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## **DE-CERTIFICATION: ACHIEVING INTERSTATE RECIPROcity**

CLARENCE HARMON\*

### THE NEED FOR DE-CERTIFICATION

Misconduct among the police is nothing new; it has been a problem for society and police departments since the founding of organized law enforcement. During my twenty-six years with the St. Louis Metropolitan Police Department, I witnessed a number of incidents of police officer misconduct. These ranged from violations of the rules of the department to various violations of the criminal statutes, including murder.

Throughout my police career and prior to the establishment of Missouri's Police Officer Standards and Training (P.O.S.T.) Commission in 1988, police officers who violated either the more serious rules of their department or crossed the line into criminality often received relatively little sanction, particularly if their misconduct escaped general public knowledge. The most severe sanction for such behavior was typically termination of employment. Actions that led to termination from the force, then and now, are: a) violations of the criminal law, either by commission of a felony or a misdemeanor, usually involving an issue of moral turpitude, whether or not conviction attended the allegation, and b) serious violations of department rules or regulations, such as physical or verbal abuse documented but not submitted for prosecution, substance abuse, and sexual misconduct.

Not uncommonly in circumstances of officer misconduct, a deal would be struck by which the offending officer would agree to resign in lieu of criminal prosecution. The problem with this system is evidenced by examples from my experience in which officers who were dismissed or forced to resign from the St. Louis Metropolitan Police Department were able to gain employment with another police department within the state, even when their previous misconduct was known to the hiring department. In the routine case in which an officer's departure was voluntary and unheralded, a police department seeking to hire the officer often sought background information informally, usually by contacting someone from the officer's previous department, such as

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the chief of police, the internal affairs commander, or someone representing the municipality's personnel department.

While Commander of the Internal Affairs Division from 1983 to 1988, I was frequently called by potential hiring departments and asked to reveal the "real scoop" behind the departure of an officer from our department. Such a request for information would occur even when the officer was being criminally prosecuted, in which case I would be asked additionally to assess the probability of the officer being convicted. Such a question was an indication that, barring conviction, the department making this inquiry would be at least willing to hire this officer, and likely would do so.<sup>1</sup>

Exacerbating the problems with informal background checks is that a superior officer risks creating civil liability both for that superior officer personally and for the department if information is divulged from a former officer's personnel file, even if what is reported is truthful and accurate. In the St. Louis Police Department release of such information was prohibited by department rules and regulations. Further, the department's attorneys recommended to the Board of Police Commissioners that all officers within the department be prohibited from engaging in any conversation or conduct that might provide information about or otherwise disclose the nature of or reasons for an officer's departure while under department investigation or pending criminal charges.

#### CREATION OF THE MISSOURI P.O.S.T. COMMISSION

My experience led to a strong belief in the need for a statewide system to account for officers whose performance indicated they should be barred from service as police officers anywhere in the state. In 1986 I began to collaborate with Professor Roger Goldman of the St. Louis University School of Law on development of a peace officer de-certification program for the state of Missouri as a mechanism to acquire information about police officer misconduct. Prior to this time there was no concerted effort to develop a de-certification process. During the period immediately preceding the establishment of the P.O.S.T. commission, a number of area police chiefs told me that they were quietly supportive of the enacting legislation, because it would "take the heat off" their own recruitment efforts. They informed me that they had often felt forced to hire officers with problematic backgrounds because either there were budgetary constraints or the applicant had political

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1. The fundamental reason for such hiring practices, particularly among smaller police departments, was the relatively high cost of training new officers compared with hiring trained officers, the difference often being thousands of dollars. Particularly where the hiring departments belonged to financially strapped municipalities new recruit training was a sizable expense the department desired to avoid.

connections within the community. A de-certification program would eliminate the pressure to hire applicants that were not qualified due to prior poor performance.

The Missouri P.O.S.T. commission was established in 1988. With the commission's inception came statewide standards for all peace officers, including minimum training requirements, licensing or certification prior to an officer's service, and a process for removal of an officer's certification for cause. I served on the P.O.S.T. commission for two years after its establishment (1992-1993).

Missouri's de-certification process appears to be doing the job it was intended to accomplish: the denial of certification to those to whom it should not be provided; revocation of the certification of those police officers who have violated their oath and the public's trust; and providing effective due process for accused officers before the P.O.S.T. commission.

#### THE NEED FOR INTERSTATE COOPERATION

The Missouri P.O.S.T. Commission was a significant advance for the integrity of policing in the state, but because of the interstate mobility of officers it is not a foolproof system. Police officers who have been de-certified in states that have de-certification statutes have some possibility, albeit remote, of gaining similar employment in another state, whether or not it has a de-certification process. While some departments are able to access the backgrounds of some officers from other states through extensive background investigation, not all officer backgrounds are obtainable because there is a lack of standardization of process for de-certification, and because not all state P.O.S.T. commissions share information with other state P.O.S.T. commissions on officers who have been de-certified. Thus some officers who have moved to another state evade what should be the consequence of their problematic employment histories. Whether the hiring agency does not pursue the background investigation or the P.O.S.T. commission in the officer's former state is not cooperative, there is a gap in the system that prevents society from eliminating the employment of officers with problematic backgrounds. My experience with this aspect of de-certification has been gained through my contacts with the International Association of Chiefs of Police (IACP) and the U.S. Conference of Mayors and is largely anecdotal; yet I believe it to be the case that inter-state employment of police officers who have problem backgrounds is an area of concern.

It might be argued that it is unlikely officers will be able to evade a proper determination of their fitness for duty, given the necessary pre-employment screening that occurs prior to officer hiring. My own experience suggests otherwise. A case in point was provided when one of my criminal justice students at Southern Illinois University, Carbondale, remarked to me recently

that he had been the student of a former St. Louis police officer who now teaches at a college in southern Illinois. I recognized the name of the instructor as that of an officer who had been terminated from the St. Louis department after the Missouri P.O.S.T. commission had been created. Despite this instructor's marred history, the student said that the instructor had also worked for a small Illinois police department prior to his teaching career and may still be employed there. The move from Missouri to Illinois may have been significant in this officer's ability to gain employment as a police officer.

#### THE CASE FOR STATE RECIPROCITY: AN INCREMENTAL APPROACH

Since state de-certification statutes apply only to peace officers employed within a state, there is ample reason to believe that officers who have been de-certified in one state may seek, and on occasion be granted, a position as a peace officer in another state. This would seem to be the case particularly where the employing state does not have a reciprocal agreement with the state from which the officer was de-certified. While no conclusive data is currently available supporting my assertion, I submit that it defies common sense to argue otherwise. Situations of inter-state movement of police officers with problem backgrounds not only exist, but also actually may increase in states that have recently seen efforts to weaken their de-certification statutes or regulations.

To correct the weaknesses of a system of individual state programs, Professors Goldman and Puro propose a national data bank, funded and operated by the federal government that "would link the data currently collected by state POSTs so that 'problem' or abusive officers are not allowed to obtain law enforcement employment in a neighboring state."<sup>2</sup> While I likely would support such a system eventually, I think it may be premature to seek development of a national data bank at this time. First, given the revisionist efforts by a number of organizations representing rank and file police officers, particularly in Florida and Arizona, and the reluctance of several of the states to adopt de-certification legislation (e.g., New York, Massachusetts, Hawaii and Alaska), there is still some ground left unplowed in this area. Second, historically Americans have resisted the encroachment of states and the federal government into local law enforcement, as exemplified by the current debate in St. Louis over the issue of a citizen's review board appointed by the governor. It seems a first step to dealing with inter-state mobility of problem officers is to continue efforts to see that all states pass de-certification statutes. In those states that refuse to do so, efforts should be made at the national level to deny them access to some federal law enforcement grants, particularly those relating

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2. Roger L. Goldman & Steven Puro, *Revocation of Police Officer Certification: A Viable Remedy for Police Misconduct?*, 45 ST. LOUIS U. L.J. 541, 575 (2001).

to the COPS and COPS MORE federal programs.<sup>3</sup> Finally, the lack of uniformity among the state de-certification processes is another reason to question the ability to achieve creation of a national data bank to compile de-certification information in the near term. Issues regarding the standards for investigations and discipline within local police departments provide reason to go slowly on the idea of a national data bank.

#### SUMMARY

For the immediate future, efforts should be concentrated toward establishing a system of inter-state reciprocity for certification/de-certification, perhaps through the National Governors Conference, the National League of Cities, or the U.S. Conference of Mayors. Some impetus for this could come in the form of federal legislation requiring that states have in place such statutes and regulations before they could receive federal anti-crime funds. The first step in this process should be the formal adoption of a set of uniform standards based on discussions among state P.O.S.T. commissions. Conceivably, this could be done under the auspices of the Department of Justice under which such efforts as community policing and "Weed and Seed"<sup>4</sup> programs were shepherded to fruition. An effort of this magnitude would require the expertise of many: law schools and their faculties, police chiefs, governors and state legislators, members of the United States Congress, representatives of rank and file police organizations, and of course the Office of the President of the United States. However, such an effort is important to ensuring the integrity of the various police forces throughout the country.

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3. Information regarding the COPS grant programs can be found at <http://www.cops.usdoj.gov>.

4. Information regarding Weed and Seed programs can be found at <http://www.ojp.usdoj.gov/eows/>.

