

Performance Appraisals & Employee Accountability

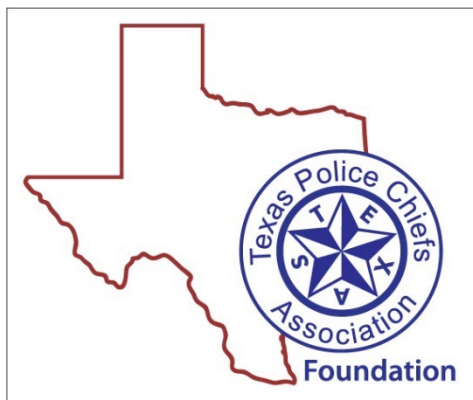
12 Hours – TCOLE Course #37008



Presented by:

***Texas Police Chiefs Association
Foundation***

P.O. Box 819, Elgin, Texas 78621



Welcome to a Texas Police Chiefs Association Foundation (TPCAF) training session. Thank you for participating in some of the best leadership focused training in Texas. Whether you are seeking the coveted Law Enforcement Command Officer Professional (LECOP) status or taking an individual class to sharpen your skill set, we hope you find this class personally and professionally rewarding.

Proceeds from training sessions like this support the TPCA Foundation's work, including the Fallen Officer Fund. The Fallen Officer Fund provides a \$10,000 check to the family of any peace officer killed in the line of duty in Texas. This includes Federal, State, county, local, and other peace officers working in Texas. The goal of the Fallen Officer Fund is to assist the family with any immediate needs by providing funds within 24-48 hours after the line of duty death. The family of a fallen officer should not have to worry about having money to pay a bill, flying in family from out of town, buying groceries, or any other need. Your attendance at this training session directly supports these families.

We encourage you to consider becoming a member of the Texas Police Chiefs Association (TPCA). TPCA is the largest association of police leaders in Texas and one of the largest state police chiefs associations in the nation. TPCA provides members with professional networking opportunities, a voice on legislative matters, resources, training opportunities, and access to model policies through the Texas Law Enforcement Accreditation Program. Please visit www.texaspolicechiefs.org for more information.

We hope you will check out our course catalog at [Texas Police Chiefs Association Conference & Training Site](#) to learn more about other training opportunities available.

Please consider donating to the Fallen Officer Fund

TEXAS POLICE CHIEFS ASSOCIATION FOUNDATION

To make a difference, please scan below



TEXAS POLICE CHIEFS ASSOCIATION FOUNDATION

TRUCK RAFFLE

2025 Chevrolet Trail Boss Valued at \$60,000
Approximate Value

 100% of Proceeds Benefit the TPCAF Fallen Officer Fund

Tickets
\$100 each

[Click Here To Purchase](#)

Drawing to be held:
April 17, 2025

Winner need not be present to win

[SCAN ME](#)



Winner assumes responsibility for all taxes and registration fees.

TPCA Foundation | PO Box 1030 | Elgin, TX 78621 | www.texaspolicechiefs.org



TPCA Training



Open To All Texas Law Enforcement Agencies

-  Classes offered throughout different regions of Texas
-  Aims to provide the very best of executive and command level training for chiefs, commanders and supervisors to lead and manage throughout their organizations
-  Classes are focused on leadership with common themes of fairness, dignity, respect, trust and non-biased practices that create healthy organization and community confidence.

Details &
Registration
Here



TRAINING TOMORROW'S LEADERS TODAY!



LECOP

Law Enforcement Command Officer Program

Earn acknowledgment as a trained Law Enforcement Command Officer by completing a series of 10 training courses. Classes are open to all Texas Law Enforcement Agencies and designed to develop leadership skills and apply those skills to specific assignments.

TRACK A

Focuses on Individual Leadership Skills

TRACK B

Focuses On Leadership In An Organization & Influencing Culture



TEXAS POLICE CHIEFS ASSOCIATION

66th Annual Conference

APRIL 14-17, 2025
Galveston Convention Center



Training Opportunities

200+ Vendor Booths

Speakers

Golf Tournament

Run 2 Remember

Networking



Plan on attending the annual TPCA Conference.

Register at [Texas Police Chiefs Association Conference & Training Site](https://www.tpcanet.org/conference)

Texas Law Enforcement Accreditation Program



The Texas Police Chiefs Accreditation Program allows Law Enforcement Agencies to voluntarily demonstrate compliance with over 170 best practices, developed by professionals, to ensure efficient service delivery and protection of individual rights.



External Review of policies & operations



Enhances knowledge of policing & procedures



Decreased exposure to liability risk & cost



Demonstrates to the community the police department meets or exceeds the highest standards of Law Enforcement excellence





WHAT YOU NEED TO KNOW:

- Open to all Law Enforcement Agencies
- Financial obligations: new application fee, annual program fee, travel costs for review team
- Program manager is required to complete 8 hours of program training - Agency heads are highly encouraged to attend
- Agency has two years to complete the process
- Accredited status is granted for four years. During this period, agencies are required to submit annual reports to demonstrate ongoing compliance with relevant standards
- Participating entities may qualify for scholarship to cover initial fee



www.texaspolicechiefs.org

PROFESSIONAL SERVICES



The Texas Police Chiefs Association (TPCA) is the largest association of police executives in Texas and one of the largest state police chiefs associations in the country. With a diverse group of experts in all areas of policing, TPCA provides a wide range of professional services to Texas governmental entities.

Police Chief Search and Selection

Staffing Studies

Executive Level Training

Comprehensive Organizational Studies

Strategic Planning

Accreditation Program

POLICE CHIEF SEARCH AND SELECTION

The Texas Police Chiefs Association offers valuable technical assistance in evaluating resumes and pinpointing credible candidates. Utilizing these resources can enhance your ability to choose the most suitable candidate for your department. Additionally, the Association can deliver a comprehensive selection process, typically at a significantly lower cost than many consulting firms.

STAFFING STUDIES

We provide Staffing Studies that use the IACP and ICMA recommended workload models to determine the staffing options for various policing strategies.

COMPREHENSIVE ORGANIZATIONAL STUDIES

A comprehensive Organizational Audit is beneficial, as it examines all departmental operations to ensure adherence to legal standards and best practices. This evaluation provides an analysis of crime control strategies, necessary staffing levels, and may include an anonymous employee survey.

STRATEGIC PLANNING

A roadmap providing organizational direction can be an effective management and budget tool. TPCA can assist law enforcement agencies in developing a strategic plan and can facilitate the strategic planning process for other city departments.

EXECUTIVE LEVEL TRAINING

TPCA provides quality training around the state. The Law Enforcement Command Officers Program (LECOP) offers a series of 10 courses to command level officers and supervisors covering the full range of law enforcement operations including Developing Leaders, Managing Administrative Operations, Patrol, Traffic, Special Operations and Criminal Investigations. Upon completing the full course series, they receive a LECOP Certificate and special recognition. All TPCA classes emphasize the importance of Leadership.

ACCREDITATION PROGRAM

A nationally recognized program with over 170 standards outlining best practices for law enforcement agencies in Texas. This program includes independent review of policies and operations of an agency, ensures efficient service delivery to the public, protection of individual rights, and decreased exposure for liability and risk.

FOR MORE INFORMATION PLEASE EMAIL
GELLIS@TEXASPOLICECHIEFS.ORG
OR CALL 512-281-5400



Table of Contents

- Texas Police Chiefs Association Foundation
- PAEA Presentation
- Case, Law, Performance Appraisal Article
- PAEA Case Study



Texas Police Chiefs Association Foundation

Overview and Macro Curriculum

Performance Appraisals and Employee Accountability

Rationale:

Employees cannot be fully informed as to their performance if it is not periodically assessed, both formally and informally. A major tenant of leadership is to provide productive feedback and direction to those performing work. In law enforcement, it is of utmost importance to monitor, assess, develop, reward and correct deficiencies in work product. The failure to do so disempowers a law enforcement agency from holding its members accountable to its goals, objectives and standards. This course is designed to inform supervisors and managers as to the benefits of sound performance appraisal systems and how to fairly and accurately administer those systems.

Overview:

This is a 12 hour course presented over 1 1/2 days. Lectures, discussions, case studies and interactive demonstrations are used to instruct the course. It is intended for those who desire to establish or improve evaluation methodologies, using sound and value driven leadership principles as well as supervisors who are responsible for administering appraisals. Although not intended to recommend specific systems, examples of forms and documentation methods will be presented.

Course Goals:

At the conclusion of this course, the participant will:

1. Identify the purposes of performance appraisals.
2. List the required steps in formal evaluation design.
3. Describe various types of appraisals and their benefits vs. weaknesses.
4. Articulate the common rating errors in performing evaluations.
5. Identify the steps in performing appraisals and briefings.
6. Define methods for behavior tracking and trend detection.

Schedule of Topics:

Day One


0800—0900 hrs	Welcome and Overview
0900—1000 hrs	Evaluation Purpose and Design
1000—1200 hrs	Types of Systems and Forms
1200—1300 hrs	Lunch
1300—1500 hrs	Leadership in Informal Corrections
1500—1700 hrs	Behavior Tracking and Documentation

Day Two

0800—1000 hrs	Case Examples and Legal Basis
1000—1200 hrs	Policies and Supervisor Duties

Instructor:

Chris Bratton, Chief of Police (Ret.)



Texas Police Chiefs Association Foundation

Performance Appraisals and Employee Accountability
12 Hours – TCOLE Course Number - 37008

1



Performance Appraisals and Employee Accountability

Course Schedule

- Day One
- 0800-0900 hrs – Welcome and Overview
- 0900-1000 hrs – Evaluation Purpose/Design
- 1000-1200 hrs – Types of Systems/Forms
- 1200-1300 hrs – Lunch (on your own)
- 1300-1500 hrs – Leadership Issues
- 1500-1700 hrs – Behavior Tracking
- Day Two
- 0800-1000 hrs – Legal Concerns/Validity
- 1000-1200 hrs – Policies and Supervisor Duties

2



Performance Appraisals and Employee Accountability

Instructor

- Chris Bratton, B.A., M.S., LCC
- Chief of Police (retired)
- cbbatton77@gmail.com
- Cell: 512-657-2534

3



Course Goals

At the conclusion of this course, the student will:

1. Identify the purposes of performance appraisals.
2. List the required steps informal evaluation design.
3. Describe various types of appraisals and their benefits vs. weaknesses.
4. Articulate the common rating errors in performing appraisals.
5. Identify the steps in performing appraisals and briefings.
6. Define methods for behavior tracking and trend detection.

4



5



Performance Appraisals

- Required by most policies.
- Periodically administered
- Basis for various personnel decisions and actions

6



Two Basic Purposes of Appraisals

- **Judgmental/Measuring** – Supervisor judges and measures the individual's performance in comparison with a performance standard which may reflect any aspect of competence, judgment or performance.
- **Developmental** – Used to correct weaknesses or improve strengths. Development is accomplished through counseling, training or setting objectives for self improvement.

7



Other Purposes

- To Create an Environment of Measurement (That Which is Measured is Valued) and Accountability.
- Provide a Formal Opportunity for Discussion with Employees about Goals, Objectives and Career Development.
- Leadership Opportunity to Learn About Each Other and Work Through Concerns.
- Establish Trust and Value.
- Determine Training Needs
- Develop Individual Goals Congruent with Department Goals

8



Formal Evaluation Design

- Job Task Analysis
- Job Description
- Evaluation Instrument
- Valid Based on
 - Content
 - Criterion in Some Cases (Firearms Qualification)

9



Forms of Appraisals

- Informal – Regular Communications to Correct and Shape Behavior.
 - See Harker Heights Policy on Tickler Files and Checkride Requirements
- Formal or Systematic – The Periodic Formal Evaluation of Employee Performance used for Permanent Recording.



16



Informal Appraisals

- A Necessary Part of Supervision
- Performance Cannot be Adequately Assessed only Once or Twice a Year.
- “State” Behavior Must be Addressed When it Occurs to Avoid Becoming a “Trait” Behavior.
- Most People Need and Seek Input.
- Lessens the Stress of “Formal” Appraisals



17



Informal Appraisals

HHPD Policy IID-7

2. SUPERVISORY MONITORING
 Every supervisor of the Harker Heights Police Department shall regularly monitor the performance and work product of his/her subordinates. In doing so, the supervisor will provide opportunities to coach and teach subordinates as well as serving as a resource to those subordinates for technical support.

2.1 REGULAR “CHECK-RIDES” OR INFORMAL MONITORING REQUIRED
 Every supervisor of the Department shall establish and maintain a schedule of “check-rides” or other means of direct observation and supervision. Each supervisor will have such personal and exclusive time with each subordinate at least 2 hours per month. A report of such activities will be submitted monthly, up the chain of command, to the Chief of Police.



18



Informal Appraisals

HHPD Policy IID-7 (Continued)

2.2 INFORMAL COUNSELING

Each supervisor of the Department shall informally counsel subordinates as is required to make small corrections in conduct as mistakes are made. If conducts become worthy of notation, these informal sessions shall be documented and acknowledged by the subordinate. These informal notations will be kept in a "tickler" file as defined in this policy.

3 TICKLER FILES AND THEIR USES

Tickler files are informal records kept by supervisors to keep track of conduct and performance issues, both good and bad, between formal evaluation periods

19



Informal Appraisals

HHPD Policy IID-7 (Continued)

3.1 FILES PURGED UPON FORMAL EVALUATION

These files shall be kept by each supervisor as assistance in supporting formal evaluation ratings given periodically. Once the information contained in the file is utilized in a formal evaluation, that file shall be purged and its contents either forwarded with the formal evaluation or destroyed.

3.2 EMPLOYEE IS ADVISED OF FILES CONTENTS

No item may be entered into a tickler file unless the effected employee has been advised of that item. It shall be the responsibility of the supervisor to discuss all matters that will affect an officer's formal evaluation as it occurs. This includes positive and negative entries. The time and date when an officer is advised of the issue to be kept in the file shall be recorded on that item and the employee should be asked to initial that item. This allows for formal evaluations to be simple reviews of all matters of importance that have occurred within the evaluation period.

3.3 FORMAL EVALUATION RATINGS BASED ON TICKLER FILE INFORMATION

No supervisor shall rate an employee as exceptionally high or exceptionally low without having evidence in the tickler file that the employee has been advised during the period by his/her supervisor of the exceptional conduct.

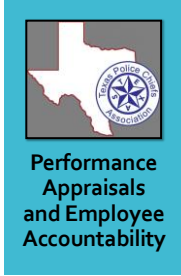
20



Tickler Files

- Running documentation of everyday performance and related issues
- Forces supervisory informal evaluations
- Provides defensible basis for formal evaluations
- Keeps employee informed
- Keeps supervisor focused
- No Surprises, Every Entry Discussed

21



Formal Appraisals

- Some Resist Doing Them
- Necessary for Due Process
- Clarifies Expectations
- Form or Type not as Important as Content
- Documents Strengths and Shortcomings
- Opportunity for Goal Setting, Encouragement, Appreciation and Correction.
- Gives the Organization Standing for Discipline Throughout.
- MUST Guard Against Arbitrary Ratings (Can Create Indefensible Patterns)

22



Guidelines for Improving Productivity and Competence (ICORD)

- I = Identify – Determine the Performance Area of Interest
- C = Communicate/Collaborate – Discuss Needs and Arrive at Agreement and Strategy for Progress
- O = Opportunity – Provide Opportunity for Improvement Through Guidance and Coaching
- R = Revisit – Inspect and Track Progress. Do Not Languish.
- D = Document – Provide Accurate Documentation of Each Developmental Step.

23



Common Rating Errors

- Supervisory Bias – Can Result From Many Things
- Halo Effect – Arises When Negatives are Ignored.
- Horns Effect – Negative Halo Ignoring Positives.
- Sunflower Effect – Rating Everyone High to Look Good as a Supervisor
- Central Tendency – Rating Everyone as Average/Satisfactory – Lazy
- Favoritism – Rating Based on Personal Likes and Dislikes.
- Recency – Rating Based Only on the Most Recent (Fresh) Behaviors.
- Grouping – Rating as a Unit Rather Than Individuals, Usually Negative
- Grudges – Never Forgiving and Revisiting Old Issues.
- Guilt by Association – Don't Like His/Her "Group".
- Comparative Error – Comparing Against Individuals and Not Standards

24



28



Employee Name: _____	Period Covered: _____ to _____										
Position: Police Officer	Job Class: _____										
Department: Wesley Chapel Police Department	Appraisal Date: _____										
Appraisee employees for performance done best evaluation only. Consider number employees for those consistent performance in corresponding areas.											
Fair and Equitable, Check One Rating	<table border="1"> <tr> <th>Unsatisfactory</th> <th>Needs Improvement</th> <th>Satisfactory</th> <th>Excellent</th> <th>Outstanding</th> </tr> <tr> <td>Fails to meet job requirements</td> <td>Periodically does not meet job requirements</td> <td>Fully and consistently meets job requirements</td> <td>Frequently exceeds job requirements</td> <td>Consistently exceeds job requirements</td> </tr> </table>	Unsatisfactory	Needs Improvement	Satisfactory	Excellent	Outstanding	Fails to meet job requirements	Periodically does not meet job requirements	Fully and consistently meets job requirements	Frequently exceeds job requirements	Consistently exceeds job requirements
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29



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Supervisor: _____ Date: _____	Appraisee: _____ Date: _____										
Reviewer: _____ Date: _____	My signature indicates I am aware of the contents and that I agree in writing.										
Division Commander: _____ Date: _____	Supervisor: _____ Date: _____										

30



- Work Improvement Plans
- Last Chance Agreements
- Grand Prairie Example
- Belton Example



34



35



Leadership Matters

“Those who are here
unfaithfully do incredible
damage.”

- Rumi



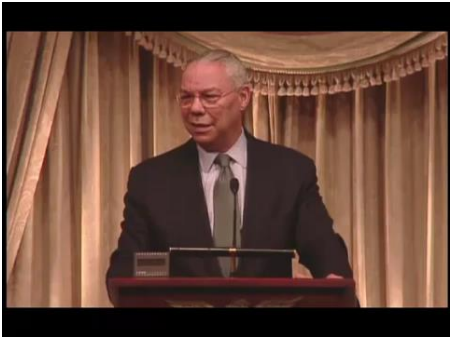
36



Leadership Matters

Describe Your Past Bosses

37



38



Leadership Matters

Nobility: Greatness of character and high ethical qualities or ideals that serve a cause greater than self; faithfulness to a higher calling or purpose.

39



Leadership Matters

"...humility is the true measure of a warrior's strength."

Eric Greitens, The Heart and The Fist

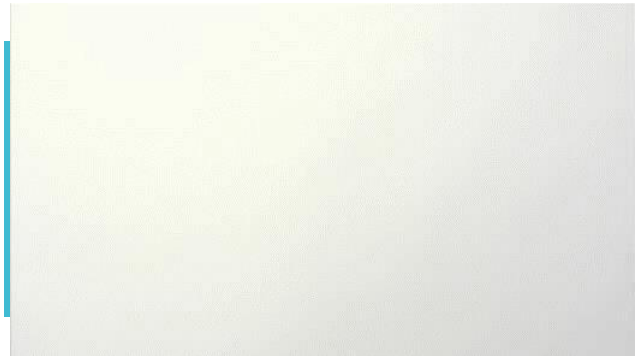
40



Leadership Matters

- Motivation
- Daniel Pink – DRIVE
 - Autonomy
 - Mastery
 - Purpose

41



42



Leadership Matters

Rewards

If You Aren't Getting the Behavior You Want, What are You Rewarding?

43



Employee Behavior Tracking

- What is Counted is Valued
- Keep Track of Positives – Calls, Arrests, Compliments, Traffic Stops, Days Worked, Special Duties, etc.
- Keep Track of Negatives – Complaints, Returned Reports, Rejected Cases, Excessive Sick Days, Crashes, etc.
- Ratio of Positives to Negatives Shifts – May Indicate Something Worthy of Addressing.
- Conduct Management Systems Required by Consent Decrees.

44



Legal Issues

- Discrimination
- Wrongful Termination
- Hostile Workplace
- Arbitrary and Capricious
- Fundamental Fairness
- Statutory Requirements for Civil Service 143.089(a)

45

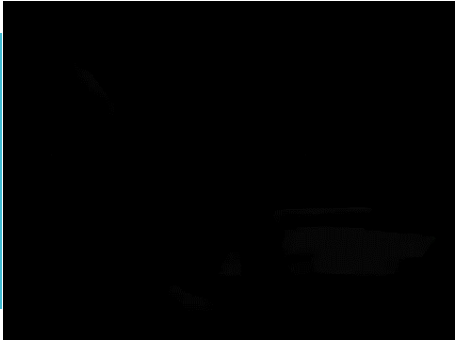


The Most Often Made Mistake By Police Supervisors

Settling for Mediocrity

- by Rewarding Poor Performance . . .
- by Not Challenging It Directly . . .
- by Training and Developing Toward the Average.

46



47



Greatest Principles

- If You Aren't Getting the Behavior You Want, Remove the Reward.
- Do What is RIGHT...Only Then Do You Have the Right to Expect it of Others.
- Do It Right....
- Do It Right Now

48



49



50

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY UNITED STATES OF AMERICA

Plaintiff,

v.

STATE OF NEW JERSEY

and

DIVISION OF STATE POLICE of the NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY.

Defendants.

CIVIL NO. 99-5970(MLC)

JOINT APPLICATION FOR ENTRY OF CONSENT DECREE

Specifically, the proposed Decree includes the following provisions:

- 1.) *Policy Requirements (¶¶26-28)*: State troopers may not rely to an degree on the race or national or ethnic origin of motorists in selecting vehicles for traffic stops and in deciding upon the scope and substance of post-stop actions, except where state troopers are on the look-out for a specific suspect who has been identified in part by his or her race or national or ethnic origin. The State Police shall continue to require that troopers make a request for consent to search only when they possess reasonable suspicion that a search will reveal evidence of a crime, and all consent searches must be based on the driver or passenger giving written consent prior to the initiation of the search.
- 2.) *Traffic Stop Documentation (¶¶29-34)*: State troopers engaged in patrol activities will document the race, ethnic, origin, and gender of all motor vehicle drivers who are the subject of a traffic stop, and also will record information about the reason for each stop and any post-stop action that is taken (including the issuance of a ticket or warning, asking the vehicle occupants to exit the vehicle and frisking them, consensual and non-consensual vehicle searches, uses of force, and arrests).
- 3.) *Supervisory Review of Individual Traffic Stops (¶¶35-39)*: Supervisors regularly will review trooper reports concerning post-stop enforcement actions and procedures, and patrol car video tapes of traffic stops, to ensure that troopers are employing appropriate practices and procedures. Where concerns arise, supervisors may require that the trooper be counseled, receive additional training, or that some other non-disciplinary action be taken. Supervisors also can refer specific incidents for further investigation, where appropriate.
- 4.) *Supervisory Review of Patterns of Conduct (¶¶40-56)*: The State will develop and implement an early warning system, called the "Management Awareness Program," that uses computerized information on traffic stops, misconduct investigations, and other matters to assist State Police supervisors to identify and modify potentially problematic behavior. At least quarterly, State Police supervisors will conduct reviews and analyses of computerized data and other information, including data on traffic stops and post-stop actions by race and ethnicity. These reviews and analyses, as appropriate, may result in supervisors implementing changes in traffic enforcement criteria, training, and practices, implementing non-disciplinary interventions for particular troopers (such as supervisory counseling or additional training), and/or requiring further assessment or investigation.
- 5.) *Misconduct Allegations (¶¶57-92)*: The State Police will make complaint forms and informational materials available at a variety of locations, will institute a 24-hour toll-free telephone hotline, and will publicize the State Police toll-free number at all State-operated rest stops located on limited access highways. The State also will institute procedures for ensuring that the State Police is notified of criminal cases and civil lawsuits alleging trooper misconduct. Allegations of discriminatory traffic stops, improper post-stop actions, and other significant misconduct allegations will be investigated by the Professional Standards Bureau inside the State Police or by the State Attorney General's Office. All investigations will be properly documented. Where a misconduct allegation is substantiated concerning prohibited discrimination or certain other serious misconduct, discipline shall be imposed. Where a misconduct allegation is not substantiated, the State Police will consider whether non-disciplinary supervisory steps are appropriate.
- 6.) *Training (¶¶93-109)*: The State Police will continue to implement measures to improve training for recruits and incumbent troopers. The training will address such matters as supervisory issues, communication skills, cultural diversity, and the nondiscrimination requirements of the Decree. The State Police also will take steps to continue to improve its trooper coach program for new troopers. The Independent Monitor selected by the parties will evaluate all training currently provided by the State Police regarding traffic stops, and will make recommendations for improvements.
- 7.) *Auditing by the New Jersey Attorney General's Office (¶¶110-113)*: The State Attorney General's Office will have special responsibility for ensuring implementation of the Decree. The Office will conduct various audits of State Police performance, which will include contacting samples of persons who were the subject of a State Police traffic stop to evaluate whether the stops were appropriately conducted and documented. The Office also will audit State Police implementation of the Management Awareness Program, and procedures used for receiving, investigating, and resolving misconduct allegations.
- 8.) *State Police Public Reports (¶114)*: The State Police will issue semiannual public reports containing aggregate statistics on certain law enforcement activities, including traffic stop statistics.
- 9.) *Independent Monitor (¶¶115-121)*: An Independent Monitor, who will be an agent of the court, will be selected by the United States and the State of New Jersey to monitor and report on the State's implementation of the Decree. The responsibilities of the Monitor will include evaluating samples of trooper incident reports, supervisory reviews of incidents, and misconduct investigations, supervisors' use of the Management Awareness Program, and the use of non-disciplinary procedures to address at-risk conduct.
- 10.) *Decree Term (¶131)*: The basic term of the Decree will be five years, however, based on the State's record of compliance, the United States and the Independent Monitor may agree to a request by the State to shorten the term of the Decree if the State has been in substantial compliance for at least two years.

Joint entry of the Decree is in the public interest since it provides for expeditious remedial activity and avoids the diversion of federal and State resources to adversarial actions by the parties. Additionally, the proposed Decree does not conflict with the collective bargaining agreements between the State Police and its troopers as noted in the Decree at 128.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff

v.

CITY OF STEUBENVILLE, STEUBENVILLE POLICE DEPARTMENT, STEUBENVILLE CITY MANAGER, in his capacity as
Director of Public Safety, and STEUBENVILLE CIVIL SERVICE COMMISSION, Defendants.

CONSENT DECREE

1. The United States brings to action to enforce Section 210401 of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141. The United States alleges that officers of the Steubenville Police Department have engaged in a pattern or practice of conduct that deprives persons of rights, privileges, or immunities secured and protected by the Constitution and the laws of the United States, and that the City of Steubenville, the Steubenville Police Department, and the Steubenville City Manager (in his capacity as Director of Public Safety) have caused and condoned this conduct through inadequate policies and failure to train, monitor, supervise, and discipline police officers, and to investigate alleged misconduct.
22. The City shall develop, and require all officers to complete, a written report each time: any type of force is used against an individual; an officer engages in a vehicular pursuit; a firearm is discharged by an officer, except at a firing range; a person in custody receives a serious injury or has received a serious injury while being taken into custody; and any officer is injured in the line of duty. Types of force to be reported include, but are not limited to, body locks, joint locks, mechanical restraints, pressure points, chokes or chokeholds, takedowns, throws, striking weapons, kicks or strikes, chemical weapons, electrical weapons, and lethal weapons (including drawing of a gun and pointing it at a person). No report for use of force needs to be filled out where force was limited to a firm grip and/or use of handcuffs. Reports shall include, at minimum, the following information: officer name and badge number; description of incident; each specific type of force used; the effectiveness of each type of force; description of any injuries to either a civilian or officer, and medical/hospital date; name, race and gender of the person against whom force was used; names and contact information for all witnesses; whether the individual against whom force was used was arrested or cited, and if so, the charges; date, time and location of the incident; and the signatures of the officer and his immediate supervisor.

SUPERVISION OF OFFICERS

64. The City, by and through its officials, agents, employees, and successors, has an affirmative obligation to supervise, monitor, and discipline its officers.
65. The City shall use the following sources as supervisory tools alerting management to potential misconduct, inappropriate behavior, and areas in which additional training or policy modification may be necessary:
 - a. The reports discussed in ¶¶ 22, 24, and 27;
 - b. criminal case orders suppressing evidence because of constitutional violations (including violations of the First Amendment, the Fourth Amendment, the Fifth Amendment) or for other reasons, or other judicial findings or comments about SPD misconduct made in the course of a criminal proceeding;
 - c. civilian complaints;
 - d. civil suits alleging misconduct by an officer in the course of his or her duties, or against an officer and including allegations of untruthfulness, physical force, racial bias, or domestic violence;
 - e. criminal arrests or charges against officers;
 - f. reports of misconduct by officers about other officers.

The reports listed in subparagraph (a) shall be referred to the IA Officer under the terms specified in ¶¶ 23, 25, and 27. Each of the other events listed in this paragraph shall trigger an IA investigation. The IA Officer shall conduct an independent investigation on receipt of the referral, and shall not wait for resolution of a criminal or civil court case. The fact that the City settled a civil litigation shall have no bearing on the need or findings of an IA investigation or on the supervisory or disciplinary results.

66. In addition, the City shall use the information system described in ¶ 71, below, in order to decide on appropriate supervision of officers.

78. The City shall develop and implement a performance evaluation policy for officers. Prior to implementation, the policy must be reviewed by the independent auditor and approved by the United States. The policy shall set out objective, job-relevant criteria, and provide for review of these criteria by each officer. It shall provide that each officer receives periodic face-to-face and written performance evaluations by supervisors during which his or her performance is discussed and evaluated, including recommendations for necessary improvement. Evaluations shall include narrative discussion of the officer's performance, and shall explain fully the weight and substance of all factors used to evaluate an officer. Supervisors shall include in the evaluation consideration of uses of force, civilian complaints, disciplinary actions, injuries, etc., focusing on possible patterns of misconduct or inappropriate action. The performance evaluations shall be part of promotion decisions made about any officer. Anonymous complaints determined by the IA officer after investigation to be uncorroborated may not be the basis of promotion of any officer. Supervisors and senior supervisors' evaluations shall include assessment of their ability to monitor, deter, and appropriately address misconduct or inappropriate action by officers they supervise.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, Plaintiff

v.

CITY OF PITTSBURGH, PITTSBURGH BUREAU OF POLICE, and DEPARTMENT OF PUBLIC SAFETY, Defendants
CONSENT DECREE

MANAGEMENT AND SUPERVISION

12. The United States acknowledges that the City has taken steps to establish a database containing relevant information about its officers, as well as a statistical model to identify and modify the behavior of problem officers (also known as an "early warning system"). The City shall have an automated early warning system in place and operational within twelve (12) months of entry of this Decree.
- a. The City's automated early warning system shall collect and record, at a minimum, the following information about an officer; officer name and badge number, citizen complaints, including textual descriptions of the allegations and all fields entered by the City of Pittsburgh Office of Municipal Investigations ("OMI") described in Paragraph 44; hit and non-hit officer-involved shootings; commendations and other indicia of positive performance; discipline imposed and related file numbers; all training, reassignments, transfers and mandatory counseling; status of any administrative claims filed against the City arising from PBP operations; a description of all other civil claims or suits that the officer is a names party to involving allegations of untruthfulness, physical force, racial bias, or domestic violence; a description of all lawsuits filed against the City, the PBP, or its officers arising from PBP operations; all arrests with the location of each arrest, the race of each arrestee, and the code violations(s); and the searches and seizures as documented in the search and seizure reports described in Paragraph 15; use of force as documented in the use of force reports described in Paragraph 15; and traffic stop information documented in the reports described in Paragraph 16.
 - b. The City's automated early warning system shall have, at a minimum, the capacity to retrieve information in the following categories; individual officer; squad, zone, shift, or special unit; arrests by officer(s) and types of arrests to determine the number of times a particular officer or groups of officers have filed discretionary charges of resisting arrest, disorderly conduct, public intoxication, or interfering with the administration of justice.
 - c. Data regarding an officer shall be maintained in the automated early warning system during that officer's employment with the PBP and for three(3) years after the officer leaves the PBP. Data regarding an officer that is removed from the automated early warning system shall be maintained in an archive indefinitely. The City shall input all the data from the OMI database and all other available data into the automated early warning system for the three years prior to the entry of this Decree.
 - d. Within four (4) months of the entry of this Decree, the City shall develop a written protocol governing the use of the automated early warning system. This protocol shall specify, at a minimum: (i) the numbers and types of incidents per officer requiring review by senior supervisors, the frequency of these reviews, and the follow-up actions to be taken by PBP senior supervisors based on information in the automated early warning system (including meeting with the officer and recommending appropriate remedial training, counseling, transfer, or re-assignment); (ii) re-training and re-certification requirements; (iii) confidentiality and security provisions; and (iv) quality assurance checks of data input. The City shall provide this protocol to the United States for review and approval at least 30 days prior to its implementation. If the parties are unable to agree on a written protocol, the auditor described in Paragraph 70 shall have final authority to determine the protocol.
 - e. Until full implementation of the automated early warning system, the City shall continue to identify for review all officers with three or more complaints of misconduct. Such review shall be documented and result, where appropriate, in re-training, counseling, transfer or reassignment.
13. The City shall develop and implement a use of force policy that is in compliance with applicable law and current professional standards. Prior to the implementation of such policy, the City shall provide the United States an opportunity to review the proposed policy and provide comments.
15. The City shall develop, and require all officers to complete, a written report each time a PBP officer (a) exercises a use of force; (b) performs a warrantless search (excluding searches incident to arrests, frisks and pat downs); (c) performs a body cavity search or strip search; and (d) conducts any warrantless seizure of property (excluding towing vehicles). The record shall include the officer's name and badge number; description of incident; the specific type of use of force, search or seizure; description of any injuries and medical/hospital data; name, race and gender of all persons involved in the use of force, search or seizure; names and contact information for all witnesses; any weapons, evidence, or contraband found during the search; whether the individual involved in the use of force, search or seizure was arrested or cited, and if so, the charges; date, time, and location of the incident and search or seizure; and the signatures of the officer and his immediate supervisor.
23. The United States recognizes that the PBP has developed a program to conduct annual performance evaluations. The PBP shall require annual performance evaluations of all officers, supervisors, and senior supervisors. The performance evaluation shall be in writing and shall fully explain the weight and substance of all factors used to evaluate an officer. At a minimum:
- a. Supervisors and senior supervisors shall be evaluated on their ability to monitor, deter, and appropriately address misconduct by officers they supervise, and;
 - b. The PBP shall evaluate each officer on the basis of his or her complaint history, focusing on patterns of misconduct.
24. In addition to the Civil Service guidelines, the performance evaluations shall be considered as one of the factors in making promotions.

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA, UNITED STATES OF AMERICA, Plaintiff
v.
CITY OF LOS ANGELES, CALIFORNIA, BOARD OF POLICE COMMISSIONERS OF THE CITY OF LOS ANGELES
And the LOS ANGELES POLICE DEPARTMENT, Defendants, CIVIL NO. 00-11769 GAF
CONSENT DECREE

I. INTRODUCTION

- A. General Provisions
- B. Definitions

II. MANAGEMENT AND SUPERVISORY MEASURES TO PROMOTE CIVIL RIGHTS INTEGRITY

- A. TEAMS II [Computer-Information System]
- B. Management and Coordination of Risk Assessment Responsibilities
- C. Performance Evaluation System

III. INCIDENTS, PROCEDURES, DOCUMENTATION, INVESTIGATION, AND REVIEW

- A. Use of Force
- B. Search and Arrest Procedures
- C. Initiation of Complaints
- D. Conduct of Investigations
- E. Adjudicating Investigations
- F. Discipline & Non-Disciplinary Action
- G. Internal Affairs Group
- H. Non-Discrimination Policy and Motor Vehicle and Pedestrian Stops

IV. MANAGEMENT OF GANG UNITS

V. CONFIDENTIAL INFORMANTS

VI. DEVELOPMENT OF PROGRAM FOR RESPONDING TO PERSONS WITH MENTAL ILLNESS

VII. TRAINING

- A. FTO Program
- B. Training Content
- C. Supervisory Training

VIII. INTEGRITY AUDITS

- A. Audit Plan
- B. Audits by the LAPD
- C. Inspector General Audits

IX. OPERATIONS OF THE POLICE COMMISSION & INSPECTOR GENERAL

- A. Police Commission
- B. Inspector General
- C. General

X. COMMUNITY OUTREACH AND PUBLIC INFORMATION

XI. INDEPENDENT MONITOR

XII. TERM OF AGREEMENT AND HOUSEKEEPING PROVISIONS

- A. City Reports and Records
- B. Implementation

 Menu

Resources

 Resources Menu

Employee performance reviews and pretext: A hard lesson from the Tenth Circuit

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By Paul Ross

As veterans of employment litigation can tell you, employment discrimination claims are rarely supported by direct evidence of discriminatory decision making. In the overwhelming majority of cases, employees support their entire case with circumstantial evidence. In short, they attempt to cast as much doubt as possible on the reasons offered by the employer for its employment decision, leaving the jury to conclude that there must be some other, more sinister reason for the decision — illegal discrimination. In essence, they ask the jury to conclude that the employer’s stated reason for its decision wasn’t the “real” reason but, instead, was pretext to hide illegal discrimination.

Of course, this approach is maddening to employers because it’s a judicial process that essentially calls the employer a liar: “Sure, sure, we know what you say under oath, but we’ll allow the jury to conclude that you’re committing perjury — a federal crime — to cover up discrimination through the employee’s use of indirect evidence; evidence that is subject to interpretation and always less than clear.” Welcome to federal court employment litigation.

A recent decision by the Tenth U.S. Circuit Court of Appeals (which covers Oklahoma) provides some important guidance to employers about one of the most common forms — indeed, the original form — of pretext evidence: the annual employee performance review.

The performance appraisal problem

In 2005, Boeing sold its local facility to Spirit Aerosystems. Spirit intended to continue operations at the plant and asked Boeing to recommend which of its former employees should be retained. The employee at the center of this case filed suit against Boeing and Spirit after his former manager recommended that Spirit not hire him.

In defense of his recommendation, the manager testified that the employee, when compared to his coworkers, had “limited skills,” performed with “low quality” and “low productivity,” and had “marginal teaming abilities” — all legitimate nondiscriminatory reasons that would support the decision not to retain him.

Lacking any direct evidence of discriminatory intent, the employee contended that his former manager’s explanation wasn’t the “true” reason for the decision, but a pretext for age discrimination. To support his claim, he offered his most recent performance appraisal.

His review reflected that he “met all expectations” in every category, including technical skills, knowledge, productivity, quality, and “people working together.” The comments section included a statement that he “performed well” and instructed him to “keep up the good work.” The employee argued that the evaluation expressly contradicted the reasons offered by his former manager and that a jury should be free to conclude that his age was the true reason for the decision.

The Tenth Circuit agreed and ordered a jury trial on the issue. The court held that the disparity between the employee’s written evaluation and the justifications later given by Boeing was sufficient, on its own, to require a jury determination on pretext. Thus, even without any affirmative evidence of age discrimination, a jury will be allowed, should it so choose, to conclude that Boeing discriminated against the employee because of his age. *Woods v. The Boeing Company*, 2009 WL 4609678 (10th Cir., 2009).

Takeaway

Although this case breaks no new legal ground, it’s a reminder of employee documentation as critical circumstantial evidence. In that regard, it highlights two important lessons for employers. First, annual employee evaluations are of no assistance unless they are authored with complete honesty. In fact, as this case shows, they can be of significant detriment. Managers must be trained to carefully and thoughtfully review their employees and offer complete and honest feedback regarding performance. They must avoid the convenience of blanket “meets expectations” reviews and the temptation to avoid confrontation with underperforming employees. Otherwise, it’s better not to do evaluations at all.

Second, HR professionals and managers alike must consider performance appraisals when contemplating disciplinary measures or other significant employment decisions. Before taking action, evaluate key documents (e.g., performance reviews) to ensure they don’t contradict the action or support a “pretext” argument by the employee. If an evaluation reveals an issue, consider alternatives that will aid in building an appropriate record of the performance problems at issue.

Employer decision making will continue to face exhausting scrutiny under the microscope of “pretext” analysis. However, this case is a shining example of preventable pretext problems and should serve as a strong reminder to employers to properly manage your annual evaluation programs.

Featured



Texas Police Chiefs Association Foundation

Performance Appraisal Case Study

A Sergeant worked with an Officer on the same shift for several years. Both were effective and competent with positive work histories. Both were experienced and highly regarded in the Department with all positive appraisals in the past. At some point, the Sergeant asked the officer for a date. The officer kindly refused and stated no interest because of their working relationship. Over time, the Sergeant became frustrated with the refusal and several weeks later, asked the Officer if the refusal was due to anything other than the work relationship. The Officer reaffirmed that it was just due to the work relationship. The Sergeant pushed further and asked, "If we didn't work together, would you go out with me?" The Officer was reluctant to answer and the conversation ended.

Approximately one month later, the Sergeant challenged the officer about the way a call was handled and said the way the officer handled the individuals on the call seemed "unkind" and then said, "You have a history of coming off that way". After this conversation, the Officer approached the Lieutenant and voiced a concern that because of the past rebuff of the Sergeant, the Officer felt the Sergeant was being unfair. The Lieutenant stated that he would speak with the Sergeant. He did and the Sergeant stated that was not the case.

Another few weeks past and the Sergeant confronted the Officer and said, "Do you find me disgusting?" The Sergeant then said, "If you find me so ugly and disgusting then maybe you should seek a transfer to another squad. This conflict then resulted in a sexual harassment investigation that resulted in the transfer of the Sergeant to another shift and a reprimand.

When appraisal time arrived shortly after, the Lieutenant instructed the Sergeant to conduct the performance appraisal rather than the new sergeant because the new sergeant had not worked with the officer during the appraisal period. The resulting appraisal was negative and stated in part that the officer had "difficulty working with others".

Discussion: In what ways did this situation endanger the Department regarding liability and how should the situation been handled? Who of the Department members were culpable in any leadership failures?