

Judicial application of the LAW ENFORCEMENT CODE OF ETHICS

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Over the years, many authors have written about the IACP's Law Enforcement Code of Ethics, most of them discussing current ethical dilemmas, historical perspectives or the need for behavioral change by law enforcement officers. This author, however, will address the value and importance of the Law Enforcement Code of Ethics from the point of view of America's judicial system.

From its beginning in 1957, the IACP's Law Enforcement Code of Ethics has enriched law enforcement history. Displayed in thousands of police and sheriff's departments throughout the nation, the code stands as a preface to the mission and the commitment law enforcement agencies make to the public they serve. State and federal courts have recognized the importance of the code, and its special message to the public and law enforcement personnel. Nowhere has a code of ethics been so important to a profession and referred to so eloquently. Having the Law Enforcement Code of Ethics distinguished by the decisions of state and federal judges supports society's interest in defining ethical law enforcement behavior, and affirms the IACP's code as representative of the law enforcement profession.

All 50 states, through their representatives to the International Association of

Directors of Law Enforcement Standards and Training (IADLEST), are committed to improving law enforcement officers' ethical conduct. Through their various programs, many of these state organizations have recognized or adopted the code as the guide for proper behavior by their law enforcement officers. Most states and localities use the code during law enforcement academy graduations and, in doing so, emphasize the concepts of ethics and values taught to new recruits during their basic academy training. Recognizing the code's importance, some states pursue violations of the Law Enforcement Code of Ethics as a specific reason to suspend or revoke state law enforcement/peace officer certification. Although many states have adopted the Law Enforcement Code of Ethics, it's how they use the code that makes them unique.

On the department level, the Law Enforcement Code of Ethics has become indispensable to American policing as an effective tool to control and defend law enforcement officer conduct and discipline. Applied legally, the code has reinforced the public's expectations of—and law enforcement administrators' commitment to—ethical behavior, equality and justice under the law.

In reviewing the legal relevance of the Law Enforcement Code of Ethics, it is important to examine several of the court cases in which the code has been directly used to determine acceptable law enforce-

ment officer behavior. These cases are diverse, involving decisions regarding employment, policies and procedures, unethical behavior, criminal conduct, jury selection, interrogation, and search and seizure. While it is acknowledged that the code has been used in many unreported civil and administrative cases throughout the nation, only reported cases can carry forth the legal strength of the code's message from state to state. To illustrate this, consider the following cases from various geographic regions of the United States.

One of the more important cases citing the Law Enforcement Code of Ethics was handed down by the Utah Supreme Court in 1986. The case, *In the Matter of Wayne L. Jones v. Tooele County*, involved a deputy sheriff who obtained property at a fraction of its value from an arrestee in exchange for money to make bail. In addition, the deputy was reported to have committed theft and used the arrestee's vehicle license plates for his own personal benefit. The sheriff appealed the decision of the district court, which had reinstated the deputy who was discharged by the sheriff. The Supreme Court held, in part, that: (1) the behavior of the deputy sheriff in acquiring vehicles from a prisoner violated the Law Enforcement Code of Ethics, as well as the policies and procedures manual of the county sheriff's office; (2) the deputy illegally used vehicles; and (3) the deputy's multiple criminal and ethical violations provided suffi-

Law Enforcement Code of Ethics

As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality and justice.

I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.

I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession . . . law enforcement.

cient cause to warrant discharge. In rendering its decision, the court stated, "The Law Enforcement Code of Ethics states, among other things, that a police officer will 'protect the innocent against deception.' It also states, 'I will keep my private life unsullied as an example to all' and 'honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department.'"

Referring to the language of the code, the court emphasized, "Where the operation of the laws [is] involved, the mere appearance of impropriety may sufficiently threaten the integrity of our public institutions so as to justify an absolute ban on certain conduct. . . . The paramount nature of this interest in the appearance of integrity has been recognized by the legislature, which has provided that a peace officer's certification may be revoked or suspended for 'any conduct or pattern of conduct that would tend to disrupt, diminish or otherwise jeopardize public trust and fidelity with regard to law enforcement.' . . . If conduct of the sort shown here is common, . . . it will not be tolerated by the judiciary and . . . should be rooted out by law enforcement before it subjects those involved, and their employers, to liability."

The Utah court's decision, with its acknowledgment of the Law Enforcement Code of Ethics, became the cornerstone for the Utah Division of Peace Officer Standards and Training in the refusal, suspension and revocation of peace officer certification. In Utah, the Law Enforcement Code of Ethics has no upward boundaries. The state has used the code in peace officer recertification actions against line officers, chiefs of police and constitutionally elected sheriffs alike. The state's Council on Peace Officer Standards and Training adopted the Law Enforcement Code of Ethics in 1968 and reaffirmed its adoption in 1986. Every peace officer in the state subscribes to the Code of Ethics upon graduation from basic law enforcement training. The code defines law enforcement conduct on an equal basis and exemplifies that state's law enforcement profession as a model to others.

City of Amarillo v. Bytheway is a Texas case in which the Amarillo Civil Service Commission upheld the indefinite suspension of a police officer and ordered him from the department. The district court annulled the order, and the city appealed.

The officer had testified in court that a convicted robber, Stevenson, had a good reputation for truth and veracity of a peaceful nature in the community in which he resided. The testimony came

one day after Stevenson had been convicted of armed robbery. The city held that the officer's actions lowered morale within the department, especially among the officers who arrested and prepared the case against Stevenson. The lowering of morale of members of the department was determined to be prejudicial to good order and a violation of department rule. Also alleged to be prejudicial was testimony contrary to the facts provided by the district attorney, which created an allegation that the officer would be ineffective as a police officer witness in future armed robbery cases.

The Texas court stated that the rules and regulations of the department included the Law Enforcement Code of Ethics, and a violation of the code was cited: "I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities."

The city failed to prove the case with the evidence it presented. Bytheway's testimony was never determined to be untruthful. In rendering its decision, the court recognized that, whether or not the officer came prepared to testify, truthful testimony was conducive to the good order of the department and complied with a police officer's duty to testify in judicial proceedings.²

In July 1978, in deciding *State v. Callaway*, the Iowa Supreme Court affirmed the trial court's decision to remove a sheriff from office on grounds of wilful misconduct or maladministration of office for committing five separate acts of physical assault on prisoners. As part of its decision, the court cited the Law Enforcement Code of Ethics to " 'underscore' [that] officers must rationally cope with violence, verbal abuse, resentment and emergencies. [President's Commission on Law Enforcement, *Task Force Report: The Police*, p. 129, 1967]"³

In *Johnson v. Metropolitan Dade County*, a Florida officer sought benefits for his response to a break-in in an adjoining township in which he sustained injuries from an accident. Florida's district court of appeals held, "While some of the provisions of the Law Enforcement Code of Ethics seem to encourage police officers to respond in such situations, the directives relating to on-duty and off-duty officers outside of their jurisdictions make it clear that their authority is limited to fresh pursuit, prisoner transportation and carrying a concealed weapon."⁴

In re Jordan was an unusual case, based upon an application to the Illinois State Bar, where false statements were alleged to have been made that involved disbarment of an ex-police officer turned lawyer. The Illinois Supreme Court found that the defendant, Jordan, had falsified his application for bar membership in several instances. One of the factual issues before the court concerned Jordan's forced discharge from the Chicago Police Department for pointing a gun at the head of a man without justification, and striking the man with a cane and gun. This incident occurred after many previous suspensions by the department.

Using Jordan's failure to live up to the Law Enforcement Code of Ethics while he was a police officer to demonstrate the pattern of conduct he had displayed in violating bar application procedures, the court upheld his disbarment.⁵

Daugherty v. City of Danville, Kentucky, is an unpublished case from Kentucky's Circuit Court of Appeals. The case involved an officer who was terminated from employment for three acts of misconduct within a six-month period of time. The officer's actions were deemed to have violated the department's written guidelines of appropriate conduct, which included the Law Enforcement Code of Ethics, in particular: "to keep his private life unsullied as an example to all," "to develop self restraint," and "to never [employ] unnecessary force or violence." The regulations required officers to maintain a high level of moral conduct in their personal affairs, and avoid any "moral turpitude" causing the department "to be brought into disrepute." The officer was terminated from employment and subsequently filed a Title VII employment discrimination claim against the chief of police, mayor, commissioners and city. The district court found no violation of Title VII, and the circuit court of appeals affirmed the district court's decision.⁶

In another unpublished discrimination case, *Martin v. City of Beaumont*, action was brought by three present police officers and two former police officers against the chief of police and the city. Discrimination was alleged in four broad areas: (1) on-the-job harassment, (2) assignment of extra-duty work, (3) discipline and (4) hiring and promotion. The court provided a very detailed legal analysis of its decision in this case, and determined that the Law Enforcement Code of Ethics had been adopted as a segment of the department's rules of conduct "to which all officers must adhere." The claims of alleged discrimination in department disciplinary actions failed, as did all other claims of discrimination.⁷

State v. Louis, from the Wisconsin

Supreme Court, was a case in which two Milwaukee police officers were deemed to be qualified to sit as witnesses in a jury trial of a suspect arrested by officers of the Milwaukee Police Department. Both officers were acquainted with the defendant. Although juror qualification allowed the officers to sit in judgment of the case, the defendant appealed on the grounds that the officers prejudiced his right to a fair trial. The Supreme Court stated, "Excluding all police as jurors could be construed as a judicial finding that law enforcement officers cannot be fair to an accused or that the public perceives all officers as biased. Such a finding would be inconsistent with the public's expectation that law enforcement officials abide by standards of fairness. Although law enforcement officers have an obligation to ferret out crime, they also have a duty, shared with all in the administration of justice, to 'respect the constitutional rights of all men to liberty, equality, and justice.' [Law Enforcement Code of Ethics]"⁸

Other recent cases from the courts in the state of Wisconsin address the code's role during police interrogation,⁹ probable cause for search and seizure,¹⁰ and officers' responsibilities towards fairness, equality and justice during investigative actions. Indeed, Wisconsin has been very proactive in using the language of the code in its court decisions.

Every new court decision utilizing the Law Enforcement Code of Ethics fortifies law enforcement's image as a true profession. And though negative conduct will always overshadow positive conduct in the news media, the courts have shown that the code is a solitary constant that can stabilize all challenges towards improper law enforcement conduct. Used properly, with consistency and reinforcement, the IACP's Law Enforcement Code of Ethics has the ability to guide officers to successful careers, while they carry out their responsibilities as public servants and defenders of state and federal constitutions.

¹ 720 P.2d 1356 (Utah 1986).

² 547 S.W.2d 674 (Texas 1977); see also *In The Matter of William Raynes v. A Police Officer*, 698 P.2d 856 (Mont. 1985), and *Matter of Wong*, 827 P.2d 90 (Mont. 1992).

³ 268 N.W.2d 841 (Iowa 1978).

⁴ 424 So.2d 911 (Fla. App. 1983).

⁵ 478 N.E.2d 316 (Ill. 1985).

⁶ 856 F.2d 193, 1988 WL 90892 (6th Cir. Ky., Sept. 1, 1988).

⁷ 1992 WL 52511, Civ. A. No. B-87-1076 (E.D. Texas, Feb. 19, 1992).

⁸ 457 N.W.2d 484 (Wis. 1990).

⁹ 482 N.W.2d 364 (Wis. 1992).

¹⁰ 501 N.W.2d 876 (Wis. App. 1993).