

Performance Evaluations for Law Enforcement

*“Are They Helping Us or
Hurting Us?”*

WORKBOOK

Instructor:
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Attorney Matt Dolan

Matt Dolan is a licensed attorney in the State of Illinois, who specializes in training and advising public safety agencies in matters of legal liability. His training focuses on helping agency leaders create sound policies and procedures as a proactive means of minimizing their exposure to costly liability.

Matt received his Bachelor's Degree in Political Science from DePaul University and his J.D. from Loyola University Chicago School of Law.

A member of a law enforcement family dating back three generations, he serves as both Director and Public Safety Instructor with Dolan Consulting Group. He has trained and advised thousands of public safety professionals throughout the United States in matters of legal liability. His training courses include *Recruiting and Hiring for Law Enforcement*, *Making Discipline Stick®*, *Supervisor Liability for Public Safety* and *Confronting the Toxic Officer*.

Presentation Outline

- I. “Inspect What You Expect”—Opportunities Presented by
Performance Evaluation Systems**
- II. The Costs Associated with Broken Performance Evaluation
Systems**
- III. Addressing Common Pitfalls and Creating Evaluation Systems
that Reflect Agency Priorities**
- IV. Review Course Take-Aways and Closing Comments**

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**Why are we Conducting Performance Evaluations and
How are they Making the Agency Better?**

Requiring that supervisors accurately evaluate performance of their subordinates and communicate expectations is critical to identifying performance deficiencies as early as possible and providing strategies for improvement. The primary functions of our performance evaluation policies should serve to allow agency leaders to:

- **Intervene early**, before misconduct/poor performance has become habitual
- **Facilitate honest communication** between supervisors and subordinates
- **Recognize excellence** for the sake of motivation, morale and retention
- Make **legally and ethically defensible decisions** re: discipline, promotions and other personnel decisions

Importance of Documenting Performance

- Documentation of performance issues, coaching and discipline
→ prevents *the causal link* between protected activity/membership in a protected class and materially adverse action.
- Without convincing documentation, conflicting stories go to the finder of fact.
- ***If it's not in writing, it didn't happen.***

Opportunities Presented by Performance Evaluation Systems

- Chance to identify performance issues early and give needed “wake up calls” to officers before discipline is necessary
- Can be incorporated into the promotional process, specialized assignments, necessary discipline and necessary termination decisions
- **CAUTION:** Upside may be dependent on **investing time and resources** in rejuvenating policies and training supervisors

**Organizational Failure to Address Performance Issues *Before* Isolated
Instances Become Habitual Misconduct**

Discipline as a “Wake Up Call” to Save Careers

True Purpose of Discipline

- **Correct** not punish.
- Overall purpose is to maintain organization's integrity, attain organizational goals, and protect the welfare of organizational members.
- Progressive Discipline demonstrates agency's good faith effort to give the employee an opportunity to **succeed**.

Evaluating Performance During the FTP/Probationary Process

- Particularly crucial when hiring applicants with minimal work experience—the probationary period may allow you to observe the new hire operating in the FIRST JOB THEY HAVE EVER HAD.
- **Fighting the perception that once they have a uniform and a badge, the hiring process is over.**
- Isn't the probationary period part of the hiring process?
- How difficult/unlikely is it that problems emerging during the probationary period will be pro-actively addressed later? → **The more difficult it is to**

rid the agency of the individual later = the more resources the agency dedicates to the FTO process?

- What are we looking for during the probationary period, in light of “red flags” known to agency leaders?
- **Do we have a training issue or something more fundamental?**

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Performance = function of:

Desire x Opportunity x Ability

Dr. Van Meter, *Quota Free Policing*

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1) ACCEPTANCE OF FEEDBACK:

1 Not Acceptable

Refuses to accept guidance or corrective criticism from supervision and/or becomes argumentative when approached with guidance. Demonstrates a lack of intent to correct problems brought to his attention. **Supervisor must document specific incidents.**

2 Less than acceptable

Does not make an immediate change to performance after receiving corrective guidance.

3 Acceptable

Demonstrates a desire to improve quality of his/her work. Readily accepts guidance from supervision without argument and is willing to accept constructive criticism.

4 More than acceptable

Accepts negative feedback as an opportunity to improve. Uses both positive and negative feedback as fuel to improve his/her performance.

5 Excellent

Seeks out suggestions to improve quality of work. Expresses sincere concern when approached with criticism from supervision. Immediately corrects problem with said problem never reoccurring. **Supervisor must document specific incidents.**



The FTO Process— A Once-in-a-Career Opportunity

Matt Dolan, Attorney

February 2018

The probationary employment period presents public safety leaders with a unique opportunity to evaluate performance, identify “red flags” and take proactive measures to address misconduct. **For most officers, the close supervision and continual feedback that they receive from their Field Training Officers (FTOs) during this period will not be replicated for the entirety of their career.** If, during this period, FTOs find probationary officers to demonstrate fundamental job deficiencies, **there is no better time to have the difficult but critical conversation concerning whether the officer is salvageable.**

While it is certainly normal for probationary officers to make mistakes, there is often a clear distinction between understandable mental mistakes versus performance issues that reflect on core character issues such as honesty, willingness to accept responsibility for errors and ability to receive corrective feedback.

There is no *good* time for agency leaders and front-line supervisors to determine the severity of performance issues with the possibility of termination on the table. But, from a legal liability standpoint, there is no better time than during the FTO process—prior to an

officer's status shifting from probationary to permanent, with all of the arbitration, appeals and/or due process rights that come with this change in employment status.

There are several key factors that make the FTO process crucial to supervisors' ability to effectively gage officer performance and make fundamental decisions regarding the men and women that represent their agency now and for years to come.

- (1) **For many probationary officers, this is not just their first job in public safety. It is their first job of any kind** or, at least, the first job in which they will be subjected to the unique challenges associated with encountering people in crisis. It is often unreasonable to expect a background investigation or even an academy curriculum to reveal all that an agency should want to know about the character and resiliency of their latest hire. **Your FTOs may prove to be the people best suited to genuinely vet applicants before they are permanent employees.**
- (2) **The probationary period is typically a period of unparalleled supervision and constant corrective feedback.** A new officer's ability and/or willingness to accept that feedback and respond appropriately to that often proves to be an indicator of future problems. The refusal to accept responsibility and engage in a good faith effort to meet performance expectations is frequently cited by public safety leaders as one of the telltale signs of a toxic officer who can present a career's worth of problems for the agency.

- (3) **The in-depth documentation of this corrective feedback and the officer's responses is likely more consistent, detailed and accurate than the performance evaluations that will follow for the remainder of a permanent officer's career.** If termination is necessary during the probationary period at the urging of hands-on FTOs, it is likely to be accompanied by documentation demonstrating the objective performance and misconduct issues that have led to the termination decision.
- (4) The legal protections afforded to permanent employees in public safety is generally substantial— including federal and state anti-discrimination protections, state police officers' bill of rights laws and due process rights. While probationary employees do have some legal recourse in the face of termination, **the burden placed on the agency to demonstrate that a probationary employee was lawfully terminated for performance deficiencies often *pales* in comparison to the burden they face in terminating a permanent employee.**

In light of the window of opportunity presented by the probationary employment period, public safety agencies would be well served to analyze the time and resources that are dedicated to the FTO process.

In our *Recruiting and Hiring for Law Enforcement* training, we discuss the concept of the FTO process as an integral part of the hiring and vetting process. Also, in our *Confronting the Toxic Officer* training, we identify the probationary period as the best available opportunity to make necessary termination decisions that stick when subjected to legal challenges.

Agencies across the country often realize too late that the chance to streamline the evaluation and possible termination of the few bad

apples inside the department has come and gone only *after* the FTO process has ended and a problem officer's status has gone from probationary to permanent.

[illegible]

Americans' Confidence in U.S. Institutions, 2019

Now I am going to read you a list of institutions in American society. Please tell me how much confidence you, yourself, have in each one -- a great deal, quite a lot, some or very little.

	A great deal/Quite a lot	Some	Very little/None	Net confidence
	%	%	%	%
The military	73	18	8	+65
Small business	68	24	8	+60
The police	53	31	17	+36
The presidency	38	17	44	-6
The U.S. Supreme Court	38	40	21	+17
The church or organized religion	36	36	29	+7
The medical system	36	38	26	+10
Banks	30	43	26	+4
The public schools	29	42	29	0
Organized labor	29	45	24	+5
The criminal justice system	24	40	36	-12
Newspapers	23	37	39	-16
Big business	23	41	34	-11
Television news	18	33	48	-30
Congress	11	36	52	-41

Net confidence = A great deal/Quite a lot minus Very little/None (vol.); (vol.) = volunteered response

GALLUP, JUNE 3-16, 2019

Washington Study

- 165 police agencies in Washington
- Review of all citizen complaints against officers
- Only 5% of officers accounted for 100% of all sustained citizen complaints
- Most of these officers received multiple complaints per year

Dugan, J. R., & Breda, D. R. (1991). Complaints about police officers: A comparison among types and agencies. *Journal of Criminal Justice*, 19, 165–171.

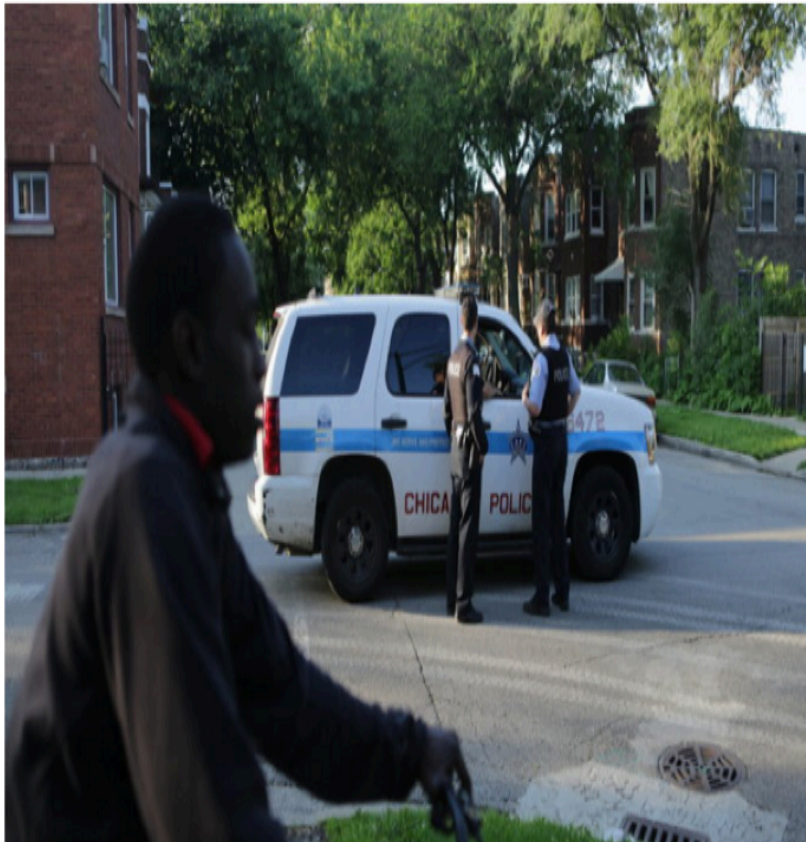
Albany, NY Study

- Review of 15 years of IA data from Albany Police Department (NY)
- 6% of officers accounted for 100% of all internal and external allegations of misconduct
- Most of these officers received multiple complaints

Harris, C. J. (2010). *Pathways of Misconduct*. Durham, NC: Carolina Academic Press.

Chicago Rarely Penalizes Officers for Complaints, Data Shows

By TIMOTHY WILLIAMS NOV. 18, 2015



The New York Times

The department said it had “implemented early warning systems to help identify potential concerns with officers’ actions and arrange for the appropriate training, when applicable,” to reduce misconduct.

But Craig B. Futterman, a professor at the University of Chicago Law School who founded the legal aid clinic that helped bring about the records’ release, said the department’s early intervention system had identified only 6 percent of officers who received 11 or more civilian complaints. The department did not dispute that figure.



When Performance Evaluation Systems are Broken...

- “Get out of jail free” cards for toxic outliers
- De-motivating to high level performers
- Even worse than a lack of documentation, they can create **inaccurate** documentation

Pitfalls in Court and in Arbitration

- The failure to **identify, confront and document** performance issues leads to failures in *Making Discipline Stick* whether in court or in arbitration
- In Court →
 - the discipline was unfair and **motivated by** the employee’s race, religion, gender, age, disability, military status, etc.
 - The discipline was unfair and was **retaliation for** the employee’s complaint of harassment, discrimination, etc.

Federal Employment Discrimination Law

- I. Title VII of the Civil Rights Act of 1964
- II. Americans with Disabilities Act (ADA)
- III. Age Discrimination in Employment Act (ADEA)
- IV. Discrimination based on Military Service (USERRA)

*Not an exhaustive list of relevant statutes

Title VII of the Civil Rights Act of 1964

Prohibits discrimination, with respect to “terms, conditions or privileges of employment,” based on:

- Race,
- Color,
- Religion,
- Sex, and
- National origin.

Americans with Disabilities Act (1990)

- Prohibits employers from:
 - (1) discriminating against
 - (2) a disabled individual
 - (3) who is *otherwise qualified* for the position
 - (4) because of that individual's disability.

- Duty not to discriminate requires employer to make
 - (1) a **Reasonable Accommodation** to the individual's disability
 - (2) that does not impose an undue hardship upon the employer.

- A disabled individual is otherwise qualified if:
 - (1) can perform the essential job functions
 - (2) with or without the assistance of a reasonable accommodation.

Age Discrimination in Employment Act (1967)

- Legislation prohibits discrimination on the basis of age, pertaining to individuals over the age of 40. Employees under the age of 40 are not protected from age-based discrimination under this law.
- There is no reasonable accommodation requirement, unlike the ADA.

Discrimination Based on Military Service (USERRA)

A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

See 38 USCS § 4311(a) (LEXIS 2020)

Summary Judgment

- Standard: Summary judgment is appropriate if the record shows that there is “no genuine issue as to any material fact and [that] the movant is entitled to judgment as a matter of law.”
Fed.R.Civ.P. 56(a).
- Without compelling documentation, conflicting stories go to the finder of fact.
- *If it's not in **writing**, it didn't happen.*
- Agency Motions for Summary Judgment tend to be unsuccessful where there is the **appearance** of unlawful discrimination.

The Just Cause Doctrine

(also known as the *Seven Tests of Just Cause*)

- Did the employee have forewarning of the possible disciplinary consequences of his/her conduct?
- Was the management rule or regulation reasonably related to the orderly, efficient and safe operation of the business?

- Did management make an effort to discover whether the employee did in fact violate the rule before administering discipline to the employee?
- Did management conduct a fair and objective investigation?
- Did management, during this investigation, obtain substantial evidence or proof that the employee was guilty of the charge?
- **Has management applied its rules and regulations and penalties evenly and without discrimination?**
- Was the degree of discipline administered reasonably related to the seriousness of the conduct and the record of the employee with the company?

See *In re Enterprise Wire Co.*, 46 L.A. 359 (1966). An entire treatise on discipline and discharge is structured around Arbitrator Daugherty's seven tests. See Koven and Smith, *Just Cause: The Seven Tests* (May Rev. 3d ed. 2006).

Significance of Just Cause Doctrine Across Different Labor Environments

- Union environments with binding arbitration.

- Departments with municipal, county or state “just cause” standards.
- Departments with municipal, county or state civil service review.
- **Any** agency under federal and state employment discrimination law.
- **Any** agency that makes it a priority to treat employees fairly and consistently in the interest of professionalism and retention.
- **Are we incorporating Just Cause Principles into our performance evaluation systems?**

Reasonable Policies Must be Consistently Applied

- In work-rule violation cases, a prima facie case and pretext can be established by showing that, even though the employee did violate, employees who engaged in similar acts were not **disciplined similarly**.
- Applies to varying levels of severity.



The City of New York

Commission to Investigate Allegations
of Police Corruption and the
Anti-Corruption Procedures of the
Police Department

COMMISSION REPORT

Milton Mollen
Chair

Harold Baer, Jr.
Herbert Evans
Roderick C. Lankler
Harold R. Tyler, Jr.

Joseph P. Armao
Chief Counsel

Leslie U. Cornfeld
Deputy Chief Counsel

July 7, 1994

Not only have many supervisors neglected their anti-corruption responsibilities, but many have even abandoned their responsibility to evaluate officers in their command - and to flag "problem" officers for the Department. Indeed, in our supervision project, supervisors admitted that performance evaluations were typically boilerplate, and not intended to flag problem officers for the Department or their superiors. Indeed, we found that performance evaluations often covered suspected corruption problems. The case of Michael Dowd presents a classic illustration of this problem. Michael Dowd testified that when he had reached the height of his career as a corrupt officer, was using drugs and drinking on the job daily, had not made a single arrest in one of the most crime-ridden precincts in the City, was driving a red Corvette and living an openly lavish life-style from his illicit drug profits, his supervisor gave him a "meets standards" evaluation and said he could one day be a "role model" for other officers. His evaluation was as follows:

Mollen Commission Report, 1994

What Does an Inaccurate Evaluation do to Past Write-Ups or Sustained Complaints?

- January—Write up for abuse of sick time
- February—Write up for violation of the pursuit policy
- March—Write up for violation of the pursuit policy
- April—Write up for insubordination
- **June—Performance Evaluation with all “Meets Expectations”**

**Positive Performance Reviews + Negative Employment Action =
Appearance of Discrimination/Retaliation/
Arbitrary Treatment**

Sources of Liability and the Appearance of Unfair Treatment

- How do we effectively defend negative employment actions as being performance based decisions when the performance evaluations tell a contrary story?
- If we don't have a clear narrative—does that open the door to liability and public trust issues?

Parallel Universes in Relation to Progressive Discipline Steps?

Are Agencies De-Motivating Their High Level Performers?

Broken Performance Evaluations—A Toxic Deputy’s Best Friend

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4 Performance Evaluation Pitfalls Your Agency Should Avoid

[Attorney Matt Dolan](#)

May 2018

Broken performance evaluation systems damage public safety agencies across the country in two ways. First, they inaccurately give positive documentation to officers that is later used to reverse important disciplinary decisions in court or in arbitration. Second, by selecting “meets expectations,” supervisors are denying performance merits to officers who have earned much greater recognition.

More often than not, it seems that supervisors view the completion of annual performance evaluations to be a tedious chore that they have to undertake once a year with little genuine regard for why we are conducting these evaluations and how they are helping the subordinate, the supervisor or the agency.

This dim view of performance evaluations by supervisors often results from four fundamental problems in the process. So, as public safety professionals, you may want to ask yourself if these common mistakes are harming your agency operations.

1—The Evaluation criteria has no real relationship to day-to-day job responsibilities.

Often the criteria by which officers, deputies, firefighters and other public safety personnel are “graded” is **so generic as to be seen as meaningless**. These criteria could often apply to the personnel in parks and recreations, the public library or any other facet of government—all important jobs but ones that have no nuts and bolts similarities to the work of a police officer or firefighter. In fact, **some local governments essentially create city-wide or county-wide evaluation forms that inevitably fail to take into account the unique “nuts and bolts” of the various jobs included under that umbrella.**

If you want your evaluations to be a meaningful communication of how well a patrol officer is coming along (where they have room for improvement and areas where they should keep up the good work) then the criteria should be directly related to their unique job description. Furthermore, **ask the question:**

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what do our patrol sergeants expect to see from their people on a given shift? Those are the criteria that should be reflected on the evaluation forms rather than generic categories that essentially amounts to “*gets along well with others.*”

2—Requiring Additional Documentation Based on the Quality of the “Grade” Given

Most men and women drawn to public safety are not in it for the paperwork. They already feel that they are buried in administrative tasks as it is. Why would we communicate to them that a “needs improvement” grade or an “exceeds expectations” grade will trigger a new round of paperwork assignments while a “meets expectations” grade requires basically no documented justification whatsoever? **The unintended consequence of such a system is to encourage supervisors to “circle down the middle”—regardless of the subordinate’s performance—in order to avoid documentation** that is not only time-consuming but requires the supervisor to recall specific incidents of misconduct or exemplary work spanning 12 months.

If you want to require documentation to support ratings, consider requiring the same amount of documentation regardless of the *quality* of the grade. The desire to avoid paperwork is a powerful incentive to overlook performance problems as well as excellence. **Removing that inherent incentive to “circle down the middle” may be a necessity.**

3—Averaging Scores Across the Board

There are some areas of public safety work that are essential to an individual’s ability to safely fulfill their obligation to the agency and the community. And a severe deficiency in one area does not necessarily mean that there are similar deficiencies across other areas of daily work performance. However, **an overall positive evaluation may well be an inaccurate reflection of the fact that the severe deficiency in one particular area could result in significant discipline, including termination, if there is not substantial improvement.**

For instance, a patrol deputy could show up promptly for every shift in appropriate attire, show pro-activity in initiating stops for serious traffic violations, respond promptly to calls for service and do so with little or no complaints from the public as a result of the fact that he is professional in his dealings with the public. The only problem is that he is a dangerously incompetent driver. He “needs improvement” in his skills as a driver and his accidents and close calls are duly documented on his performance evaluation. But his overall grade as a deputy is “meets expectations” due to his proficiency in other areas.

Can an individual’s deficiencies in a key safety area be *so significant* that an overall “meets expectations” is *not* a fair reflection of their need to address performance issues? Furthermore, could these deficiencies be so significant in one key area that it is unethical for an agency to allow him to remain employed in his

current capacity without substantial improvement? It seems obvious that the answers to these questions is a clear yes.

If you want to give individuals a general sense of how they are performing overall, while they may exceed expectations in some areas but need improvement in others, **consider the caveat that a “needs improvement” in particular key areas renders an overall grading of “meets expectations” as an impossibility.** Fundamentally, a patrol deputy is expected to demonstrate proficiency in following lawful directives, driving ability, firearms proficiency, professional communication with the public and adherence to protocol related to officer safety in making stops and responding to calls for service. It would seem impossible that a deputy could consistently fail in one of these areas while simultaneously meeting a supervisor’s standards set forth for the position of deputy. Your evaluations should reflect this common-sense reality.

4—Tying Merit Pay Raises to Obtaining a Particular Grade

The idea of tying pay raises to performance *sounds* like a good one. Well-intentioned local political leaders are often enthusiastic to pass rules and legislation requiring, for instance, that only those who “exceed expectations” in their performance be justly rewarded with a pay raise. **They assume this will encourage public safety personnel to strive for excellence and ensure that excellence is rewarded. The reality tends to be starkly different.**

Very quickly, merit pay raises are seen by those within the agency as an overdue pay raise for all department members. Therefore, a supervisor’s decision to indicate anything lower than “exceeds expectations” is nothing short of taking money out of somebody’s pocket. The reluctance of supervisors to accurately identify performance problems in this environment is often predictable. Supervisors often reason that, **“I know she’s not getting the job done and she’s causing more problems than she solves when she’s working...but we haven’t had a pay increase in five years and I’m not going to take money out of her pocket”.**

So, an employee who is the source of constant problems now has a piece of paper from her subordinate stating that she is doing great. And that piece of paper may well become very relevant if the agency decides to deny her a promotion, suspend her or even terminate her at some point in the future. “If she’s been such a problem”, the argument will be in court or in arbitration, “then why did the agency consistently grade her as an excellent employee?”

If there is funding available for merit pay raises, agency leaders should consider advocating an across the board pay increase in light of the nation-wide prominence of the unintended consequences associated with tying pay increases to positive performance evaluations. Inflating evaluation grades across the agency can have extremely detrimental effects when agency leaders attempt to make disciplinary decisions down the road.

Doesn't Every System Require Confrontation and Documentation?

Addressing Common Pitfalls in the Evaluation Form

- Insufficient evaluation forms
- Policies that encourage supervisors to “circle down the middle”
- Requiring assessments without requiring day-to-day/week-to-week/month-to-month documentation
- Failure to train

The Performance Evaluation Form

- Is the criteria related to the job description?
- Are we actually encouraging supervisors to circle down the middle in order to minimize paperwork?
- Or are we requiring fact-based documentation for *all* ratings?

Supporting Inherently *Subjective* Opinions with *Objective* Facts

Should Employees EVER be Surprised by their Evaluations?

Performance Evaluations Should Be...

- Fact-based *rather* than purely opinion-based.
- Contain extensive supervisor narrative *rather* than 1-5 standing alone.
- On-going appraisals *rather* than exclusively pre-scheduled Evaluations.



Why are We Grading Performance Evaluations?

[Matt Dolan, Attorney](#)

August 2019

Why are we conducting performance evaluations and how are they making our agencies better? Ask this question to groups of sergeants, command staff, chiefs and sheriffs across the country and you will get shrugs, smirks, and eye rolls. It is the fundamental question that often gets lost in the day-to-day realities of personnel management in law enforcement.

The official, textbook answers to these questions tend to fall somewhere along the lines of the following:

Regular performance evaluations are intended to ensure (1) that supervisors are communicating clear performance objectives to subordinates, (2) that subordinates are aware of their areas of needed improvement as well as the areas in which they excel, and (3) any questions associated with subordinate performance are answered and performance objectives are clarified with specificity.

Performance evaluations improve agency functions by providing a pre-disciplinary setting in which to address performance deficiencies as early as possible before formal discipline is necessary and before performance issues results in significant damage to agency operations.

These types of policy manual descriptions are rooted in a **simple idea: supervisors should be continuously “kicking tires” and evaluating the work being done by their officers to find problems early and “nip them in the bud”** as quickly as possible. This is in the interest of the individual officer who is under-performing and in the interest of the agency. **But how are the benefits of continuous communication and early intervention affected by forcing supervisors to grade or rate their subordinates through annual evaluations?**

How Attaching Ratings to Evaluations Hurts Communication

Accurately evaluating performance and communicating expectations to subordinates—whether on the side of the road after a traffic stop, or as part of a pre-scheduled performance appraisal meeting—inevitably involves difficult conversations. Many law enforcement supervisors seem more comfortable confronting violent offenders on the street than they are confronting a subordinate at the



precinct. **This tendency to shy away from confrontation with subordinates is often exacerbated by the fact that, beyond a difficult conversation and documentation of areas of some deficiency, the subordinate is getting a “failing grade” in the form of a number or rating that amounts to a *D* or an *F*.**

In most agencies, officers don’t grieve the narrative facts of the evaluation—they grieve the grade. Many supervisors and officers readily admit that, **as long as they are receiving positive ratings on the evaluation, officers don’t even bother to read the narrative notes and comments.** This is a huge problem—the notes and comments are supposed to be the point of the evaluation, *not* the rating score.

How Attaching Rating Scores to Evaluations Impacts Defensible Promotions and Discipline

Broken performance evaluations that don’t accurately reflect the realities on the ground can do a great deal of damage to a department. They can de-motivate high-level performers who are keenly aware of the fact that their pay and evaluations are the same as the “bad apple” in the unit. They can undermine, or even demoralize, supervisors who feel that they are expected to “check a box” without causing any waves rather than actively taking ownership of their subordinates’ conduct in furtherance of their duties. But possibly the worst outcome is that **broken performance evaluations can often serve as “get out of jail free cards” for the worst officers in the agency.**

The pressure to circle a 3, or “meets expectations,” can be strong when the supervisor knows that circling anything less than that puts the onus on the supervisor to meticulously document why the performance is substandard, how long it has been a problem, and what the supervisor plans to do to improve it.

When the time comes to suspend, demote, or even terminate an officer, stacks of these yearly “meets expectations” evaluations—no matter how truly inaccurate—prove to be one of the best friends that a “bad apple” officer ever had.

What if We Conducted Feedback Sessions Without Grades?

What if a supervisor sat down every 3 or 6 months with every subordinate and briefly went over a couple of pages of concrete feedback? What if the supervisor laid out the positives, the negatives, and their expectations moving forward? Then, what if the supervisor simply required an acknowledgment of receipt signature from the subordinate *without* attaching a grade?

If an officer is demonstrating significant deficiencies, the supervisor should be engaging in progressive discipline—beginning with “knock it off” verbal warnings and continuing with more formal performance improvement plans. If an officer is outstanding—the agency should consider how excellence is recognized within the organization, whether through commendation or some other form of formal recognition.

But if an officer is neither a problem employee nor an outstanding performer, why are agencies spending time handing out grades? After all, the narrative feedback between the grades is supposed to be the



rationale for conducting these evaluations in the first place. **What better way to minimize the risk of the rating score becoming the focal point than to get rid of it all together?**

This idea is far from guaranteed to have a positive impact on agencies' personnel management. If what your agency has done for years isn't working, however, then it might be time to try something different.

Matt Dolan is a licensed attorney who specializes in training and advising public safety agencies in matters of legal liability. His training focuses on helping agency leaders create sound policies and procedures as a proactive means of minimizing their exposure to costly liability. A member of a law enforcement family dating back three generations, he serves as both Director and Public Safety Instructor with Dolan Consulting Group.

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Are We Training Our People on This?

- If NOT, what message does that send?
- Are we requiring documentation throughout the evaluation period?
- Are we requiring documentation regardless of the level of performance indicated?
- Are we utilizing *objective* facts to justify inherently *subjective* determinations of individual performance?

Agency-Specific Evaluation Systems Reflecting Agency-Specific Priorities

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[illegible]

[illegible]

If you get too engrossed and involved and concerned in regard to things over which you have no control, it will adversely affect the things over which you have control.

--John Wooden

[illegible]

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Thank You!

Matt Dolan

Attorney & Director

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Disclaimer

This presentation is not intended to constitute legal advice on a specific case. The information herein is presented for informational purposes only. Individual legal cases should be referred to proper legal counsel.

