, the employer may give the older worker less punishment than the other worker.

Just Cause

8. Have records and evidence of the offense and the decision made by the agency been maintained?

Is there documentation and/or evidence?

Document

- **EVERYTHING**
- Start a file (write on the inside of file jacket)
- E-mails, notes, phone calls, copy of every memo, “memo to file” summary
- Date, time, who else was present
- Chronological order
- If a delay, WHY?
- “Proof Of Service” (copies and signatures)
- New Practice/ Policy? – Wait 5, 10, 30 days to enforce & document warnings, training, reminders

Types of Documentation

- Record of Verbal Counseling / Coaching
 - Written Counseling
 - Written Reprimand
 - Suspension
 - Separation
-

- Memorandum to File
- Letter of Instruction
- Referral to the EAP
- Remedial Training
- Performance Improvement Plans (PIPs)

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- 6. Is everyone treated the same?*
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- 8. Is there documentation?*

Two Other Things

1. Progressive Discipline: When responding to misconduct that is short of egregious, the employer must issue at least one level of discipline that allows the employee an opportunity to improve.
2. Mitigating and extenuating circumstances: Discipline must be proportional to the gravity of the offense, taking into account any mitigating, extenuating, or aggravating circumstances.

Employee Status

- Rules, regulations, policies & procedures
- Federal/State laws, ordinances & contracts
- Protections, responsibilities, duties & obligations
- Elected Sheriff? Or appointed “at-will” Chief?
- Probationary or Tenured – property right vested?
- Union member with CBA?
 - Limited to discipline for “just cause”
- Civil Service? Or Sheriff’s Merit Commission?
- Protections for Veterans

Progressive Discipline

Q: What is Progressive Discipline?



Practicing Progressive Discipline

It is NOT *Progressive Discipline* unless:

An employee:

- (1) Understands the reason for the penalty and;
- (2) Been given an opportunity to correct the behavior. [Except in final stage]

Training opportunities (re-training) to set them up for success so they can correct the behavior!

Progressive Discipline

A: Discipline that increases in severity for each offense.

EIGHT STEPS HAVE BEEN GENERALLY INSTITUTIONALIZED

1. Informal Discussion
2. Oral warning
3. Written Reprimand
4. Final Written Warning
5. Transfer
6. Suspension
7. Demotion
8. Discharge
(The final step)



Types of Separation

- Resignation // (Forced) Resignation
- Retirement // (Forced) Retirement
- Sometimes you MUST fire (do not let them resign) You can't fire them once they resign or retire!
- **Involuntary – Termination**
 - ALWAYS in writing
 - Deals? Implied? What kind of reference?
 - Last pay check, turn-in equipment, firearm, locker, key-card access, LEADS, E-Mail, pending cases, etc...

Constructive Discharge

Q:What is Constructive Discharge?

A: When an employee's resignation is treated as if he/she were actually discharged

Asking someone for their resignation

Why did the employee think s/he was going to be fired?

Turned over termination memo (shown to union in advance)

Suspended "Pending Termination"

2 legal questions

1. Was the employer attempting to avoid the legal protections due the employee?
2. Did the employer make the working environment intolerable for the employee?

Interference with Property or Liberty Rights/Interest

- Whenever the government interferes with an individual's property or liberty interests, the individual must be provided “due process” of law.
- For public employees,
 - a **property** interest generally exists in their present job,
 - and a **liberty** interest exists in their right to pursue their chosen career in the future.

Property Right

- For employees that can only be discharged “for cause” the courts have recognized that officers have a property right in their jobs
- Cannot deprive employees of property right without due process
- Right to title, prestige, working conditions, (Detective, Bomb Squad) as well as money
- This is after the probationary period is over

Liberty Right

- Opportunity to clear their good name
- Rumors
- Gossip
- Inuendo
- Bad reference
- No reference
- “You’ll never be a Detective!”

Designed to assist the supervisor:

- To minimize resentment
- To withstand challenge
- Includes 4 elements:
 - Advance warning
 - Immediacy
 - Consistency
 - Impersonality

The *Hot Stove* Rule



Q: Does it matter how severe the action taken is for the hot stove rule to be effective?

*A: No...**the level of severity is not an element of the hot stove rule.***

1) Advanced Warning

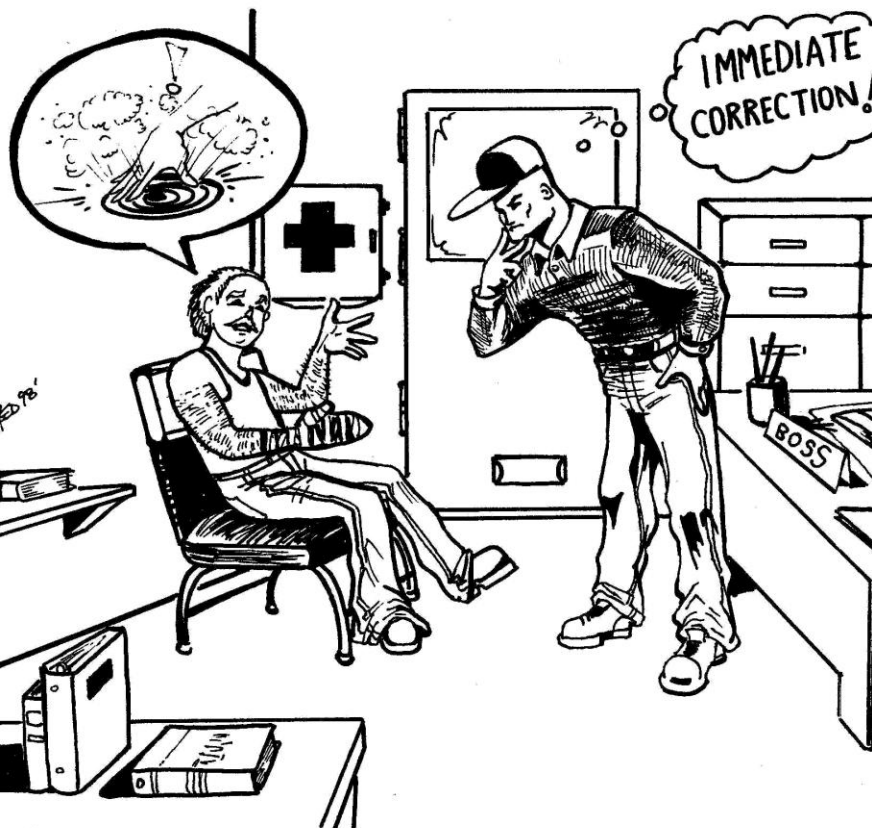
- As we grew up we were warned by our parents to not touch a hot stove because it would burn us



- Give time to make improvements

2) Immediacy

- When we touch a hot stove, the burn comes immediately



3) Consistency

- If a hot stove is going to burn you today, it **will also** burn you tomorrow or at anytime in the future



4) Impartiality

- Anyone who puts his hand on a hot stove, will be burned



DANGER Land-Mines

1. “Protected” = Gender, Age, Race, Color, National Origin, Sexual Orientation, Disability, Pregnancy, Veteran, Marital status, HIV Status
2. Medical—sick, family emergency, got to leave
3. Union Activity
4. Refusal to work with dangerous equipment
5. Whistle blowing
6. Free-Speech / Association issues
7. Workman’s Comp (retaliation)
8. Refusal to / or perceived retaliation for backing a political cause, party, candidate

Documentation: Prepare for the Appeal

When do you document?

- Immediately after every incident that results in disciplinary action or potential disciplinary action;
- After every step in the disciplinary process, and investigation;
- After the process is complete.

Documentation: Prepare for the Appeal

What do you document?

- The what, where, when, why, and how of every incident.
- All information obtained that is based on substantiated fact, or to be examined.
- Draw a conclusion if it is clear and obvious, otherwise simply state the facts of the allegation or investigation.
- Do not use an investigation as a fishing expedition

Documentation: Prepare for the Appeal

Evaluate your work:

- Handled similar incidents the same?

 - (be consistent)

- Ignored similar situations?

 - (be fair)

- Affected by the target being a “goof”?

 - (restrain yourself)

- “Piled on”?

 - (don't)

Documentation: Prepare for the Appeal

Evaluate your work:

- Written in objective, unemotional terms?
(be careful and concise)
- Identified mitigating factors?
(put them in)
- Is the action in everyone's best interest?
(if it isn't—it's not done correctly)
- Could it be misinterpreted?
(write clearly—have no axe to grind)

Documentation: Prepare for the Appeal

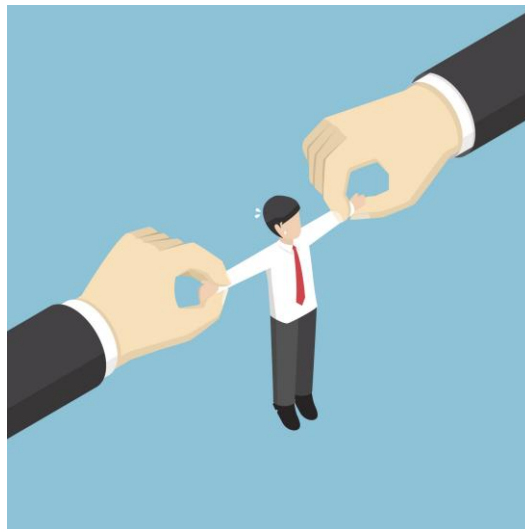
Evaluate your work:

- Missed anything?

(if you missed something, someone else will find it)

- Is there a conflict of interest?

(If one is even possible—make it known from the beginning)



Parallel Investigations

Officer-involved shootings (OIS) and deaths involve several separate investigations. The investigations may include:

- A criminal investigation of the suspect's actions.
- A criminal investigation of the involved officer's actions.
- An administrative investigation as to policy compliance by involved officers.
 - Internal Affairs or Command Staff
- A civil investigation to determine potential liability.
 - FBI, State AG or OIS, Private Law Firm retained by employing agency

Chinese Wall

['chī-'nēz 'wō]

A virtual barrier erected to block the exchange of information between departments in a company when an ethical issue could result.

Parallel - Never Touch!



Court Rulings

“Flow” from the 5th Amendment right to remain silent (police do not have a “watered down” set of rights) & 14th Amendment

Garrity v New Jersey (1967)

- Told “Give statement or be fired”
- Gave statement and then was charged and fired.

Gardner v Broderick (1968)

- Told “Give statement or be fired”
- Did not give statement and was fired.

WHY ARE THESE CASES IMPORTANT TODAY??

The *Garrity* Rule

If a public employee is compelled (ordered) to make an oral or written statement

then . . .

The public employee can be removed for not replying (insubordination) if he is adequately informed both that he

- 1) is subject to discipline up to discharge for not answering and**
- 2) that his replies and their fruits cannot be used against him in a criminal case.**

The Three Degrees Of Immunity

(GOOD) - Use Immunity: The compelled statement may not be used in a subsequent criminal prosecution.

(BETTER) - Derivative Use Immunity: The compelled statement and the “fruits” of a compelled statement may not be used in a subsequent criminal prosecution.

(BEST) - Transactional Immunity: An individual who is compelled to give a statement may not be prosecuted about the subject or transaction of the compelled testimony.

* Granted by who? The Prosecutor? Management?

Where Can A Compelled Statement Be Used?

- To discipline the employee
- In civil suits against the employee
- To prosecute other employees
- In grand juries (under some circumstances).
- For impeachment, perhaps?

14th Am. Loudermill Hearing

- Pre-deprivation due process.
- Face-to-face or written (written preferred).
- Notice to employee of potential disciplinary action that could impact pay.
- Explanation of evidence – sufficient enough for employee to respond.
 - Need not be all evidence
 - Need not turn over or show documents
 - Be mindful of CBA

Cleveland Bd. Of Educ. V. Loudermill, 470 U.S. 532 (1985)

“Hearing”

Take “name clearing sessions,” “pre-disciplinary hearings,” and Loudermill hearings seriously.

ESPECIALLY for “liberty interest” probationary employees to clear their good name.

Listen to what people say and encourage them to speak. Whether required or not, these proceedings are the last opportunity for your agency to learn of a serious problem. Last chance for the employee to be heard – convince boss otherwise

NEVER let it be said that they were denied the ability to be heard (fundamental fairness).

10 Keys to Effective Discipline

1. You have a duty to act—and have to know when to act.
(Vicarious liability)
2. Be a role model and demonstrate compliance with rules & regulations and know S.O.P.
3. Practice hot stove rule—Immediate, based on established rules, consistent and impersonal.
4. Be in control—especially if the situation is not under control.
Unless challenged publicly, discipline privately.
5. Always treat subordinates with respect and dignity.
Be firm but fair. Be open honest and direct.

10 Keys to Effective Discipline

6. Be a teacher, mentor, and counselor.
Always provide information and help;
make every officer better than you.
7. Stay out of private lives of subordinates, unless necessary.
8. Do not ridicule the rules and regulations that you cannot change.
9. Don't make rules as you go, stick to formal rules and your
“guidance”.
10. Be accurate and precise—never attempt to get around labor
contracts, bargaining agreements, or ethical guidelines.

Headaches

- Rules, regulations, policies, & procedures, general orders, special orders, and training bulletins that are PAPER TIGERS!
 - Out dated, refers to Deputy Chief who retired 5 years ago, testimony from others who will swear “nobody here does it that way”
- Supervisor (management) sets new policy
 - Does not follow written policy
 - Past practice
 - Others have and do get away with the same thing--never disciplined

5 things that lead to Corruption

1. Broad Discretion for Police
 - Ends justify the means, easy to hide corruption
2. Low Managerial Visibility
 - Too trusting, asleep at switch, vicarious liability!
3. Low Public Visibility
 - Lack of public oversight, transparency, “big secret”
4. Peer Group Secrecy
 - Us vs. them blue wall of silence
5. Managerial Secrecy
 - Came from the ranks, same thin blue line

“We must create an atmosphere where the crooked cop fears the honest cop, and not the other way around.”

Frank Serpico, Knapp Commission, 1971

Discipline link to corruption?