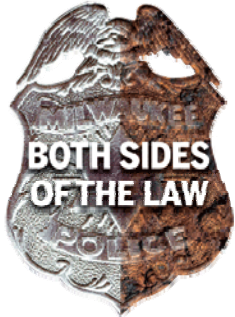


BOTH SIDES OF THE LAW

Milwaukee Journal Sentinel



Oct. 23, 2011 - First of three parts

At least 93 Milwaukee police officers have been disciplined for violating law

By GINA BARTON

At least 93 Milwaukee police officers — ranking from street cop to captain — have been disciplined for violating the laws and ordinances they were sworn to uphold, a Journal Sentinel investigation found.

Their offenses range from sexual assault and domestic violence to drunken driving and shoplifting, according to internal affairs records. All still work for the Police Department, where they have the authority to make arrests, testify in court and patrol neighborhoods.

Officers who run afoul of the law often aren't fired or prosecuted, the newspaper found. Consider:

At least six officers disciplined by the department for illegal behavior suffered no legal consequences whatsoever. One was Reginald Hampton, accused of sexually assaulting two women he met on duty. Another was Mark Kapusta, suspended after a woman said he pointed a gun at her head during a drunken road-rage incident. Neither officer was charged or ticketed.

Twenty-three officers got breaks from prosecutors that allowed them to avoid being convicted of serious charges — or any charges at all — as long as they didn't commit more crimes and followed prosecutors' instructions. One was Patrick Fuhrman, originally charged with a felony for a beating that sent his wife to the hospital and, according to a witness, left blood in every room of their house. A conviction on that charge could have gotten him fired from the department, banned from carrying a gun for life and imprisoned for 3½ years. Instead, he ended up with two tickets for disorderly conduct.

Nine of the 93 officers were convicted of crimes. Some even spent time behind bars. Yet when their criminal cases were concluded, they went back to their careers with the Milwaukee police.

At least one, John P. Corbett, was a police sergeant by day and an inmate by night. Convicted of driving drunk with a child in the car, Corbett did his job at the police station while on work release from jail. His 13-year-old daughter told authorities Corbett took the wheel after she got lost driving back from a tavern.

The Police Department, district attorney's office and Fire and Police Commission share responsibility for keeping officers in line.

All three fall short.

The department tolerates misconduct. Prosecutors give cops career-saving deals. The commission reduces punishments when officers break the rules. As a result, police who have crossed to the other side of the law keep the power that comes with the badge. Meanwhile, citizens have no way of knowing whether the officers responsible for protecting them have tarnished records.

None of the agencies has a comprehensive list of cops who have broken the law.

It took the Journal Sentinel nearly two years of records requests, a court case and \$7,500 in fees to compile the list of 93 — which is about 5% of the force. The list doesn't include cops with juvenile records, arrests before they were hired or discipline under different department rules.

What's more, no department policy prevents officers from enforcing the same laws they've been disciplined for breaking. An intoxicated motorist may be stopped — or allowed to drive on — by one of more than 30 cops who have been arrested for drunken driving. A woman who calls 911 in fear of her husband may be met by one of more than a dozen officers with a history of domestic violence.

Cops who break the law should be fired, said Milwaukee County Sheriff David A. Clarke, who worked for the Milwaukee Police Department for 24 years. Illegal conduct undermines officers' authority and erodes the public trust, he said.

“There should be a higher standard for (an) . . . employee who enforces the law than for a worker who cuts the grass,” Clarke said. “There's no understanding why a cop would drive drunk. There's no understanding why a cop would be abusive to a spouse. When you start to justify and rationalize this type of behavior, it gets ugly.”

The newspaper's review — the first of its kind involving the Milwaukee police — has uncovered information even those in charge of the department didn't know.

In a recorded speech to officers, the audio portion of which was obtained by the Journal Sentinel, Milwaukee Police Chief Edward Flynn said he was surprised at the large number of officers arrested for driving drunk.

“We've got an issue of conduct here that's related to culture that we need to confront and deal with,” he said.

A video of the speech was shown to officers a month after a Journal Sentinel reporter shared the newspaper's key findings with a police spokeswoman and asked for an interview with the chief. In the speech, Flynn announced a new program of training, support and discipline for officers dealing with alcohol-related problems.

He also warned of the newspaper's investigation.

“I understand they are going to post . . . names on their website,” Flynn said during the presentation. “They are also selecting . . . officers for special scrutiny in their newspaper, with the operating question being whether they should be police officers given their prior conduct.”

Flynn didn’t answer that question in the video. He also wouldn’t answer questions about the newspaper’s findings. Instead, he issued a one-sentence statement:

“We recognize that alcohol abuse, divorce and suicide are overrepresented in the law enforcement profession, and we actively educate, intervene, discipline and provide resources for our members to ensure they understand the inherent risks of the job, and the personal and professional consequences of their behavior.”

Milwaukee County District Attorney John Chisholm also would not discuss the problem with a reporter. His chief deputy, Kent Lovern, provided a written statement, pointing out that 70 Milwaukee officers have been charged over the past 10 years.

Of those, 42 were convicted of misdemeanors or felonies under Milwaukee County’s jurisdiction, according to an analysis by the newspaper. Most of them are no longer on the force.

But the list was started in 2000, making it incomplete. About one-third of the officers identified by the newspaper were disciplined before that point.

Mayor Tom Barrett, who recruited Flynn to Milwaukee and who appoints the members of the Fire and Police Commission, also refused to meet with a reporter. He issued a statement supporting the chief and the commission.

Only Michael G. Tobin, executive director of the Fire and Police Commission, agreed to discuss the issue with the Journal Sentinel.

Significant improvements have been made to the commission — a civilian board that oversees hiring and discipline — over the past decade, he said. In 2001, the board began requiring a written psychological test for job candidates. Since 2005, it has been followed up with an in-person mental health exam.

In addition to getting a new slate of members in recent years, the commission was reorganized in 2008, Tobin said. Two independent investigators now handle citizen complaints to the commission. In the past, the commission referred complaints to the department.

The commission also has hired a research analyst who studies trends within the department, including use of force and vehicle pursuits. Some of those reports have resulted in improved training for officers, Tobin said.

As for disciplinary appeals, commissioners can’t always do what they want — they must follow procedures dictated by state law, Tobin said. He believes they try their best to protect the public without violating officers’ rights.

“It’s not a fail-safe system,” he said. “With the passage of time it could be proven that a different course of action could have been taken.”

Only on the force

The 93 officers identified during the newspaper’s two-year investigation include only those the department concluded broke the law while on the force. To compile the list, the newspaper

reviewed officers' disciplinary records and built a database of discipline imposed since their hire dates, which range from 1979 to 2010.

The department provided the disciplinary records over a one-year period beginning in January 2010. The list may not include incidents or discipline that occurred after the records were released. It does not include officers hired after 2010. Officers who left the force after Oct. 1 may not have been removed.

More than half the officers disciplined for violating laws or ordinances were suspended for three days or less, according to the newspaper's analysis.

Seven officers were fired but got their jobs back during the appeal process. Four were reinstated by the Fire and Police Commission; two reached agreements with chiefs to return to work; and one was rehired as the result of a settlement in a discrimination lawsuit.

Nine officers were disciplined for more than one instance of illegal behavior. Five were disciplined for breaking the law while employed as police aides — a program that gives teenagers a head start on becoming recruits — yet were allowed to become officers anyway.

No one tracks how many cops committed crimes before they were hired. A state law that keeps job applications secret and blocks access to their birth dates makes it impossible for the public to figure out that number.

Until about four years ago, applicants with multiple misdemeanor convictions could be hired as Milwaukee police officers, as long as the offenses were not domestic violence and did not occur within three years of applying.

"Now there's no magic number," Tobin said. "Every time there's even a single one, that individual gets greater scrutiny."

Several other states ban convicted drug dealers, people who have lied in court and people with recent drunken-driving convictions from working in law enforcement. Not Wisconsin. A state law here prohibits all employers — even police departments — from discriminating against applicants with misdemeanor criminal records unless their convictions are related to the job.

Which crimes are considered related to the job of policing is open to interpretation, Tobin said.

The only absolute bars to working in law enforcement here are felonies or crimes of domestic violence, because federal law precludes people convicted of those crimes from carrying guns.

Once officers are on the job, it is difficult to convict them of crimes. Experts say jurors are inherently biased in favor of police.

"Your competence and credibility sort of come with the badge," said Dennis C. Elias, who serves on the board of the American Society of Trial Consultants. "Additionally, people don't want to believe the people that we trust to protect us would ever do anything bad."

Deputy District Attorney Lovern has acknowledged that prosecutors take police credibility into consideration when deciding whether to issue charges.

"We always have to consider how a jury will react in considering evidence against a police officer," he said in January, after his office declined to charge fired officer Ladmarald Cates with an on-duty rape.

Federal authorities later launched an investigation, and the U.S. attorney's office secured an indictment against Cates on two felony charges last month. He has pleaded not guilty and is scheduled for trial Jan. 9.

Five prior allegations

Cates was indicted and fired amid allegations that he raped a woman after responding to her 911 call in July 2010. The Journal Sentinel examined the case and published an interview with the victim in January. The newspaper later found Cates had been accused of breaking the law five times before, all without being charged or losing his job. Three of the previous allegations involved sexual misconduct — two with female prisoners and one with a 16-year-old girl who said he offered her cash in exchange for sex.

Another Milwaukee cop who avoided criminal charges because prosecutors thought the evidence wouldn't stand up in court was Mark Kapusta.

Here is what the woman who encountered Kapusta at a southwest side intersection told investigators, according to a summary of the internal investigation:

She was helping her boyfriend deliver newspapers around 4:45 a.m. Jan. 20, 2006, when she turned the corner. The driver of a black pickup truck, who also had been waiting to turn, started honking his horn. He pulled behind her, swerving all over the road.

When she honked back at him, the man pulled his truck in front of her car, forcing her to stop. The man, who turned out to be Kapusta, got out of the truck, yelling. His bloodshot eyes and slurred speech told the woman he was probably drunk.

He was holding a gun.

Kapusta, who was not in uniform, approached the woman's car. Her window was partially open. He pointed his weapon through it, aiming at her head.

"Put your hands where I can see them!" he shouted. "I'm the f---ing police!"

She feared she was about to die.

But Kapusta didn't fire.

The woman told him she was going to call the police, and he went back to his truck and drove away.

The woman's boyfriend told investigators a similar story, except he said he did not see Kapusta point the gun at the woman's head, according to the summary. The document does not name the boyfriend. He could not be reached for this story.

When two sergeants showed up at Kapusta's house around 7 a.m., he didn't answer the door.

Two hours later, two detectives knocked for 10 minutes before an intoxicated Kapusta came to the door, the summary says. One of the detectives overheard Kapusta on the phone, telling his partner: "I f---ed up." Asked about it later that day, Kapusta's partner said he "did not recall" the statement.

Around noon — seven hours after the incident — Kapusta's blood-alcohol level was 0.15, nearly twice the legal limit for driving, the summary says.

Kapusta did not respond to requests for comment. Here is what he told investigators, according to the summary:

After he finished work around midnight, he had two drinks with fellow officers. Around 4:30 a.m., he was on his way home when he noticed the car behind him following too closely and too quickly. Kapusta, who was assigned to the gang unit, suspected its occupants were gang members who recognized his truck. Kapusta approached the car, showed his badge, and identified himself as a police officer, keeping his gun at his side, he said.

He instructed the woman to call 911 because he was afraid of her boyfriend. But then the couple left, so he went home.

At first, Kapusta said he went to sleep as soon as he arrived. He later changed his story to say he went home, drank five to seven shots of alcohol, and then went to sleep.

About two weeks after the incident, the woman called investigators and said she was too afraid to continue pursuing charges, the summary says. Although she denied being intimidated or threatened, she would not come to the door to discuss her decision with a detective because she was terrified, her boyfriend told police.

Without the woman's cooperation, Milwaukee County Assistant District Attorney Karen Loebel concluded she could not prove the case, the summary says.

Nannette Hegerty, police chief at the time, initially fired Kapusta. While his appeal was pending before the Fire and Police Commission, she agreed to reduce his punishment to a 60-day suspension and allow him to remain on the force, records say.

Records do not explain Hegerty's reasons for changing her mind. She could not be reached for comment.

Three years later, Kapusta received an award for distinguished service for devising a system to reduce thefts from cars.

Domestic violence

In the years following a case in which seven police officers were convicted of beating a man at a Bay View party that was held seven years ago this week, both DA Chisholm and Chief Flynn vowed to take a hard line on officer misconduct.

That didn't happen in the case of Patrick Fuhrman, who beat his wife so badly there was blood in every room of their house, according to a summary of the internal investigation.

Fuhrman's wife and a neighbor who helped her — both police officers themselves — gave the following description of events, according to the summary:

When Fuhrman's wife got home from work on Nov. 3, 2008, she was upset because he had told her he wanted a divorce. She tried to talk with him, but the conversation turned into an argument.

Then it turned physical.

Fuhrman grabbed his wife by the neck and threw her to the ground. The force caused her to hit her head on the floor and bite her lip. He punched her several times in the head, then in the nose. While she was on the ground, he kicked her and stomped on her repeatedly, calling her a "n---- lovin' crazy whore woman."

She was able to get up from the floor, but he came at her again. She threw her police baton at him but missed, cracking the TV screen.

“You disgust me,” he said, laughing. “I should have never married you. If you are going to fight, you should learn how.”

Then Fuhrman left for work and his wife went to Community Memorial Hospital. She arrived with bruises on her face, legs, elbows and shoulders, the summary says. She needed three stitches in her lip.

In an interview with internal investigators, Fuhrman admitted throwing his wife to the ground, but said he did it because he wanted to get away from her. Fuhrman also admitted striking her “in the chest, chin and/or face area with an open hand,” but said he only did so after she tried to hit him with the baton. He also said he may have “gotten her in the nose,” the summary says.

When the investigator asked Fuhrman if he had called his wife a whore and used a racial slur, “he stated he called her many things to that effect and that many hurtful things were said by both of them,” the summary says.

Fuhrman also told investigators he was sorry.

“I just want to apologize that I brought shame and embarrassment to the Police Department and to my wife and my family,” he said.

Jeffrey Greipp, then an assistant district attorney, initially charged Fuhrman with domestic violence-related substantial battery, a felony.

A conviction on that charge would have cost him his job.

Within five weeks, prosecutors reduced the felony charge against Fuhrman to misdemeanor battery, according to court records. A conviction on that charge would have knocked him off the force as well. Because his wife was the victim, he would not have been allowed to carry a gun under federal law.

A deferred-prosecution agreement, signed by Assistant District Attorney Gilbert F. Urfer in March 2009, reduced the charge even more and saved Fuhrman’s job.

Agreements for deferred prosecution allow defendants to avoid serious criminal convictions if they meet certain conditions, such as getting treatment and not committing more crimes. They must plead guilty to a crime initially, but the charge is reduced or dismissed if they live up to their end of the bargain.

Fuhrman’s deal required him to plead guilty upfront to two misdemeanor counts of disorderly conduct, which is less serious than battery.

Prosecutors agreed to reduce the charges a third time — to noncriminal tickets — if Fuhrman completed domestic violence treatment, substance abuse assessment and treatment, and a parenting class. For the seven months of the agreement, Fuhrman also agreed not to commit any additional crimes and not to use alcohol or illegal drugs.

“The agreement was offered to Fuhrman at the request of the victim in the matter, and in consideration of the fact that there was more than one consistent account of the events that supported the prosecution,” according to the statement from Lovern, chief deputy prosecutor.

Neither Fuhrman nor his wife responded to requests for interviews.

Lack of cooperation from the victim, which is common in domestic violence cases, is not a valid reason to let an accused batterer go free, said Judy Munaker, who prosecuted such cases in Dane County before working for five years as a state Office of Justice Assistance trainer, where she taught police about officer-involved domestic violence.

Victims of domestic violence almost never participate in prosecution, said Munaker, now a consultant. When the perpetrator is a police officer, cooperation from the victim is even less likely.

“I’ve never had a case with a law enforcement officer when the victim is willing to testify,” she said. “We expect most victims to recant or not testify because they’re trying to stay alive.”

Fuhrman satisfied his conditions and walked out of court with the municipal tickets and a fine. Flynn suspended him for 30 days.

Fuhrman’s personnel record includes an award for arresting an armed robber in 2000. In 2007, he received the chief’s superior achievement award for pursuing an armed suspect.

More diversions

Fuhrman is among 14 Milwaukee police officers who have benefitted from deferred prosecutions and similar deals known as diversion from Milwaukee County prosecutors. Another four officers have gotten such treatment from prosecutors in other municipalities.

It isn’t easy for the public to figure out all the information about either type of case.

As reported by the Journal Sentinel last year, Chisholm has greatly increased the number of deferred prosecutions since he took office in 2007. He has touted the program as a solution to take pressure off the overcrowded court system, but has not specifically addressed the deferred prosecutions or diversions of police officers.

Deferred prosecutions are supposed to be entered into the state’s online records system, known as CCAP. But that isn’t always done. When it is, the details available electronically are sketchy. The full story is contained only in a paper file at the courthouse.

There are even fewer records of diversion cases, in which prosecutors agree to hold off on filing charges in the first place. In exchange, potential defendants must meet certain conditions, ranging from staying out of trouble to attending counseling or paying restitution. Diversion cases are not entered into the online database. Because prosecutors don’t file charges upfront, there are no paper court records of the deal, either.

The newspaper located limited documentation on diversion cases involving police officers by filing public records requests with the Police Department and district attorney’s office.

Those records also contained information about six officers whose cases were “held open” with instructions from prosecutors to meet certain conditions in order to avoid charges, but without a formal deferred prosecution or diversion agreement.

Agreement ignored

At least one officer who was offered a diversion agreement, Robert A. Brown II, slipped through the cracks.

Brown was never charged even though he failed to attend anger management classes after a fight with his girlfriend in January 1998, according to a summary of the internal investigation.

The document gives these details:

Brown was arrested for domestic violence battery after the woman, who was six months pregnant with his child, was treated at St. Joseph's Hospital for cuts on her forehead, neck pain and a swollen nose. The woman told investigators Brown choked her and punched her in the face.

The woman said she wanted to prosecute because Brown had choked her three times before.

Milwaukee County Assistant District Attorney William Hanrahan — now a Dane County circuit judge — told Brown he would not issue charges if Brown completed an anger management course and refrained from further violent contact with the victim. Brown agreed.

Nine months after the fight, a police sergeant contacted the district attorney's office for an update.

“Due to a possible error or oversight on the part of the District Attorney's office, this case never made it into the diversion program and records indicated Officer Brown never attended the stated program,” the summary says.

In his written statement, Lovern said that because the case was so long ago, he had no information about why charges weren't filed.

Brown's only punishment was a one-day suspension. He did not respond to an email seeking comment.

His record also includes recognition for arresting a burglary suspect in 1995.

Altercation with senator

Jeremy Gonzalez, an officer involved in an altercation with state Sen. Tim Carpenter (D-Milwaukee), also was offered a diversion program. Although Gonzalez was still a probationary officer when the incident occurred on Aug. 14, 2004, he was allowed to remain on the force.

Carpenter, who lived upstairs from his elderly parents in a duplex, was running for U.S. Congress at the time. He heard a noise, and he and his father went outside, Carpenter said in an interview.

Gonzalez and his brother had torn down a campaign sign.

“I came out and said, ‘What happened?’ □” Carpenter recalled. “(Gonzalez) got upset. He was kind of combative. He told me to shut my mouth and get inside my house. He (grabbed) my shirt and twisted it and ripped my shirt.”

Meanwhile, Gonzalez's brother tackled Carpenter's father, who was in his 80s, Carpenter said.

“My dad went flying through the air,” Carpenter said. “As soon as he hit the ground, he said, ‘Oh, my back.’ It still goes through my mind in slow motion: Standing on our own property, having someone come at my dad like a linebacker going after a quarterback.”

Gonzalez, who did not respond to a certified letter seeking comment, told internal investigators he kicked the sign because he was angry with his brother. After that, Carpenter started the fight

by threatening to “kick his ass,” according to a summary of the internal investigation, which also includes Carpenter’s account.

Gonzalez denied shoving Carpenter, as a witness reported, or grabbing his shirt.

Gonzalez’s blood-alcohol level was 0.10, according to the summary. He was arrested for disorderly conduct. As part of his deal to avoid charges, he completed an anger management program.

His brother, Dimitri A. Gonzalez — who is not a police officer — was charged with misdemeanor battery and pleaded no contest, court records show.

Jeremy Gonzalez was suspended for two days. He has not been disciplined since, according to his personnel record.

He has received three awards from the Police Department for meritorious arrests: armed robbers in 2004 and 2007 and a marijuana dealer in 2005.

A few days after Gonzalez’s fight with Carpenter, Jon Reddin, who has since retired as deputy district attorney, told the Journal Sentinel that Carpenter’s reluctance to press charges was part of the reason prosecutors gave the rookie cop a break.

Like Gonzalez, most of the officers disciplined for violating the law did so off duty.

But that isn’t always the case.

Assault accusations

As the Journal Sentinel first reported in March, three current officers avoided criminal convictions and kept their jobs after women accused them of on-duty sexual assaults, according to records. Unlike Cates, who ultimately was fired, Reginald Hampton, Milford Adams and Scott Charles kept their jobs.

Hampton was accused by two women he met on the job. Internal investigators referred both cases to the district attorney’s office, but Hampton was never charged. He was not disciplined as a result of the first investigation, in 1990, according to his personnel record.

After the second woman came forward in 1991, then-Chief Philip Arreola fired Hampton. But the punishment was overturned by the Fire and Police Commission, which instead suspended him for 60 days.

The commission also overturned the firing of Adams, who was accused of allowing a woman to avoid arrest in exchange for performing a sex act in his squad car in 2004. The woman previously had been convicted of prostitution and drug charges.

After a jury found Adams not guilty at a criminal trial, the commission rescinded all internal discipline against him, leaving him with a clean employment record.

The commissioners did not find the woman’s testimony credible - in part because the jury in the criminal case did not believe her, according to their written decision.

The third officer, Charles, was accused of sexually assaulting a woman after he pulled her over for drunken driving in 1994, according to a summary of the internal investigation. The

investigator concluded that Charles went into the woman's apartment "under the guise of ensuring her safety . . . and did have an act of sexual contact with her," the summary says.

The woman told investigators she was very intoxicated and may have blacked out during the assault. Charles told investigators the two sexually touched each other consensually and the woman was not unconscious at any point, the summary says.

Investigators expected Charles would be criminally charged with misconduct in public office, the summary says. But he was not.

The summary does not contain an explanation of why Charles was not charged. The district attorney's records of the incident no longer exist because of a county policy that calls for the destruction of files in uncharged cases after 10 years, Deputy District Attorney James J. Martin wrote in response to an open records request from the newspaper.

Charles was suspended for 60 days, according to his personnel record. He avoided being fired by receiving satisfactory monthly reports from his supervisor for a year. Charles, who did not appeal the punishment to the commission, has since been promoted to sergeant.

Just because officers haven't been criminally convicted doesn't mean they are fit to serve, Sheriff Clarke said.

"That type of behavior is incompatible with working in law enforcement," he said.

Guilty, but still on force

Even when officers are successfully prosecuted, they don't automatically lose their jobs.

Nine officers on the force as of Oct. 1 have been convicted of crimes. Of those, seven were prosecuted by the Milwaukee County district attorney's office. One of them was later pardoned.

The other two convicted cops broke the law while in different jurisdictions.

One of them was John Corbett. He was sentenced to jail by a Fond du Lac County judge, but he didn't have to take a leave from the Police Department while he served his time.

According to a police report:

A sheriff's deputy spotted Corbett's car, alternately swerving across the centerline and weaving onto the shoulder, around 1:30 a.m. Nov. 21, 2010.

When the deputy pulled over the car, she saw two men passed out in the back seat, covered in vomit.

Corbett swayed and stumbled as he performed field sobriety tests such as walking a straight line and standing on one foot. His eyes were red and he smelled of alcohol.

Corbett told the deputy he drank just two beers, but a preliminary breath test showed a blood-alcohol level of 0.18, more than twice the legal limit for driving. Two knives hung from Corbett's belt, and a handgun was tucked into the passenger side visor.

Corbett's 13-year-old daughter was crying in the passenger seat. She told another deputy that after a day of deer hunting, she, her father, and some friends went to a bar called Mr. Lucky's. Because the adults were drunk, the 13-year-old was driving them back to Kiel, where they were staying.

Then she got lost, and her father took over.

Corbett did not respond to a request for comment.

He told internal investigators he had seven drinks over about 7½ hours. He had used the knives to field dress deer, and had forgotten the gun was in the car, he said. Corbett also told investigators he let his daughter drive for about a mile in a rural area, but said it was on the way to the bar, not after they left.

Corbett pleaded guilty to first-offense drunken driving with a child younger than 16 in the car, a misdemeanor. He was fined \$1,059, and sentenced to 30 days in jail, which he was allowed to serve in Waukesha County. His driver's license was suspended for 15 months.

Department spokeswoman Anne E. Schwartz confirmed that Corbett, a desk sergeant, was on the job while on work release from jail. Corbett was on administrative duty, which means his police powers were suspended and he had to turn in his badge and gun. Practically speaking, however, his day-to-day tasks didn't change much, since desk sergeants generally do paperwork and answer phones and don't usually respond to emergency calls or make arrests.

Corbett was suspended from the department for 60 days beginning in June, 2½ months after his jail term had ended.

The Police Department should not tolerate drunken driving or domestic violence by officers, said Carpenter, the state senator.

The small percentage of officers who engage in those behaviors or otherwise violate the law make the rest — who do a good job of protecting the city and serving as role models — look bad, he said. And those with a pattern of wrongdoing also could pose a liability for the city.

“Those people need to be screened out and they can't be allowed on the police force,” he said. “It's just too dangerous.”

How to file a complaint

Citizens who feel they have been mistreated by a police officer have two ways to file a complaint.

To file with the Fire and Police Commission:

Go to room 706 of City Hall, 200 E. Wells St., from 8 a.m. to 4:45 p.m. Monday through Friday; call (414) 286-5000. Or visit <http://city.milwaukee.gov/fpc/Complaints> to download a complaint form or to view locations where forms are available.

To file with the Police Department:

Go to or call any district station and ask for a supervisor; or call the Professional Performance Division at (414) 935-7942. For more information, visit <http://city.milwaukee.gov/Police/CitizenComplaints.htm>.

The **Journal Sentinel Watchdog** team can be reached at (414) 224-2318 or watchdog@journalsentinel.com

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Chief lacks final say on discipline

By GINA BARTON

When it comes to firing officers for misconduct, police chiefs in Wisconsin don't have the final say.

In Milwaukee, the chief's decision to fire an officer or to impose a suspension longer than five days can be appealed to the civilian Fire and Police Commission. An officer who doesn't agree with the commission's decision has the right to take the case to court.

In other Wisconsin departments, the chief may only recommend discipline; it's up to a commission or civilian board to carry it out.

"You have the right to hear charges against you, tell your side of the story, be represented by an attorney — the basic procedural protections you get in court," said Paul Secunda, an associate professor at the Marquette University Law School who specializes in labor law.

In deciding whether a punishment imposed by the chief is justified, the commission and the courts also must consider precedent, said Eugene O'Donnell, professor of law and police studies at John Jay College of Criminal Justice in New York.

"Even when they explicitly say there's a rule, there are, commonly, exceptions to the rule," he said. "Nobody picks up on that faster than the cops."

And they aren't afraid to use it in court.

Fired, reinstated

For example, Milwaukee police Officer Ronald Ferrill was fired after he was convicted of disorderly conduct while armed for firing a gun from a moving car in 1990. Ferrill, who is black, sued for racial discrimination, saying a white officer would not have been fired for similar conduct. He was rehired under the terms of a settlement agreement.

Since 2008, when Edward Flynn took over as the city's police chief, 19 officers have been fired, according to the Fire and Police Commission. Three of them — Milford Adams, Charles Cross and Vincent Woller — were reinstated as a result of the appeals process, according to court and commission records.

In a criminal court, jurors must be convinced of guilt beyond a reasonable doubt. At a disciplinary hearing before the commission, the standard is preponderance of the evidence, which translates to "more likely than not," according to Michael G. Tobin, executive director of the commission. The rules of evidence also are more lenient.

Commissioners, appointed by the mayor and approved by the Common Council, take the role of jurors. There are seven positions, but one is vacant. Based on their availability, panels of three are chosen to hear each disciplinary appeal.

As in the criminal courts, the two sides argue about the admissibility of evidence and try to negotiate agreements in the weeks leading up to the hearing.

Adams was accused of allowing a woman to avoid arrest in exchange for performing a sex act in his squad car in 2004. He was criminally charged but acquitted by a jury. Former Chief Nannette Hegerty fired Adams, but his appeal was not concluded by the time she retired in late 2007. Flynn took over the process, reiterating that Adams should be fired. The commission overturned that decision after a hearing in August 2008, and Adams kept his job.

Flynn initially fired Cross and Woller but later agreed to reinstate them as part of settlement agreements while their appeals were pending, according to the commission.

Cross was convicted of criminal damage to property in August 2007 for kicking in the door of the apartment he shared with his girlfriend, according to court records.

Woller was accused of kicking a handcuffed suspect in the head after a chase in November 2008, according to a complaint Flynn filed with the commission.

Woller admitted to internal investigators he was upset with the suspect and intended to tackle the man. The officer told internal investigators “he might have been unable to stop himself” as he ran toward the suspect, resulting in physical contact, the chief’s complaint says. Woller was not criminally charged.

Flynn declined to be interviewed for this series. In March, he told the Journal Sentinel he had no choice but to accept the outcome when the commission or the courts overturn a firing.

“The decision was made by higher authority that they are competent to be officers,” he said then. “It’s my responsibility to make sure they’re properly supervised and are held accountable.”

He did not address his role in settlement agreements.

Sheriff criticizes board

Milwaukee County Sheriff David A. Clarke Jr. has been more aggressive, sending objections to the county’s Personnel Review Board when it goes against his recommendations for firing problem deputies.

“You have rationalized abhorrent behavior by those involved in law enforcement, such as domestic violence battery, drunk driving, gross dereliction of duty, knowingly cheating on timecards and now, theft,” he wrote in one letter to the board. “Your decision . . . has given license to anybody wearing a law enforcement badge in Milwaukee County to engage in criminal behavior, with no fear of being separated from the service. You couldn’t be that clueless. What you are, though, is an enabler.”

In an interview with the Journal Sentinel, Clarke called it “extremely frustrating” to have his judgment overruled by the board.

“I have an obligation to protect the public,” he said. “And that sometimes means from our own people.”

Oct. 23, 2011

Opening files took time, money

By GINA BARTON

In 1998, Monica Ray, then a deputy chief with the Milwaukee Police Department, got into a shouting match with a clerk at a custard stand.

Ray accused the worker of shorting her daughter \$5 in change and cursed at her, according to media reports at the time. Both Ray and the clerk were ticketed for disorderly conduct, a city ordinance violation.

Ray — whom Police Chief Edward Flynn promoted to assistant chief in 2008 — appealed in Municipal Court, where the citation was upheld. She then appealed to Milwaukee County Circuit Court, where a jury found her guilty. She was fined \$300.

Although Ray was convicted, she was not disciplined for breaking the department rule against violating laws or ordinances. Instead, her personnel record says, she was suspended for 10 days for violating a different rule: failing to be civil and courteous to a member of the public.

Ray, who retired from the Milwaukee Police Department in March, is now the chief of police at Alabama A&M University. She did not respond to an email seeking comment.

Her case illustrates that despite spending thousands of dollars and waiting more than a year and a half for Police Department records, it is impossible for the newspaper — and the public — to figure out exactly how many Milwaukee police officers have run afoul of the law.

To figure out how often officers engage in criminal conduct, the newspaper requested the personnel records — known as hard cards — of the department's approximately 1,900 sworn members under the state open records law. After negotiations between attorneys for the newspaper and the city, the department agreed in late 2009 to release the back page of each record, which lists each rule violated, the date and punishment. Under the agreement, the department did not release copies of the front side of the cards, which contain information such as birth date, home address, the date the officer was hired, promotions and district assignments.

For some officers, the newspaper later requested copies of the front of the cards, which the department redacted before release.

The newspaper paid \$2,059.42 in location and copying fees for access to the back sides of the cards, which the department said it would release in batches of about 100 per month.

Union files lawsuit

After the first batch was released, the Milwaukee Police Association sued the city. The union did not dispute that the records were public, but contended it was against the law to release them without first notifying the officers and giving them a chance to challenge the release.

Milwaukee County Circuit Judge Timothy G. Dugan ruled in the union's favor in April 2010. The department charged the Journal Sentinel \$3,916.79 to notify the officers via certified mail. After the newspaper paid, the department sent the letters and began releasing the records.

The newspaper then built a spreadsheet of officers disciplined for violating state laws or local ordinances or both. Ordinance violations, which are considered less serious than state crimes, include offenses such as retail theft and first-offense drunken driving.

The spreadsheet includes 93 officers.

But there is no way to know how many officers — like Ray — broke the law but were disciplined under some other department rule. For example, some officers accused of sexual assault were disciplined for “idling and loafing,” the same count used to punish officers for sleeping on the job.

The hard cards also do not include information about crimes officers committed before they were hired. The newspaper may not be aware of officers who broke the law between the time their hard cards were released and publication.

The cards do not indicate which law or ordinance each officer was disciplined for violating.

To get that information, the newspaper requested summaries of internal investigations conducted by the department's Professional Performance Division. Those records include details of the allegations, summaries of witness and officer interviews and investigators' conclusions.

One officer whose hard card lists discipline for violating laws or ordinances is not included in the list of 93 because the department could not locate the corresponding summary, leaving the newspaper unable to verify the details.

The department released the rest of the summaries to the newspaper in batches of between 10 and 20 per month over 11 months at a cost of more than \$1,600.

All told, the Journal Sentinel paid more than \$7,500 for access to public police records, which the department took 19 months to provide.

Oct. 23, 2011

Series built on police disciplinary records

By GINA BARTON

To report this series, the Journal Sentinel requested the disciplinary record of every Milwaukee police officer and supervisor — about 1,900 of them — under the state open records law. The Police Department released them over a year's time, beginning in January 2010.

The newspaper built a database of sworn personnel who have been disciplined by the Police Department for violating state laws or local ordinances. There were 93.

The database includes only those who broke the law after their hire dates, which range from 1979 to 2010. It may not include incidents or discipline that occurred after the hard cards were released. It does not include officers hired after 2010. Officers who left the force after Oct. 1 may not have been removed from the database.

Again using the open records law, the newspaper requested summaries of the internal investigations from the Police Department. The Journal Sentinel paid more than \$7,500, not including internal legal costs, for access to the police records, which the department took 19 months to provide.

One officer whose hard card lists discipline for violating laws or ordinances is not included in the list of 93 because the department could not locate the corresponding summary, leaving the newspaper unable to verify the details of the incident.

When criminal charges were issued, the newspaper reviewed the court files.

When charges were not issued, the newspaper used the open records law to obtain copies of “no process” letters and deferred-prosecution agreements from the Milwaukee County district attorney's office and from prosecutors in other jurisdictions.

Some of the 93 officers were named in family and civil court files, which the newspaper also reviewed.

In all, the newspaper examined more than 8,000 pages of police and court records.

The newspaper also made numerous requests for interviews with Milwaukee police Chief Edward Flynn, Milwaukee County District Attorney John Chisholm and Milwaukee Mayor Tom Barrett. All three refused to talk with a reporter. Barrett issued a one-paragraph statement. Flynn issued a one-sentence statement. Chisholm's office provided a written statement of about 1½ pages.

The newspaper also sent a certified letter with a return receipt to every officer named in the stories. The letters indicated the focus of the series, listed the specific events involving the officer that would be reported and requested interviews. In a few cases, the post office could not confirm delivery. Those letters were re-sent to the officers' Police Department email accounts.

Just two officers, Joseph Zawikowski and Jill Glidewell, agreed to speak with a reporter. Herb Glidewell responded via his attorney. Charles Cross sent an email declining comment. The others did not respond.

Due to state laws that allow some records to be kept secret, the newspaper could not determine how many officers broke the law before they were hired. For example, although the roster of Police Department employees is public, the department may withhold officers' birth dates. This makes it impossible to accurately compare the roster with a court database of criminal cases.

People who want to become police officers must list criminal convictions on their job applications, but those documents are not public records.

The public also does not have access to juvenile court records.

Oct. 23, 2011

These interactive elements both can be found at www.jsonline.com/watchdog/131554703.html

Both Sides of the Law - JSOnline - Windows Internet Explorer

http://www.jsonline.com/watchdog/131554703.html

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BOTH SIDES OF THE LAW

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From shoplifting to battery, some 93 officers faced few consequences for violations

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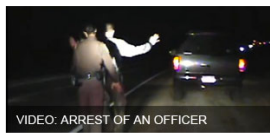
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Milwaukee Police Department
 Investigation Employee Case File History (All Employees)

EMPLOYEE	NAME	STATUS	PHOTO
1001	FLYNN, JAMES	ACTIVE	
1002	SMITH, JOHN	RESIGNED	
1003	DOE, JANE	TERMINATED	

OPEN RECORDS, HIDDEN RECORDS



THE BATTLE FOR RECORDS

Accessing personnel files
 To figure out how often officers engage in criminal conduct, the newspaper requested the personnel records — known as hard cards — of the department's approximately 1,900 sworn members under the state open records law. The Journal Sentinel paid more than \$7,500 for access to public police records, which the department took 19 months to provide. [READ MORE](#)

Department withholds complaints
 In most cases, the Milwaukee Police Department releases only a partial list of complaints against officers, known as a case file history. It does not include all complaints that were filed, but only those complaints that internal investigators ruled deserving of discipline. [READ MORE](#)

Officers' criminal records elusive
 In response to public records requests dating back to 2007, the Milwaukee Police Department and the Fire and Police Commission told the newspaper that a list of police officers who committed crimes does not exist, and officials would not create one. [READ MORE](#)

Ongoing Coverage

Vos acted to restore fired cops' pay
 As state Rep. Robin Vos (R-Rochester) tried to drum up support for a provision in the state budget that would pay the salaries of fired Milwaukee police officers until their appeals were exhausted, he told the story of an officer he claimed was unfairly fired after a fender-bender. The bill seemed

Oct. 26, 2011 – Second of three parts

Milwaukee police often face minimal punishment for driving drunk

By GINA BARTON

Milwaukee police Officer Andrew Wagner was driving drunk when he struck Luisa Villa on the freeway. Villa was standing beside a disabled car, trying to help the driver, when Wagner's pickup truck plowed into her, according to the accident report. She was pinned between the two vehicles as they collided, then thrown into the median. She landed on the ground, unconscious.

At least one witness thought she was dead.

But Villa, then 20, survived. She left the hospital with a walker and stitches across her face.

"I made it to the couch and didn't move for six weeks," she said.

That's longer than Wagner was off the job, according to his personnel record. He was suspended from the Police Department for 10 days.

Wagner, who was off-duty when the crash occurred, is not an anomaly. At least 35 members of Milwaukee's police force have been disciplined by the department after being arrested for driving drunk off-duty since they were hired, a two-year Journal Sentinel investigation found.

They are among 93 officers who have been sanctioned after the department concluded they violated state laws or local ordinances ranging from shoplifting to sexual assault, according to the newspaper's review, the first of its kind involving the Milwaukee police.

Wisconsin is the only state in which first-offense drunken driving is usually a traffic violation rather than a crime. Numerous attempts to change that in the Legislature have never gotten off the ground in a state where so many people drink socially and the Tavern League is a political force.

Even so, one drunken-driving conviction is enough to get someone fired from Milwaukee's largest cab company. A second offense, which rises to the level of a misdemeanor, results in a lifetime ban from the commercial driver's license needed to work as a truck driver.

But Milwaukee cops caught drunk behind the wheel continue to be responsible for stopping drunken drivers and enforcing other laws, even if they've been convicted more than once.

That's not the case in many departments around the country. And it tells the community the police don't take drunken driving seriously, advocates say.

"It puts people's lives and livelihoods at risk," said John Vose, state spokesman for Mothers Against Drunk Driving. "When someone in law enforcement drives drunk, that just makes it all the more difficult for us to send the message that drinking and driving is wrong."

Wagner is one of 10 officers whose intoxicated driving has crossed the line into potentially criminal conduct by injuring someone in a crash, having a gun in the car, having a child as a

passenger or getting busted more than once, the newspaper found. Just four of them were convicted of crimes.

Wagner, whose blood-alcohol level was more than double the legal limit, initially was charged with two misdemeanors in connection with the 2004 crash that injured Villa. As part of a plea agreement, the criminal charges were dismissed. Instead, Wagner, then 25, was ticketed for first-offense drunken driving — the same outcome he would have faced if he had simply been pulled over rather than causing a crash with injuries. He was fined \$300, according to court records.

Villa can understand that Wagner was driving drunk in the first place. He was young, she said, and in Wisconsin, driving drunk is practically a rite of passage.

But the fact that Wagner didn't go to jail bothers Villa. She suspects he got a break because of his job with the Police Department.

"I know they tend to take care of their own," she said.

Wagner did not respond to a request for comment.

Milwaukee County District Attorney John Chisholm declined to discuss Wagner's case or the reasons behind the plea deal. In a written statement, Chief Deputy District Attorney Kent Lovern pointed out that Wagner paid more than \$22,000 in restitution.

Court records show Wagner's insurance company actually made the payment to Villa.

Milwaukee Police Chief Edward Flynn also refused to be interviewed by the Journal Sentinel. But in a video presentation to officers, the audio portion of which was obtained by the newspaper, he said drunken driving is "as much a threat to officer safety as any other issue."

"Anybody who is a police officer who drives drunk puts their life in danger and the life of the public in danger," he said during the speech.

The video was shown to officers about a month after a Journal Sentinel reporter shared the newspaper's findings with a police spokeswoman and asked for an interview with the chief. In the video, Flynn said he was surprised by how often Milwaukee police drive drunk and acknowledged the department had not been dealing with the problem effectively.

"This is an issue of concern everywhere, but when you couple that issue with what is frankly acknowledged — too often humorously — with a culture of drinking in Wisconsin, you have a recipe for serious problems," he said.

Despite the prevalence of alcohol-related problems within the department, very few people have been referred to the employee assistance program, which provides counseling, Flynn said.

"We refer about one-fifth the numbers that the Fire Department refers," he said.

An employee committee was working to develop a new program that includes education, support and discipline for officers with alcohol-related problems, he said. Training began earlier this month.

That's a step in the right direction, said Nina Emerson, director of the Resource Center on Impaired Driving at the University of Wisconsin Law School. Early intervention can reduce both drunken driving and domestic violence, which is often fueled by drinking, she said. And it can help change a culture that doesn't take impaired driving seriously.

"It's such a huge problem in this state," she said. "We should all know better."

That goes double for law enforcement, said Milwaukee County Sheriff David A. Clarke Jr.

It's a clear conflict for someone who has driven drunk to pull over other drivers for the same offense, according to Clarke, who said he is getting backlash from the union because he won't allow a twice-convicted deputy to go out on patrol.

"If I'm going to hold the public's feet to the fire in terms of drunken driving, how can I not hold my officers' feet to the fire?" he asked. "It's dangerous behavior."

It's even worse if an officer has racked up multiple offenses or lied about it, he said.

Alcohol abuse on record

Milwaukee police Officer Jason E. Rodriguez, hired as a police aide in 1997 at age 18, has a history of alcohol abuse and dishonesty, according to court records and summaries of internal investigations.

In June 1998, he was ticketed for underage drinking at Summerfest, according to a summary. Rodriguez told his supervisor he was merely holding a beer for a friend who was in the restroom. But the Milwaukee County sheriff's sergeants who ticketed him said Rodriguez admitted drinking "one or two beers."

He was suspended for one day for drinking and another five days for lying.

Rodriguez's first drunken-driving offense occurred less than six months later, court records show. But police documents do not reflect the incident, which occurred Dec. 24, 1998. It is not listed on Rodriguez's personnel record.

Rodriguez became a recruit officer in 2000, when he was 21.

Fourteen months later, Rodriguez was charged with second-offense drunken driving and obstruction, both misdemeanors, after he reported his car stolen in Madison.

According to the criminal complaint:

Rodriguez told Madison police Officer Jimmy Minton he had parked his Jeep on the street around 4 or 5 a.m. Nov. 10, 2001, and walked several blocks to a gas station for directions. When Rodriguez came back about half an hour later, he found the Jeep had been struck by another vehicle, he told Minton.

The evidence didn't support Rodriguez's story.

The Jeep's rear quarter panel, bumper and tailgate were damaged, a tire was bent and a taillight was broken. But there was no debris nearby. Instead of paint from another vehicle, there were wood chips embedded in the Jeep. Tire damage also indicated the Jeep had been driven after the wreck.

"Officer Minton concluded that Mr. Rodriguez had in fact collided with another object and was attempting to cover up a hit-and-run violation," the complaint says.

Rodriguez denied he had been drinking, but a preliminary breath test put his blood-alcohol level at 0.12. At that time, Wisconsin's legal limit for driving was 0.10. It has since been lowered to 0.08.

As the result of a plea agreement with Dane County prosecutors, Rodriguez pleaded no contest to the misdemeanor charge of second-offense drunken driving and was ticketed for a less serious obstruction charge — a county ordinance violation rather than a crime. He was sentenced to 15 days in jail and fined \$800. His driver's license was revoked for a year.

Rodriguez did not respond to a certified letter seeking comment for this story. He attended a chemical dependency program for two months, according to a letter in his court file.

Then-Chief Arthur Jones fired Rodriguez, who appealed to the Fire and Police Commission. At his appeal hearing in November 2002, Rodriguez testified that the incident had made him realize he was an alcoholic. He acknowledged he had embarrassed himself, his family and the department. Rodriguez also testified that he had quit drinking.

The commission overturned Rodriguez's firing and reduced his punishment to a 70-day suspension. Commissioners agreed to reduce it to a 40-day suspension if he attended Alcoholics Anonymous weekly for 12 weeks and continued treatment for two years.

Rodriguez's personnel record shows he has since received three awards.

In 2005, he received a merit award for arresting two gang leaders. In 2009, his anti-gang unit received a service award. In 2010, Rodriguez received a meritorious service award for developing a strategy to bust a burglary ring.

Commercial crackdown

In 2005, the state got tough on truckers who drive drunk. A second drunken-driving offense since then — even with a low blood-alcohol level and no crash — means someone can never again qualify for a commercial driver's license, according to Sgt. Paul Wolfe of the Wisconsin State Patrol.

"You're done," he said.

The penalty applies regardless of whether the person was driving a big rig or a personal car at the time.

No state law or department policy lays out similar sanctions for Milwaukee police.

States such as Alaska, Idaho and Tennessee prevent people with recent drunken-driving convictions from becoming police officers.

Not Wisconsin.

Joseph Zawikowski's history of problems with alcohol, which included one conviction for drunken driving and two for underage drinking, wasn't an issue here. In 2004, at age 24, he was hired as a Milwaukee police recruit.

Less than a year later, Zawikowski was arrested for drunken driving again.

The drunken off-duty cop approached a security guard in the parking lot of Wheaton Franciscan Health Care-St. Francis and asked for help finding a woman named Stephanie, according to a summary of the internal investigation and court transcripts. Zawikowski's strange behavior alarmed the guard, who thought Zawikowski was impersonating an officer.

“He, in effect, threatened the guard by telling him he was a Milwaukee Police Department employee, and he better not take any action,” Assistant District Attorney Nancy Ettenheim said in court.

The security guard called police, and they pulled over Zawikowski’s car a few blocks away.

He could barely stand and couldn’t spell his own last name, according to the transcripts. Officers didn’t ask him to do any field sobriety tests — such as walking heel-to-toe — because they were afraid he might hurt himself, records say.

Zawikowski’s blood-alcohol level was 0.215, nearly three times the legal limit.

He pleaded guilty to second-offense drunken driving, a misdemeanor.

During his sentencing hearing in January 2006, Ettenheim said Zawikowski never should have been hired as a police officer.

“When I look at his record ... the Police Department should have been on notice that he was a very poor candidate for employment in the first place,” she said.

The shame and embarrassment over his conviction will never go away, Zawikowski said in an interview with the Journal Sentinel.

“Unfortunately, that’s what it took for me to get my life together, but at least it is now,” he said.

The tickets for underage drinking and for his first drunken-driving offense, when he was 19, were not a big deal at the time, he said.

“Obviously I was very immature,” he said.

Zawikowski tried to stop drinking — or at least to stop mixing drinking with driving — after the first time he was caught driving drunk, but the stresses of his new job as a police officer and the murder of his uncle around the same time were too much, he said.

He remembers virtually none of the events leading up to his arrest.

“When I came to, I was in the back of a squad car, and that’s when it hit me: How did I get to that point? How did I let this happen? There’s no one else left to blame except for yourself. I just couldn’t believe it.”

Zawikowski was sentenced to 60 days in jail, which he served on house arrest, he said. His sentence was reduced to 45 days for good behavior.

He fully expected to be fired from the Police Department, but said he is extremely grateful he wasn’t. Instead, he was suspended for 16 days, according to his personnel record. He has not been disciplined since.

“I did feel a lot of guilt, that here are all these other guys going out there working really hard, and I kind of ruined the good work out there. I feel like I let the department down and myself,” he said.

He also knew he needed to get treatment.

“I learned that I really can’t handle it, so I live a different lifestyle now,” said Zawikowski, 31. “I have purchased a house, gotten married. I live a totally different life. .□.□. I don’t know what else would have caused me to change.”

Today, he works on bicycle patrol in District 7.

Lieutenant got a break

In the internal video in July, Flynn asserted that he had recently cracked down on drunken driving and “generally increased the discipline dramatically to three and four and even six weeks’ discipline.”

But in 2008, Flynn suspended Lt. Jason Smith for just 11 days for driving drunk with his loaded, department-issued gun in the car and refusing a breath test, according to Smith’s personnel record and a summary of the internal investigation.

According to the summary:

Another driver called Brown Deer police after spotting Smith’s Mazda swerving, changing speeds and driving over a median into a snowbank around 9 p.m. Feb. 27, 2008. The caller said Smith drove out of the snowbank and parked behind a strip mall.

When officers arrived and asked what he was doing there, Smith answered: “Taking a piss, and I’m Lt. Smith with the Milwaukee police.”

Smith’s speech was slurred and he smelled of alcohol. He failed field sobriety tests.

The Brown Deer officers asked Smith twice if he was armed, and both times he said no. But when police searched his car, they found his gun on the passenger floorboard, leaning against the center console. It would have been easy to reach while he was driving, the internal affairs investigator concluded.

Smith refused a breath test on the scene, so he was taken to Columbia St. Mary’s Milwaukee. There, he also refused a blood test. When officers informed Smith that his blood would be drawn whether he consented or not, he did not resist. His blood-alcohol level was 0.13.

Smith later gave internal investigators this account:

He had worked more than 24 hours with only about half an hour of sleep. When he left work, one of the officers under his command stopped him and asked for his help with some personal problems. The two went to a tavern, where Smith had at least four drinks.

While he was drinking, his gun was holstered to his belt. When he got back in the car to drive home, he took it off.

On the way, he got lost and figured he must have fallen asleep while driving. He stopped behind the buildings to try to figure out where he was, but didn’t remember urinating there.

He told the Brown Deer officers he wasn’t armed because he didn’t have his gun on him while he was standing in the alley — it was in the car. He refused the alcohol tests because he thought it was in his best legal interest.

“In the end, Lieutenant Smith stated that it was an error in judgment to drink and drive after not having enough sleep and that he accepts responsibility for all of his actions,” the summary says.

Refusing an alcohol test is a traffic violation that can result in a one-year driver's license suspension.

Being armed while drunk is a misdemeanor with a maximum jail term of nine months.

But Smith wasn't convicted of either offense.

The Milwaukee County district attorney's office asked Kenosha County Assistant District Attorney Richard Ginkowski to act as a special prosecutor in the case.

"My primary goal is how do I best and most quickly protect public safety," Ginkowski said in an interview. "Drunken driving is bad in the first place, but, you know, it can happen to anybody."

Ginkowski was more concerned with the fact that Smith had a gun.

"If he had been doing something inappropriate with his gun, he should have been prosecuted and should not have continued as a police officer," Ginkowski said.

Not all prosecutors agree with that approach.

For example, Milwaukee police Officer Robert Waldoch got a deferred-prosecution deal from Ohio prosecutors in 1999 after he fired at least seven shots near downtown Cleveland and jumped into a river to try to escape police, according to a summary of the internal investigation . Waldoch later told investigators he drank "three or four" beers but wasn't drunk, the summary says. Authorities did not do a blood-alcohol test.

Waldoch was suspended for five days and remains on the force, according to his personnel record. He did not respond to an email requesting an interview.

Ginkowski said he surely would have charged someone like Waldoch outright in hopes of having him removed from the job.

Smith, though, "wasn't waving his gun around" and didn't fire it, Ginkowski said. He had a positive record with the department and didn't lie to investigators. Smith also accepted responsibility for his actions by pleading no contest to first-offense drunken driving in Municipal Court, Ginkowski said.

As a result, he offered Smith a deferred-prosecution agreement that required him to get treatment, avoid breaking the law for a year and comply with discipline handed down by the Police Department, according to records.

In exchange, Ginkowski did not file the firearms charge.

Smith got another break when the Brown Deer village prosecutor, Rebecca Boyle, dismissed Smith's ticket for refusing the breath and blood tests.

Smith's personnel record lists two commendations.

In 1991, he received a commendation for arresting five suspects in an attempted robbery.

In 1996, Smith received another award, this one for recovering a sawed-off shotgun and connecting it to suspects in a string of armed robberies.

Smith did not respond to a certified letter seeking comment for this story. As a result of the drunken-driving conviction, he was fined \$779, according to the summary. His driver's license was revoked for 6½ months.

Smith successfully completed the deferred-prosecution deal. There is no other discipline on his record.

If Smith had been a driver for American United Taxi Cab Co. in Milwaukee, he would have been let go after the incident.

“Drunken driving, we do not accept at all,” said Mike Richlin, general manager of the cab company. “There’s no question, even on a first offense.”

As a Milwaukee cop, though, the outcome for Smith wasn’t nearly as dire. In August, Flynn promoted him to captain.

In the video presentation to officers, Flynn didn’t address the potential danger of mixing guns and alcohol.

But he did talk about it during a Milwaukee Common Council committee meeting in May. At the time, the new law allowing Wisconsin residents to carry concealed weapons was being debated in the state Legislature.

At the meeting, Flynn said citizens with recent drunken-driving convictions shouldn’t be allowed to carry guns.

“Obviously,” he said, “the state has an interest that if you’re in the position to carry a firearm lawfully, you do so not under the influence of any substances.”

Oct. 30, 2011 – Third of three parts

Police Department ignores national standards for officers accused of domestic violence

By GINA BARTON

When Robert Velez's wife left their home to escape his abuse, he used his Milwaukee police training — and his badge — to track her down.

First, Velez connected his missing wife to the Exel Inn hotel chain. He initially showed his badge at the Wauwatosa location, according to court and internal affairs records. Lying to the clerk, Velez said he was working undercover, looking for a suspect.

The woman wasn't checked in there, but the clerk located her in Oak Creek. She had alerted staff that her abusive husband — a cop — might come looking for her.

Nonetheless, the hotel desk clerk led Velez to his wife's room, knocked on the door, and told her to open it. If she didn't, the clerk said, he would use the master key.

She did.

Velez shoved past her into the room, where he found one of his fellow officers — whom he and his wife had known for about three years. Velez immediately began beating the man, telling him: "I'll break your f---ing neck! I'm going to kill you!"

When his wife tried to break up the fight, Velez punched her in the face. He put the man in a headlock and dragged him down the stairs, the records say.

When Oak Creek officers arrived, Velez also fought with them. He repeated the lie about working undercover a third time and pulled back his black leather jacket to show the gun in his waistband, according to a summary of the internal investigation.

As a result of the 2001 incident, Velez was arrested for battery while armed, domestic violence battery and misconduct in public office — charges that could have landed him in prison for 5½ years and barred him from possessing a gun for the rest of his life.

But that didn't happen. Not only did Velez avoid prison, he was suspended from the department for just six days.

Velez is one of at least 16 Milwaukee police officers disciplined after internal investigators concluded they had committed acts of domestic violence, according to internal affairs records obtained by the Journal Sentinel during a two-year investigation. They are among 93 officers on the force who have been disciplined for violating state laws or local ordinances, according to the newspaper's analysis, the first of its kind involving the Milwaukee police.

Department leaders don't follow national standards on how to handle accusations of domestic violence against officers. Prosecutors often charge them with lesser crimes — or no crimes at all.

As a result, officers who abuse their spouses or romantic partners are allowed to keep their jobs, carry loaded weapons and respond when battered women call for help, the newspaper found.

Law enforcement agencies that tolerate abusive officers endanger victims, erode the community's trust and leave themselves vulnerable to lawsuits, said Judy Munaker, an attorney who spent five years training cops about officer-related domestic violence through the state Office of Justice Assistance.

'Protecting their own'

"They see it as protecting their own, but it's corruption," she said. "They need to stop protecting their own and start protecting victims."

It is impossible to tell how many domestic incidents the Milwaukee Police Department has not investigated. Last year, for example, the wife of a high-ranking commander in the Professional Performance Division, which investigates officer misconduct, called 911 in fear of her husband.

No one wrote up a report, and department officials say a recording of the emergency call does not exist.

Just three of the Milwaukee officers disciplined for abusing their spouses or romantic partners, including Velez, ended up with criminal records — but none of those convictions was for a felony or misdemeanor domestic violence, crimes that would have ended their careers by stripping them of their right to carry firearms under federal law.

Prosecutors charged Velez with only misdemeanor battery, and he pleaded no contest.

Even though he later violated a court order by contacting the victim, Milwaukee County Circuit Judge Jean DiMotto sentenced Velez to a year of probation.

He spent three days in jail.

Officer Edward McCrary was convicted of disorderly conduct after he fought with his wife and choked her cousin. He was sentenced to one day in jail.

Sgt. Charles Cross was convicted of criminal damage to property for kicking in the door of the apartment he shared with his girlfriend. He was fined \$500. Prosecutors offered him a deferred prosecution agreement on the charge of domestic violence-related disorderly conduct. He got treatment for depression and alcohol abuse and the charge was dismissed.

A fourth officer, Zebdee Wilson, now has a clean criminal record despite pleading guilty to violating a restraining order in 1994. His wife needed oral surgery after he punched and kicked her repeatedly in the face, court records say.

That conviction should have stopped Wilson from continuing to serve as a police officer after the federal law banning domestic violence offenders from carrying guns took effect in 1996. The ban was retroactive and applies no matter when the conviction occurred. There is no exception for police officers.

But then-Gov. Tommy Thompson pardoned Wilson, erasing his conviction and saving his career.

Another provision in the federal law allows officers to carry weapons on duty despite domestic abuse restraining orders if their employers allow it.

The Milwaukee Police Department does.

What's more, the department does not have a written policy on how to handle officer-involved domestic violence — a practice that goes against recommendations by both the International Association of Chiefs of Police and the state Department of Justice. The assistant chief who oversees officer performance and discipline, Darryl Winston, said in May he had not read the state's model policy, released by the Wisconsin Department of Justice in 2009.

The model policy contains an educational component that discusses the causes of the problem and its impact on the community. It gives clear, step-by-step instructions for investigations, including lists of who should be called to the scene and what kinds of paperwork should be completed. The policy also addresses how departments should deal with abusive officers.

“Ignorance is no excuse,” said David R. Thomas, an instructor at Johns Hopkins University in Baltimore, who helped write a model policy for the international association.

“If they're willing to look the other way on this type of criminal activity, where does it stop?”

Milwaukee Police Chief Edward Flynn and Milwaukee County District Attorney John Chisholm declined to discuss the issue with the Journal Sentinel.

In a written statement, Chief Deputy District Attorney Kent Lovern said prosecutors handle officer-involved domestic violence cases the same as any others.

“Domestic violence victims often are forced to struggle with interests in addition to their own personal safety, including children in the household and financial distress,” he wrote. “Cases involving police officers are no different, and we evaluate those cases just as we evaluate domestic violence cases involving citizens of other occupations, with a goal of achieving an appropriate measure of accountability under the circumstances.”

Certified letters to Velez, McCrary and Wilson were returned, and they did not respond to emails requesting comment. Cross, via email, declined to comment.

Velez received a meritorious service award in 2010 for dragging a burning trash bin away from a building and a crowd assembled for an immigration rights march.

He also provided support during a domestic violence awareness walk in the Latino community in 2006, according to a letter in his personnel file.

Wilson received the chief's superior achievement award in 1993, the year before his criminal conviction, for rushing into a burning building and waking seven people inside. In 2002, he received a commendation for disarming and arresting a dangerous suspect.

Far above norm

Domestic violence is far more common among the families of police officers than among the rest of the population, according to the U.S. Department of Justice and the National Center for Women and Policing. At least 40% of police families are affected by domestic violence, as opposed to an estimated 10% in other households.

Because of the unique stresses that result from confronting dangerous suspects, analyzing bloody crime scenes and witnessing breakdowns in the criminal justice system, police officers also experience higher rates of suicide and post-traumatic stress disorder, experts say. If officers don't

learn to manage their stress and to separate their jobs from their personal lives, the results can be disastrous.

The very training that makes someone a good police officer can produce a frightening abuser, experts say.

For example, officers are trained to take control of every situation. They learn to interrogate suspects and to conduct effective surveillance. They learn how to pursue suspects and physically restrain them — in many cases, without leaving a mark. When they use force, they know how to provide legal justification.

Friends who work in the criminal justice system also tend to believe abusive officers who label their victims crazy or dishonest, according to Thomas.

“He’s a master manipulator,” Thomas said of an abusive officer. “He’s a batterer with a PhD.”
And a gun.

The law that prohibits people convicted of domestic violence from carrying firearms, known as the Lautenberg Amendment, has been counterproductive when it comes to police officers, according to Diane Wetendorf, an Illinois-based consultant who has specialized in officer-involved domestic violence for the past 15 years.

Instead of taking guns away from abusive officers across the nation, it has made prosecutors — who work closely with cops every day — more lenient with them for fear of ruining their careers, she said.

Take the case of McCrary, now a detective.

On July 14, 1998, McCrary’s then-wife fled in fear to a neighbor’s house after he threw books and disconnected the phone wires when she tried to call 911, court records say. She was six months pregnant at the time.

Prosecutors agreed not to charge McCrary with a crime as long as he got counseling and stayed out of trouble. The Milwaukee County district attorney’s office has offered that type of deal, known as a deferred-prosecution agreement, to at least five other current Milwaukee police officers accused of domestic violence, according to the newspaper’s analysis.

But McCrary didn’t live up to his side of the bargain, according to a summary of the internal investigation. He didn’t go to therapy.

And in October 1998, he got into another argument with his wife. When her cousin intervened, McCrary grabbed the woman by the neck, according to a criminal complaint.

“He choked her, lifted her up off the floor, and started moving her backwards toward the front door,” the complaint says.

He yelled obscenities at the woman, pushed her out the door and threw out her clothes and shoes behind her, the complaint says. She had scratches on her neck and her hand was bleeding.

Because McCrary fell short of completing the deferred prosecution deal, prosecutors charged him with domestic violence-related disorderly conduct in connection with the July incident. He also was charged with battery against his wife’s cousin as a result of the October fight.

But under a plea agreement, the charge involving his wife was dropped and the battery charge involving her cousin was reduced to misdemeanor disorderly conduct.

McCrary pleaded no contest. Because he was not convicted of a charge in which his wife was a victim, he was not prohibited from carrying a firearm and kept his job.

Milwaukee County Circuit Judge Dominic Amato sentenced McCrary to a single day in jail.

At the sentencing hearing, McCrary apologized and said he accepted responsibility for his actions, according to a transcript.

“I didn’t want it to go this far,” he said. “Me and my wife, we decided that we weren’t going to be together, we should have just parted without incident.”

McCrary initially didn’t go to counseling because his insurance didn’t cover it, but he later started treatment, his attorney, Steve Kohn, said at the hearing.

McCrary was suspended from the department for 15 days for breaking the rule against violating laws or ordinances. He did not respond to interview requests. His ex-wife declined to comment. Her cousin could not be reached.

Lovern, chief deputy in the district attorney’s office, said the plea deal in the cousin’s case was done “in accordance with the wishes of the victim.” His written statement did not address the charge involving McCrary’s wife or explain why he was offered deferred prosecution in the first place.

Police exemption

Domestic violence injunctions, more commonly known as restraining orders, also don’t keep guns away from abusive officers in Milwaukee — and don’t always lead to department discipline.

Most people with restraining orders against them lose the right to possess firearms. But the Milwaukee Police Department allows officers in that situation to “check out” their duty weapons at the beginning of each shift and return them afterward.

That is a constant source of stress for Jill Glidewell, who recently divorced Milwaukee police Detective Herb Glidewell.

“He said if I ever told the things he’d done, I’d disappear,” she told the Journal Sentinel.

Nonetheless, she testified in an attempt to get a restraining order against him, detailing abuse dating back to 2006.

Milwaukee County Court Commissioner Dean B. Zemel granted the restraining order based on an incident that occurred Nov. 1, 2008, in which Jill Glidewell — a police officer herself — ended up with a damaged rotator cuff.

The week before, she had told her husband she was pregnant with their second child.

“He viciously attacked me while I was in bed,” she testified later. “He got on top of me. With all his weight, he was picking me up and slamming me down as hard as he could on the bed, over and over, more than 10 times. I was screaming for him to stop and get off of me. That it was hurting me.”

She grabbed the phone, but he yanked it out of her hand and started beating the barking dog with it, she said. Taking the dog and her baby daughter, she drove to the District 6 police station, barefoot, at 3 a.m.

She was too embarrassed to go inside. A friend who was on duty came out to comfort her, but didn't push her to file a report, she said.

Herb Glidewell appealed the commissioner's decision to grant the restraining order. He denied wrongdoing at a hearing before Milwaukee County Circuit Judge Francis T. Wasielewski, according to court transcripts.

"We argued often, yes," Herb Glidewell testified. "And I'm sure on all those dates, we probably did have disputes; but never, at one point, ever, was it physical. I've never harmed her, never touched her, hit her, pushed her, any of those things."

At the end of a two-day hearing, Wasielewski, who has since retired, left the restraining order in place. It is in effect until 2013. He based his decision on medical records, which showed Jill Glidewell sought treatment for the shoulder injury and told her doctor it was the result of domestic violence, the transcripts say.

Herb Glidewell is among seven police officers who have had restraining orders imposed against them by a commissioner. Of those, three orders were later dismissed — two by the women and one by a judge when the woman didn't show up at an appeal hearing.

In another 11 cases, officers' spouses or romantic partners filed for restraining orders that were not granted by a commissioner in the first place, either because there was not enough evidence or because those who filed for them did not follow through with the cases. One was later granted by a judge after the victim appealed.

But Herb Glidewell's attorney, Barry Book, characterized the burden of proof for restraining orders as extremely low. In the Glidewell case, the law allowed the commissioner and the judge to "err on the side of caution," he said.

Book said the timing of the application for the restraining order was suspect, since his client was served with it the same day he signed away his rights to the couple's house in a pending divorce.

Jill Glidewell says she would have done it sooner, but he was out of town. He wanted his name off the house because he already offered to purchase another one, she said. Property records back up her assertion, showing Herb Glidewell closed on a new house five days later.

The attorney also questioned Jill Glidewell's continued assertions of abuse, saying he suspected she was using them as ammunition in a contentious custody battle.

"I do think there are some extenuating circumstances in this particular case that call Ms. Glidewell's credibility into question," Book said. "The divorce proceedings lasted about 2½ years. It was very acrimonious from the beginning."

Nearly two months before she sought the restraining order, Jill Glidewell discussed her then-husband's abusiveness with internal affairs, alleging the same mistreatment she testified about in court.

After an investigation, the Police Department referred the case to the district attorney's office. Local prosecutors often review cases against Milwaukee police officers themselves. But in this

case, they asked Chris Freeman, then a Dane County assistant district attorney, to serve as a special prosecutor.

“The Glidewell case was referred to Dane County due to the appearance of a conflict, although to our knowledge, no actual conflict existed,” Lovern’s written statement says. It does not say what the perceived conflict was.

In a letter to the department, Freeman, who has since been promoted to deputy DA, said “three major incidents stood out as strongest for charging.” One was the episode in which Jill Glidewell’s shoulder was injured. In another, Herb Glidewell grabbed her by the throat and pushed her into a wall, Jill Glidewell said. The third “was an incident in which Herb Glidewell started a fire on a grill in front of the residence while he was intoxicated,” Freeman’s letter says. “The fire raged to such a degree that the wheels of the grill melted into the pavement.”

To corroborate her statements, Jill Glidewell provided the medical records regarding her shoulder, as well as pictures of redness on her neck and of the melted grill.

Freeman did not charge Herb Glidewell with a crime.

“The reason for the lack of charges does not stem from the belief that these events did not occur as Jill Glidewell describes, but that I do believe based on the entirety of the record and reports that this case could not be proved beyond a reasonable doubt,” Freeman wrote in the letter, which explained his decision to the Police Department.

Herb Glidewell was not disciplined, and his personnel record remains spotless.

His ex-wife is frustrated that he hasn’t been held accountable.

“He told me, ‘If you ever leave me or try to fight me, I’ll ruin you,’ □” she said. “Criminals are afforded the right to a fair and speedy trial. Why aren’t victims of domestic violence?”

Herb Glidewell primarily works burglaries and robberies, according to Book. He carries his gun while on duty. If the department ever asked Glidewell to work domestic violence cases, his attorney said that wouldn’t be a problem.

“I think he is able to separate his personal situation from his professional obligations,” Book said. “I have no question in my mind that if he were to investigate a domestic violence case he would do the right thing. If he had to put a dad under arrest, he would do it.”

Jill Glidewell said she has never feared a suspect as much as she fears her ex-husband.

“This is the most dangerous thing I’ve ever done,” she said of leaving him. “I live in fear every day that someone is going to shoot up my house.”

Police departments that give abusive officers access to their guns need to be aware of that possibility, according to Thomas, of Johns Hopkins.

“People think you go on duty and all of the sudden there’s a protective shield around you and you’re not going to do anything stupid anymore? It’s just ignorant,” he said.

Higher standard needed

While officers’ attitudes about domestic violence in the community have evolved over time, most police around the country still don’t take it seriously when the perpetrator is one of their

own, according to experts. Handling such accusations the same as any other criminal allegation against police, as Milwaukee does, isn't good enough, experts say.

Because responding officers can be biased, one of the goals of a model policy on officer-involved domestic violence is to remove their discretion, said Thomas, who retired from the Police Department in Montgomery County, Md., in 2000. Following written guidelines step by step protects the victim, the investigator and the alleged perpetrator, he said.

"If I'm accused of being involved in this activity and I didn't do it, I want a good, clear exhaustive investigation so I can be exonerated," he said.

That didn't happen in the case of Lt. David Salazar, a supervisor in the Milwaukee police's Professional Performance Division, which investigates wrongdoing by officers.

After receiving a tip that Salazar's wife called 911 during a fight with him, the Journal Sentinel made a public records request for audio recordings of all calls associated with his home address and any police reports affiliated with them.

No reports were written, according to the department's response.

The department provided only a dispatcher's log of the June 2010 incident, which confirms that Salazar's wife called for help during an argument over suspicions he was cheating. She told the dispatcher he was intoxicated and trying to break down the door.

The newspaper requested the information in August 2010. Three months later, the department said the recording of the call had been inadvertently purged from the system.

Then, in January, the story changed.

Department spokeswoman Anne E. Schwartz said that actually, the system malfunctioned and no emergency calls were recorded the entire day Salazar's wife called 911.

The supervisor called to the scene, Capt. Aaron Raap, determined Salazar "had not operated a motor vehicle, had not had physical contact with the caller and did not appear to be intoxicated," Schwartz said in an email.

Raap decided an internal investigation was not necessary, and Salazar was not reassigned or disciplined as a result of the incident, Schwartz said.

"The determination was based on Capt. Raap's years of training and experience," she said. "Police officers use their discretion every day in every situation."

The state's model policy says if no arrests are made, "the on-scene supervisor shall submit a written report explaining any and all reasons why an arrest was not made or a warrant was not sought."

Allowing officers to hide behind discretion in cases such as Salazar's is "unacceptable," Thomas said.

"It's saying we're just not going to uphold the law with our own the way we do with a citizen," he said. "We should, in law enforcement, be held to a higher standard because we're supposed to enforce the law. ... Otherwise, it's the fox watching the henhouse."

Neither Salazar — who received a unit service award in 2009 as part of the department's homicide division — nor his wife responded to certified letters seeking comment.

Salazar continues to supervise investigations of other officers accused of wrongdoing.

Still investigating cases

Officers such as Velez, convicted of the beating in the hotel room, continue to investigate domestic violence, the newspaper's investigation found. In April alone, Velez responded to domestic disputes five times — an average of more than once a week, according to the most recent records released to the newspaper.

That's another direct contradiction to the recommendations in the state's model policy. It's a recipe for destroying community confidence and placing victims at risk, the policy says.

“There are grave concerns regarding how officers who commit the crime of domestic violence respond to domestic violence calls in the community,” the policy says. “Obviously, their personal conduct affects their capability to effectively deal with these situations impartially. Moreover, an officer, sympathetic to an abuser, may not adequately protect a victim.”

Munaker, the former Office of Justice Assistance trainer, agreed.

“We can't let abusers investigate this. We just can't,” she said.

Flynn has said fighting domestic violence is a priority for the department. In February, he rolled out a new initiative to combat the problem, targeting repeat offenders and calling for greater protection of frequent victims.

“A violent assault is a violent assault, and that warrants justice,” he told department supervisors at the time.

John Diedrich and Ben Poston of the Journal Sentinel staff contributed to this report.

Oct. 30, 2011

Officers' criminal records are tough to track

By GINA BARTON

In 2004, Frank Jude Jr. was beaten by a group of off-duty Milwaukee police officers at a party in Bay View.

Officers ripped off Jude's clothes, punched and kicked him in the head and threatened him with a knife and a gun. As a result, seven cops were convicted of crimes and sentenced to prison.

A federal judge called Jon Bartlett the worst of them.

Before Bartlett started working for the Milwaukee police, he was convicted of fleeing and eluding law enforcement in Door County. The Milwaukee Police Department knew about the conviction when Bartlett applied for a job as an officer. He was hired anyway.

The public learned about Bartlett's earlier criminal record only after the Journal Sentinel uncovered it in a civil court file while reporting on the Jude case.

After that, the newspaper asked the Police Department, the Fire and Police Commission and the Milwaukee County district attorney's office for a list of officers who have been convicted of crimes.

In response to public records requests dating back to 2007, the department and the commission told the newspaper such a record does not exist, and officials would not create one.

Michael G. Tobin, who became executive director of the commission in late 2007, said he wanted to research the question shortly after he started the job, but the commission's database wasn't set up to answer it.

It still isn't.

"Anecdotally, it's a very small number," Tobin said earlier this year.

District attorney's list

The district attorney's office has a bit more information.

Officials there maintain a database of police officers throughout Milwaukee County who have been convicted of crimes or have criminal charges pending against them. In response to the newspaper's request, the prosecutor's office provided a list from that database.

But the database does not include information about crimes officers committed before they were hired. And the database contains no information about crimes that occurred before it was created in 2000.

While there is substantial information about criminal records on the state courts' website, known as CCAP, it is impossible to compare defendants there with a roster of police officers because the department redacts birth dates before releasing the roster to the public.

Further, the system is not all-inclusive and not always accurate. Clerks in different counties don't consistently code the information they put into the system. Portage County, which includes Stevens Point, does not submit criminal information to the site at all. And because the system is run by the state courts, it doesn't include information about charges or convictions in other states or federal crimes.

Some officers' crimes, including Bartlett's offense in Door County, have been missing from the site without explanation. That conviction was not listed until after it was reported by the Journal Sentinel in the wake of the Jude case.

Credibility at issue

An officer who has been convicted of a crime can be rendered useless as a prosecution witness — especially if dishonesty is involved, said Kenosha County Assistant District Attorney Richard Ginkowski, who once worked as a police officer in Iowa. The defense can use that information to cast doubt on the cop's testimony.

"If an officer is caught lying, that dilutes their credibility in other cases and makes them less effective as an officer," he said. "That's a significant concern."

That's one reason departments in many other states, including Illinois, preclude people convicted of certain misdemeanors — generally involving deception, drugs and abusive behavior — from carrying a badge and a gun.

"It's just overwhelming how people in communities really do believe law enforcement officers have to be held to this standard," said Kevin McClain, executive director of the Illinois Law Enforcement Training and Standards Board. "People feel that police officers should be models in society."

Not only are people convicted of those types of crimes barred from being hired as Illinois officers — working officers who are convicted of those crimes are automatically decertified under state law, which means they immediately lose their jobs and can't be rehired, McClain said. Any officer who fails to notify the state of a conviction — either during the application process or after hiring — can be charged with a [felony](#).

McClain helped draft the statute that set these standards, which took effect in 1999. Not only did average citizens support it, he said, but police officers and their unions did, too.

"It's not only a situation that protects the public, but it protects the police officers as well," McClain said. "Police officers would like to believe they can rely on other officers for safety and support in dangerous situations. When there are bad cops out there, other police officers don't want them out there, either, because they feel it could jeopardize their safety."

Oct. 30, 2011

Vos acted to restore fired cops' pay

By GINA BARTON

As state Rep. Robin Vos (R-Rochester) tried to drum up support for a provision in the state budget that would pay the salaries of fired Milwaukee police officers until their appeals were exhausted, he told the story of an officer he claimed was unfairly fired after a fender-bender.

With Republicans controlling the state Legislature and the governor's office, the budget provision — which would have reversed a 2009 reform that had saved city taxpayers hundreds of thousands of dollars — seemed on the fast track for approval in June.

But Vos hadn't done his homework.

He didn't know the name of the officer.

“My information is from the police union. I believe what they tell me, but I have to be upfront about that,” Vos said of the union, which has often supported Republican candidates in recent elections.

The bill passed both chambers of the Legislature and was awaiting Gov. Scott Walker's signature when the Journal Sentinel identified the officer Vos had referenced as James Morsovillo. He previously had been suspended for incidents involving domestic violence, hit-and-run and drunken driving.

The same newspaper article pointed out that fired officer Ladmarald Cates — who has since been charged with two federal felonies after a woman accused him of rape in the wake of her 911 call — also would continue to draw his salary as he pursued his appeal before the Fire and Police Commission.

The day after the story appeared, state senators and city officials asked Walker to veto the provision. Among those calling for a veto was Fire and Police Commission Executive Director Michael G. Tobin. He also wrote a letter to Vos and state Sen. Alberta Darling (R-River Hills) — who had helped write the provision and defended it on the floor — asking them to reconsider their position.

Darling reversed course and added her name to the list of officials asking Walker for a veto. She said she changed her mind after talking with Tobin.

Five days after the newspaper's initial report about Morsovillo, Walker announced he would veto the police pay provision.

Inspired by Jude case

The veto left intact reforms that were initiated after the 2004 beating of Frank Jude Jr. by off-duty police officers at a Bay View house party. The three officers with central roles in the beating appealed their firings and collected nearly half a million dollars in pay and benefits while they awaited trial. They were not removed from the payroll until they were convicted and their appeals were dismissed because of a state law that says felons cannot be police officers.

Under the old law, fired Milwaukee officers remained on the payroll for an average of nine months, in part because of lengthy appeals by the politically connected police union, according to a Journal Sentinel investigation in 2006. Some fired officers collected full paychecks for years.

Legislators first modified the law in 2008 — cutting off pay only for officers fired for conduct that also resulted in felony or serious misdemeanor charges. The following year, lawmakers cut off pay for all fired officers. Officers who win their appeals get back pay.

Walker's veto prevented the law from being rolled back to the 2008 version.

Cates had been fighting his dismissal but dropped his appeal the week the story on the police-pay measure broke.

Morsovillo's appeal remains pending before the commission. A hearing is scheduled for Dec. 14.

Shortly after the budget item was vetoed, Vos said he would address the police pay issue again, with stand-alone legislation. But last week his spokeswoman, Kit Beyer, said Vos had changed his mind and had no immediate plans to introduce such a bill.

"He's going to focus on jobs this fall," she said.

John Diedrich of the Journal Sentinel staff contributed to this report.

SUPPLEMENTAL STORIES

Jan. 16, 2011

911 police call results in rape, woman says Officer later was fired but not prosecuted; federal investigation is in progress

By GINA BARTON

Federal authorities have launched a criminal investigation against a recently fired Milwaukee police officer accused of sexually assaulting a woman after he responded to her 911 call in July.

Former officer Ladmarald Cates admitted to internal affairs investigators that he had sex with the woman, who called police because teenagers were trying to kick in the door of her north side home, according to police records obtained by the Journal Sentinel.

Police Chief Edward Flynn fired Cates, who gave conflicting stories to department officials, for lying and for “idling and loafing” — because having sex on duty is against department rules. Cates has appealed his dismissal to the civilian Fire and Police Commission, which has the power to give him his job back.

The woman’s account suggests the system designed to protect the public from rogue police officers broke down at several levels. And it isn’t the first time an on-duty Milwaukee police officer has been accused of sexual assault.

The woman called 911 for help, but when police arrived she was victimized repeatedly — sexually assaulted, mistreated by backup officers and then jailed on trumped-up charges when she refused to remain silent, according to her attorney, Robin Shellow.

The Journal Sentinel does not name victims of sexual assault.

In an interview with the newspaper, the woman said numerous officers — on the scene and at the police station — accused her of lying when she begged for help and asked them to take her to the hospital.

The Milwaukee County district attorney’s office spent two months reviewing the case but didn’t charge Cates. The woman said that during that time, prosecutors ignored her phone calls.

“In all honesty, I just want to die,” said the woman, a mother of two young children. “I know I can’t die right now, because I got the kids. But if I could find someone to take care of my kids as good as me, I’d just end it. I think about it every day and every night. ... I’m sick of thinking about it. I’m sick of crying. I’m sick of people calling me a liar.”

The FBI and U.S. attorney’s office opened a federal investigation after the district attorney’s office declined to prosecute Cates. In an October letter to Flynn, Assistant District Attorney Aaron E. Hall said he believed the woman’s account but didn’t think he would be able to prove a sexual assault case in court.

“While I did find the victim’s version of events credible, I did not believe that her testimony would be strong enough to successfully prosecute Officer Cates,” Hall wrote in the letter to Flynn.

Chief Deputy District Attorney Kent Lovern said prosecutors also considered charging Cates with misconduct in public office but decided against that as well.

“We always have to consider how a jury will react in considering evidence against a police officer,” he told the Journal Sentinel.

When a citizen accuses an officer of wrongdoing, department protocol calls for a supervisor to be summoned to the scene. The supervisor then determines whether an investigator from internal affairs, known as the Professional Performance Division, should be dispatched. In sexual assault cases, investigators from the Sensitive Crimes Division also are supposed to be notified promptly.

Those things didn’t happen in this case, according to the woman’s account.

The woman says she told officers on the scene that Cates raped her. It appears that a sergeant responded two hours after the initial 911 call, according to dispatch records. But no one from internal affairs or Sensitive Crimes took a statement from the woman on the scene. Instead of being taken immediately to the hospital for treatment and evidence collection, she spent approximately 12 hours in jail before speaking with a sergeant or being interviewed by internal affairs. Only after that did she receive medical attention.

Besides Cates, no officers have been disciplined for violating those practices or for any other conduct connected with the incident, according to Milwaukee police spokeswoman Anne E. Schwartz. She declined to answer specific questions about the woman’s allegations and did not make Flynn or any supervisors in District 3, where the incident occurred, available for an interview.

The Police Department declined to release reports of its internal investigation into Cates’ behavior, citing the pending federal investigation. The department also would not release a photo of Cates.

Cates, 43, did not answer the door at his home and did not respond to a letter left there. His former partner, Alvin Hannah, could not be reached. Cates’ attorney, Jonathan Cermele, did not return telephone calls.

Studied criminal justice

The woman was 19 at the time of the incident and had been living on her own, with the help of the foster care system, for four years. In addition to raising her children, ages 2 and 3, she had been given custody of her 15-year-old brother by the courts because of their mother’s drug addiction. She was studying criminal justice at the University of Wisconsin-Milwaukee.

The woman, now 20, has been ticketed for numerous traffic violations since 2006, according to online municipal court records. She also was ticketed for resisting and obstructing an officer in December 2009.

“I want to be someone in life, to help other people,” she said. “But now I’m kind of lost.”

During a 2½-hour interview with the Journal Sentinel, the woman provided a detailed account of what happened. On the afternoon of July 16, some teenage girls in the neighborhood were harassing her as she sat on the porch, she said. She went inside. But instead of leaving her alone, the girls started throwing bricks through the windows and trying to kick in the door, so she called 911. Cates and Hannah responded, according to police dispatch records.

Although the teens who had thrown the bricks were still outside, the officers didn't talk to them, the woman said. Instead, she said, they seemed focused on getting everyone but her out of the house.

First, the officers urged her to call someone to pick up her children, which she did.

Hannah then handcuffed the woman's brother, saying there was a missing persons report out on him, she said.

The woman had been in court three weeks earlier to file for guardianship of her brother, she said. She showed the officers check stubs for payments she received from the state to care for him under the kinship foster care program. She also called her social worker, who got on the phone with the officers and confirmed her brother was supposed to be living with her, she said. Hannah took her brother out to his squad car anyway.

Cates then gave her boyfriend \$10 and told him to go to the store for some water, the woman said.

"I asked him did he want some water from the refrigerator," she said. "He said, 'Oh no, that water looks cloudy.' "

Her boyfriend — the father of both children — walked to the store a couple of blocks away, he confirmed.

Cates then asked the woman to follow him to the back of the house so he could see the damage, she said. She showed him broken windows in the bathroom, then reached behind the toilet to pick up a brick that had landed there. She turned around to find the officer with his pants down, she said. He demanded oral sex. Shocked and afraid, she complied. Afterward, Cates raped her, she said. He did not use a condom.

Then he let her go.

"I ran outside crying, saying, 'He raped me. He just raped me.' "

Arrest follows protests

The woman's 15-year-old brother, who by then had been uncuffed and let out of the squad car, started shouting at Cates and his partner. Hannah put him in a chokehold, the woman said.

When the woman, who weighs 105 pounds, tried to come to her brother's defense, Cates came up behind her, she said.

"He embraced me like he knew me," she said. "I didn't want him touching me."

When she struggled, Cates shoved her toward one of her friends, who was standing nearby. He told them to be quiet or they would be going to jail, the woman said. But she didn't stop saying that he had raped her. When Cates overheard, he threw her to the ground, she said.

According to dispatch records, Cates and Hannah called for backup using the urgent code “officer needs assistance,” which signals all available officers in the area to respond.

At least 10 showed up, according to the records.

The woman said she told one of the backup officers what had happened and asked him to take her to the hospital.

“He cracked up laughing,” she said. “He said, ‘You’re not going to the hospital. You’re going to jail. Quit lying.’ ”

At the police station, she told the booking officer about the rape. He didn’t believe her either, she said.

Cates came into the holding cell while she was waiting to be questioned, she said.

“He said, ‘You better tell them you made it up.’ ... I was looking down. He said look at him in his face. He said if I tell, he and his partners will be coming to see me.”

She told Cates she would recant the accusations, but she did not. Instead, she asked to speak with a supervisor. A sergeant whose name she does not know came to talk with her.

“He said I ain’t gonna get out of jail by lying. I said, ‘I’m not lying. Could you please help me by getting me to a hospital?’ ”

Shortly after that, about 12 hours after the woman first called 911, an internal affairs detective came to talk to her. The detective, Reginald Thompson, called an ambulance, which took her to Aurora Sinai Medical Center for treatment and collection of evidence, she said.

Thompson also interviewed the woman at the hospital and seemed to believe her, she said. Nonetheless, she was taken back to jail, where she was detained two more days. She was not charged with any crime.

Cates’ statements

Flynn’s internal complaint against Cates, obtained by the Journal Sentinel, summarizes numerous statements Cates made to internal affairs investigators.

The day after the incident, Cates told Thompson he did not have sexual contact with the woman after her 911 call. However, he said the two had met about nine months before, when he pulled her over. The two exchanged phone numbers and had consensual sex in his car a couple weeks later, he said.

During a second interview with Thompson the next day, Cates changed his story. This time, he admitted he had oral sex and intercourse with the woman in the wake of the 911 call.

“Officer Cates stated he let his sexual arousal get the best of him,” the report says. “Officer Cates knew that having sex while on duty ‘wouldn’t be OK’ and stated he made a stupid decision.”

Cates also said he made up the story about having sex with the woman nine months earlier.

“Officer Cates did not know why he fabricated the story that he previously had sex with (the woman),” the report says. “Officer Cates cited being nervous, scared, shocked and tired as reasons for being untruthful,” the report says.

Online municipal court records show the woman was ticketed for running a red light and driving with a suspended license in November 2009. She told the Journal Sentinel she recalled being pulled over by Cates around that time. A friend was in the car with her, she said. Cates gave her his telephone number, but she crumpled up the paper and threw it out the window because she thought it was inappropriate for him to be hitting on her, she said. She didn't recognize him when he responded to her July 911 call but later remembered his name, she said.

Because having sex on duty is against department rules, Flynn fired Cates for "idling and loafing" — the same count used to punish officers for sleeping on the job. Each of the two counts of "untruthfulness" also warranted dismissal from the force, according to Flynn's complaint.

Disciplinary record

Cates was hired by the Police Department in 1997. His disciplinary record dates back to 2001 and includes infractions for mistreating a prisoner, lying and failing to carry out the functions of the department in an efficient manner, according to his personnel record. In 2002, he was suspended for two days for "failing to conform to and abide by the criminal laws in effect in the state of Wisconsin," his record says. No further details were available.

He has appealed his firing to the Fire and Police Commission. A hearing on whether he will get his job back has not been scheduled.

Assistant U.S. Attorney Mel Johnson would not discuss the federal investigation of Cates.

Lovern, of the district attorney's office, said local prosecutors were informed of the federal probe a few weeks ago.

"We're certainly willing to assist in any way possible," he said.

Convicting police officers of crimes is "always difficult," Lovern said.

However, officers have been convicted of crimes in recent years, including sexual assault.

In 2007, fired Milwaukee police officer Steven Lelinski was convicted of sexually assaulting women he met on duty and was sentenced to 21 years in prison. For years, the veteran officer acted as a sexual predator in a police uniform, preying on prostitutes, drug addicts and women with warrants he encountered on police calls and assaulting them, knowing their word wouldn't stand up to his, Assistant District Attorney Miriam Falk said at Lelinski's sentencing hearing.

Besides the charged cases of three women, Falk presented allegations against Lelinski from six other women whose cases were too old to prosecute. Several of those were reviewed earlier by the district attorney's office and rejected because prosecutors said the women were not credible enough.

In the wake of the beating of Frank Jude Jr. at a party full of off-duty officers in 2004, three officers were acquitted in state court. Federal authorities then built a separate case, ultimately convicting seven fired officers.

It will likely be months before federal authorities complete their review of the allegations against Cates.

Meanwhile, the woman who says Cates raped her has dropped out of school. She was evicted by her landlord. She is on the verge of losing custody of her brother because of her traumatized state, she said. Six months after the incident with Cates, the woman, who has never been convicted of a crime in Wisconsin, was charged with misdemeanor prostitution and possession of marijuana in connection with a Jan. 5 incident in Fond du Lac County.

She has attempted suicide.

Yet she is holding out hope that Cates will be held accountable for what he did.

“I cry myself to sleep every night,” she said. “I would like to see him get about 500 years in prison.”

John Diedrich of the Journal Sentinel staff contributed to this report.

Feb. 13, 2011

Fired cop no stranger to inquiries Milwaukee police chief says ‘obvious pattern’ of serious allegations was overlooked

By GINA BARTON

A recently fired Milwaukee police officer under federal investigation after a woman said he raped her on duty in July has been accused of breaking the law five times before, according to department records and officials.

Three of the previous allegations involved sexual misconduct — two with female prisoners and one with a 16-year-old girl.

The incidents involving Ladmarald Cates date to 2000, three years after he was hired by the department, according to internal affairs documents and officials.

In one case, Cates was suspended for two days for domestic violence battery. In another, he was suspended for eight days for mistreating a prisoner and failing to obey a supervisor’s orders. In the others, he was not disciplined by the department.

In two of the earlier cases, the Police Department asked the Milwaukee County District Attorney’s Office to consider these criminal charges against Cates: for the domestic violence battery in 2000 and sex with the teenager in 2007. He was not charged in either case.

The district attorney’s office also declined to charge Cates following the July rape complaint. The FBI and U.S. attorney’s office then opened an investigation into the incident, the Journal Sentinel reported last month.

Cates’ record shows how a police officer can rack up serious misconduct allegations for more than a decade before facing significant consequences. His history also shows that prosecutors don’t routinely consider previous complaints against officers — even though that approach led to criminal convictions for sexual assault against former officer Steven Lelinski four years ago.

Milwaukee Police Chief Edward Flynn, who took over in 2008, acknowledged that a computerized early-intervention system designed to identify potentially troubled officers didn’t flag Cates, who was fired in December. But Flynn said procedures instituted under his watch should stop officers like Cates from slipping through the cracks in the future.

“It is clear to me looking at this employee’s record that from a management point of view an obvious pattern was overlooked,” Flynn said. “The department did not see the forest for the trees here.”

Attorney Robin Shellow, who represents the woman who says Cates raped her following a July 911 call, said both police and prosecutors failed her client.

“I am truly saddened that the Police Department and the district attorney’s office in Milwaukee County choose to protect corrupt police officers more than the most vulnerable citizens of Milwaukee,” Shellow said. “These are poor women, women of color, women who may have made mistakes, but truly victims.”

Shellow’s client said Cates raped her and forced her to perform oral sex after he responded to her 911 call about teenagers trying to kick in the door of her north side home.

In an interview with the newspaper, the woman said numerous officers — on the scene and at the police station — accused her of lying when she begged for help and asked them to take her to the hospital. She spent about 12 hours in jail before being interviewed by internal affairs. Only after that was she taken to the hospital for treatment and evidence collection.

Cates first denied any sexual activity between them, but later admitted to internal affairs investigators they had sex, according to records.

Cates, 43, could not be reached. He denied wrongdoing in all the previous instances, according to department documents. His attorney, Jonathan Cermele, did not return telephone calls.

The misconduct allegations span the tenure of three police chiefs: Arthur Jones, Nannette Hegerty and Flynn.

“We’ve been working hard to improve and to address some of the issues for which Officer Cates is an unfortunate poster child,” Flynn said.

Flynn fired Cates in connection with the July 911 call for lying and for idling and loafing, because having sex on duty is against department rules. Cates has appealed his dismissal to the civilian Fire and Police Commission, which has the power to give him his job back. A hearing has not yet been scheduled.

13 reviews back to 1998

An index of the department’s internal investigations of Cates, provided to the Journal Sentinel under the state’s open records law, lists 13 department reviews since 1998.

Six of them — the first of which occurred in 2000 — involved allegations of failure to conform to state statutes, according to the document. The other internal reviews involved alleged violations of department rules.

A request by the newspaper for documents containing detailed accounts of the investigations is pending with the Police Department. Limited information about some of the cases is contained in the index, known as a case file history, and in documents released by the Fire and Police Commission and the district attorney’s office. During an interview with the newspaper, Milwaukee Police Capt. Pat Mitchell of the Professional Performance Division provided clarification about some of the incidents.

Cates was disciplined by the department for breaking the law first in 2000, according to his case file history. He was suspended for two days for domestic violence battery. His girlfriend at the time, also a Milwaukee police officer, said he choked her and shoved her during an argument, according to Fire and Police Commission records.

The department, under Chief Jones, referred the case to the district attorney’s office, which offered Cates a potentially career-saving deal.

If Cates had been convicted criminally, he likely would have been removed from the force, because federal law prohibits people convicted of domestic violence offenses from carrying guns. Instead, he entered a one-year diversion agreement with the district attorney's office, which allowed him to avoid charges by refraining from criminal activity, avoiding violent contact with the victim and undergoing counseling.

The same year, Cates was investigated again for failure to conform to state statute, according to his case file history.

His former girlfriend, named in the battery case, had received a series of hang-up telephone calls and suspected Cates, according to Mitchell. He was neither disciplined nor referred for charges in connection with that allegation.

It is listed as "pending," which means police did not have enough information to prove misconduct or to clear the officer. If witnesses come forward or more evidence is presented, the internal investigation could be reopened.

In 2005, while working as head jailer at the city lockup, Cates was investigated for allegedly breaking the law in connection with an incident involving a female prisoner. The charge, which involved allegations of sexual contact, was ruled "not sustained," Mitchell said.

At the time, Cates was responsible for administration and paperwork. He was not supposed to interact with female prisoners or move them throughout the facility, according to a complaint filed with the Fire and Police Commission by then-Chief Hegerty.

Nonetheless, Cates moved a woman from the female "bullpen" — an area with lots of prisoners in it — to an individual holding cell. While she was there, "Officer Cates was observed having lengthy conversations with her," the complaint says.

While the investigation about his activities with the female prisoner was going on, Cates went against a supervisor's orders and asked another officer about its progress, the complaint says.

Cates was suspended for eight days for mistreating a prisoner and failure to obey a supervisor's orders.

Two years later, in February 2007, Cates was investigated for sexual assault and misconduct in public office. A different woman said she had consensual sex with him in the city jail, according to Mitchell.

Consensual sex on duty is against department rules. But investigators could not prove conclusively misconduct or clear the officer. Again, the case was pending, and Cates was neither disciplined nor referred for charges.

In November 2007, Cates, then 40, was investigated for allegedly having sex with a 16-year-old girl while off duty. The department, under Hegerty, sent the case to the district attorney's office, which again did not prosecute Cates. A form letter sent to the victim's parents, a copy of which was provided to the Journal Sentinel under the open records law, says the case won't be prosecuted, but does not specify why. Cates also was not disciplined by the police department, according to the case file history.

No additional information about the investigations into the three sexual misconduct allegations was included in the records released to the newspaper.

Weighing a charge

In deciding whether to charge someone with a crime, prosecutors must weigh the credibility of the victim, defendant and other witnesses. When considering charging a police officer, the district attorney also has to consider what impact the badge will have on jurors' reactions, according to Chief Deputy District Attorney Kent Lovern.

However, the tendency for jurors to believe police officers more than their victims — especially if those victims have troubling histories or criminal records — can be overcome if prosecutors can show a pattern of wrongdoing by the officer.

That's what happened in the case against fired Milwaukee officer Lelinski. But for nearly a decade, according to prosecutors, Lelinski got away with sexually assaulting prostitutes, drug addicts and women with warrants out for their arrest — women whose reputations would not stand up to his.

At a 2007 trial, Lelinski was convicted of second-degree sexual assault and attempted second-degree sexual assault, both felonies, and fourth-degree sexual assault and lewd and lascivious behavior, both misdemeanors. He was acquitted on two counts of third-degree sexual assault. He is serving a prison term of more than 20 years.

From 1996 to 2005, nine women accused Lelinski of sexual misconduct. He was not charged until 2006, when Assistant District Attorney Miriam Falk decided to take on the case.

Falk charged Lelinski in connection with incidents involving three women, two of which occurred in 2005 and one in 2002. A different prosecutor had declined to charge the 2002 case at the time.

The other six cases were too old to charge by the time Falk charged Lelinski, but a judge allowed her to present information about them during Lelinski's trial because they showed evidence of a pattern. Other prosecutors had been made aware of many of those incidents shortly after they occurred, but did not issue charges because they did not consider the women credible.

In two of those cases, which occurred in the late 1990s, internal affairs investigated, but did not notify the district attorney's office.

As a rule, prosecutors aren't in the business of reviewing internal investigations, Lovern said. Further, under a U.S. Supreme Court decision, if an officer makes a statement as part of an internal investigation, it can't be used in court.

"If something is deemed as an internal matter, it's not something we would be later made aware of in a criminal investigation," he said. "It's something we would not be allowed to consider in evaluating a later criminal charge."

While prosecutors may examine past referrals to learn more about a potential defendant's background, they aren't necessarily looking for trends, Lovern said.

"Every matter we review must rise or fall on its own particular set of circumstances," he said. "We review each one of those independently."

'Pattern is a pattern'

In building a case against Cates, Flynn said the former officer's history added credibility to the accusations that he raped a 19-year-old woman after her July 911 call.

“We recognize individual cases can be difficult to prove, but a pattern is a pattern,” he said. “If there is a pattern even of unsubstantiated allegations, we recognize it requires a closer look.”

In 2007, the department started using a data-based system in an attempt to identify such trends. The early intervention system, which the department had struggled to implement since 1993, tracks squad car accidents, vehicle pursuits, uses of force, internal investigations (including citizen complaints) and sick leave. Three hits on any combination of those in 90 days flags an officer, who is then required to meet with his or her supervisor.

Because the sexual misconduct allegations against Cates didn’t all occur within three months, the system didn’t identify him, Flynn said.

On the flip side, the system wastes a lot of time because the computer mandates meetings for high-performing officers who simply have been unlucky over a 90-day period, Flynn said. For example, some officers have special Taser training and may be repeatedly ordered by supervisors to use them.

“It’s clear to me the system’s performance has come nowhere near close to its promise,” Flynn said.

While the department is working to improve the system, it is not a substitute for good management and communication, he said. To that end, department managers now analyze employee behavior the same way they analyze crime, using data to evaluate officer performance. Weekly, they review indicators such as sick time. Quarterly, they delve into issues such as citizen complaints.

“Organizationally we’re examining this stuff in a big room with all the accountable commanders at the same time,” Flynn said.

Ultimately, it’s the job of federal authorities to serve as watchdogs, making sure local police and prosecutors aren’t letting officers get away with breaking the law, said Laurie Levenson, a professor at Loyola Law School in Los Angeles.

“If you have somebody in a position of authority who may be committing a crime, it’s the feds’ job to investigate,” she said. “They have to objectively evaluate it.”

When FBI agents and the U.S. attorney take on an investigation, they consider a suspect’s entire history, said Leonard Peace, spokesman for the FBI’s Milwaukee office.

“When we do get involved, we will ask for all the information on the individual,” he said.

“Personnel, criminal, administrative records. We want everything.”

John Diedrich of the Journal Sentinel staff contributed to this report

March 27, 2011

3 cops back on job after sex complaints 1 is suspended, 2 are fired but reinstated after women allege misconduct on duty

By GINA BARTON

Three Milwaukee police officers disciplined by the department after women accused them of on-duty sexual misconduct continue to wear the badge, a Journal Sentinel investigation found.

One of the officers, Scott D. Charles, served a 60-day suspension and has since been promoted to sergeant.

The other two, Reginald L. Hampton and Milford Adams, were fired but reinstated after appealing to the civilian Fire and Police Commission, which has the authority to conduct its own disciplinary investigations and to overturn punishments imposed by the chief.

Recently fired officer Ladmarald Cates — accused of raping a woman after he responded to her 911 call in July — hopes to use the same appeals process to get his job back. Like the other three, he is accused of using his police authority to prey on vulnerable women.

The complaints against the other three date from 1990 to 2004. In Adams' case, a woman said he agreed not to arrest her if she performed a sex act. The other two officers were accused of having inappropriate sexual contact with women in their homes. In all three cases, internal affairs investigators concluded the officers deserved discipline.

After appealing his firing to the commission, Hampton, who was not criminally charged, was suspended for 60 days. Adams, who was charged with felony misconduct in public office but acquitted by a jury, was not disciplined by the commission at all.

Their cases show that without a criminal conviction, officers who are the subject of sexual misconduct complaints deemed credible by the department can keep their jobs — even if the police chief wants them fired.

Carmen Pitre, co-executive director of the Sojourner Family Peace Center, said abusive officers are particularly dangerous to victims. Not only that, they cast a shadow of doubt on the good work done by the rest of the force, she said.

“Police officers have a lot of power in their hands and when they abuse that power, we have to take a very firm stand on that not being acceptable,” she said.

Adams and Charles did not return telephone messages. Hampton and Cates did not respond to letters left at their homes. Their attorneys also did not comment on the misconduct allegations.

Michael G. Tobin, who was appointed executive director of the Fire and Police Commission in November 2007, defended the group's work. Its hearings are independent and based on the rule of law, he said.

“Unless you sit through the whole hearing just like a jury would, it’s really hard to second-guess what their final finding is, because so many things can happen in the hearing that are unexpected,” he said. “They’re always trying to do the best thing. There is no ulterior motive involved.”

Once disciplinary proceedings against an officer have been completed, the punishment cannot be changed, Tobin said.

That means Chief Edward Flynn, who took office in 2008, has no choice but to live with the earlier results, Flynn said in a statement.

“The decision was made by higher authority that they are competent to be officers,” Flynn said. “It’s my responsibility to make sure they’re properly supervised and are held accountable.”

The Journal Sentinel has requested, but not yet received from the Police Department, a list of any investigations into the three officers’ conduct that did not result in discipline.

Charge was expected

Charles was hired as a police officer in 1991. Three years later, he was investigated by internal affairs and referred to the district attorney’s office after a woman accused him of sexual assault, according to a summary of the investigation obtained under the state open records law.

The woman told police she had been drinking at a few south side taverns until around 1 a.m. Aug. 3, 1994, according to the summary. Charles, driving a squad car, followed her home, she said. The woman told investigators Charles said he planned to arrest her for drunken driving.

“The officer then told her that he wanted to walk with her into her apartment to make sure she lived there and that everything was all right,” the summary says.

The woman told investigators she was very intoxicated and may have blacked out. She remembers lying on the floor as the officer performed a sex act, the summary says. Afterward, she scrawled the name and badge number from his uniform on the cover of a magazine. The next day, she told her ex-boyfriend what had happened. He told her to put her clothes into a plastic bag to be used as evidence, which she did.

Charles told investigators he went into the woman’s apartment because she told him she had been assaulted by her ex-husband in the past and she wanted him to go inside to be sure she was safe, according to the summary. He said the two sexually touched each other consensually and the woman was not unconscious at any point, the summary says.

The investigator concluded that Charles went into the woman’s apartment “under the guise of ensuring her safety ... and did have an act of sexual contact with her,” according to the summary.

The Journal Sentinel has learned the identity of the woman but could not locate her. The newspaper does not name victims of sexual assault.

An internal affairs report dated March 22, 1995, says: “As of the date of this report a charge of misconduct in public office is pending, but expected to be issued, by the district attorney’s office.”

But it was not.

The summary does not contain an explanation of why Charles was not charged. The district attorney's records of the incident no longer exist because of a county policy that calls for destruction of files in uncharged cases after 10 years, Deputy District Attorney James J. Martin wrote in response to an open records request by the newspaper.

E. Michael McCann, who was district attorney at the time, did not return telephone calls.

Charles was suspended for 60 days for "failing to conform and abide by all the criminal laws of the state of Wisconsin and the ordinances of the City of Milwaukee" and for "idling and loafing while on duty," according to his personnel record. He avoided being fired by receiving satisfactory monthly reports from his supervisor for a year, his personnel record shows.

"Idling and loafing" is the same count used to punish officers for sleeping on the job. It encompasses any on-duty behavior not related to police business.

In 2000, in a different incident, Charles was disciplined for filing a false official report, failing to appear in court and failing to obey an order by a superior officer, according to his personnel record.

He was promoted to sergeant in 2002. He works as a night shift supervisor in District 1.

2 separate accusations

Another officer avoided criminal prosecution and removal from the force after two different women accused him of sexual assault within two years.

Reginald Hampton's first accuser said she met him when he responded to a domestic violence call involving her roommate and uncle, according to a summary of the internal affairs investigation. The two became friends and had consensual sex once, the woman told investigators. The woman said Hampton came to her apartment while he was on duty about seven times over a six-month period.

Around 11 p.m. Jan. 1, 1990, Hampton went to the woman's apartment in his police uniform, she told investigators. She allowed him to handcuff her arms behind her back. She allowed him to caress and kiss her, but told him she did not want to have sex because she was menstruating, according to the summary.

"However, Officer Hampton disregarded her statement," the summary says.

It goes on to say that according to the woman, Hampton placed her in a prone position and lifted her underwear. The remaining details of what occurred were redacted from the records provided to the Journal Sentinel. Afterward, the woman told the officer "he was sick," and she "began to cry hysterically," according to the records. She also went to the hospital.

Hampton told investigators the two had consensual sex previously. On the date in question, Hampton told investigators the woman did not cry "or act distressed in his presence," according to records. He denied assaulting her.

After the newspaper dropped off a letter seeking an interview at the woman's home in January, her mother called a reporter. The woman did not want to talk because she was still traumatized by the incident, her mother said.

Then-Assistant District Attorney John DiMotto did not charge Hampton with a crime because there was no evidence to corroborate the woman's story, the two had a prior sexual relationship and Hampton passed a lie-detector test, according to the internal affairs summary.

Because no charges were issued and because Hampton denied any involvement in a sexual assault, "the scope of the internal investigation was limited to the alleged on-duty act of consensual sexual intercourse," which occurred earlier, and the alleged on-duty visits to the woman's apartment "without a legitimate police purpose," the records say.

But because the woman could not detail the specific dates and times of those visits, and because Hampton told investigators he never went to her apartment while he was working, investigators ruled that complaint unsubstantiated, according to the summary.

Hampton admitted he had consensual sex with the woman earlier but said he was off-duty at the time. Because he was married and there is a state law against adultery, internal investigators concluded he violated a department policy against breaking the law.

The summary does not indicate whether he was referred to the district attorney's office on that charge, which is almost never prosecuted. He was not criminally charged. His personnel record also shows no departmental discipline in connection with the incident.

Less than two years later, internal affairs investigators again referred Hampton to the district attorney's office, this time for possible second-degree sexual assault charges, according to a summary of the investigation. Then-Assistant District Attorney Audrey Renschen did not file charges because the woman wanted Hampton disciplined by the department rather than criminally prosecuted, the summary says.

The Journal Sentinel was unable to determine the woman's identity, which was redacted from the summary.

The woman and Hampton met when she went to the District 7 station to file a complaint against her boyfriend on Oct. 27, 1991, she told investigators. After taking the report, Hampton followed her to her mother's house in his squad car and walked her to the door, the summary says. About an hour later, around 3 a.m., he rang the doorbell.

"He told her he was checking the area and just wanted to make sure she was all right," the summary says.

The woman said Hampton called again the next evening, and again rang the doorbell in the middle of the night. This time, she let him in and he kissed her, the summary says. He returned about four more times that night. He called again the next evening, and then rang the doorbell around 1:30 a.m.

If Hampton had not been a police officer, she never would have let him into the house, she told investigators.

The woman told investigators Hampton performed oral sex on her even though she pushed him away and told him "no." Eventually, she stopped pushing him and "went with the flow," the summary says.

"She stated she felt safe, but didn't want him to do what he did and that she didn't scream when it was going on because she didn't want her family to see what was happening," the summary says.

Shortly after the encounter, the woman moved. She did not tell Hampton her new address, yet about six weeks later, he showed up there, she told investigators. After that, her boyfriend called police and she filed the sexual assault complaint.

Hampton told investigators he never kissed the woman, never had sexual contact with her and never assaulted her, according to the summary. He denied being at her house the day she said the assault occurred. He knocked on the door of her new home by coincidence because he was trying to figure out who had been driving a yellow Cadillac parked in the back, he told investigators.

The woman's boyfriend told police he owned the Cadillac but he always parked in the garage.

“(There is) ample circumstantial evidence which leads one to conclude officer Hampton was untruthful in several of his responses during this investigation,” the summary says. “This untruthfulness clearly destroys officer Hampton's credibility, consequently, there is no reason to believe his denial of the allegations made by (the woman).”

The investigator concluded that Hampton had nonconsensual sexual contact with the woman, visited her home for no apparent police purpose, and failed to maintain adequate documentation in his memo books, according to the summary. Then-Chief Philip Arreola fired Hampton.

The punishment was overturned by the Fire and Police Commission, which instead imposed a 60-day suspension, according to Hampton's personnel record.

Hampton has been disciplined once since he was reinstated in June 1993. In 2005, he received an official reprimand for using department stationery for personal correspondence.

He works the day shift in court administration, according to his personnel record.

All discipline rescinded

The commission also overturned the firing of another police officer, Milford Adams, who was accused of allowing a woman to trade a sex act for her freedom. After a jury found Adams not guilty at a criminal trial, the commission rescinded all internal discipline against him, leaving him with a clean employment record.

The criminal case against Adams began with an anonymous call to internal affairs around 5 a.m. July 23, 2004, according to an internal complaint issued by then-Chief Nannette Hegerty. The caller, who was never identified, said a police officer and a woman were engaged in sexual activity in an unmarked squad car, according to a summary of the internal investigation. The caller also provided the license plate number. The plates came back to Adams' car. Records showed Adams had run a check on a woman around the same time, learning there was a warrant out for her arrest on a probation violation. She also had a history of drug and prostitution arrests.

The woman told authorities Adams stopped her while she was walking near a convenience store at S. 11th St. and W. Greenfield Ave. He searched her by untucking her shirt and telling her to bend over, according to a criminal complaint. He found a crack pipe hidden in the back of her underwear.

When the woman tried to talk her way out of being arrested, Adams reclined the car seat and told her, “You know what to do,” according a transcript of her testimony in the criminal case.

“He's an officer with a gun,” she testified. “I assumed it was safer for me to do what he wanted me to do than not. I could tell this wasn't exactly a cut and dry arrest.”

After she touched him sexually, he let her go, she said.

“He let me out the door and he drove off,” she testified. “I went inside the Open Pantry, and I cried and hyperventilated, and tried to drink a soda and got my wits about me and waited about a half an hour and then I left.”

During an interview with internal investigators, Adams denied having sexual contact with the woman, the summary says.

“He released her on the condition that she give him information on drug houses in the future,” the summary says. “He later threw the crack pipe in the Dumpster at District 2.”

Internal investigators deemed the woman credible, and the district attorney’s office agreed. Prosecutors initially charged Adams in March 2005 with encouraging a violation of probation, a misdemeanor. Milwaukee County Circuit Judge Kevin Martens granted a defense motion to dismiss the charge because simply failing to arrest someone wanted on a probation violation does not constitute encouraging the violation, court records show.

Authorities worked to build a better case, and in January 2007 prosecutors issued a second criminal complaint regarding the same incident. This time, they charged Adams with felony misconduct in public office and three misdemeanors: disorderly conduct, lewd and lascivious behavior, and encouraging a probation violation, according to court records. Prosecutors dismissed the charge of lewd and lascivious behavior prior to trial. Milwaukee County Circuit Judge William Brash granted a defense motion to dismiss the charge of encouraging a probation violation.

A jury acquitted Adams on the other two charges in January 2008.

Kent Lovern, chief deputy district attorney, did not respond to questions about the case.

Both Adams and the woman testified before the Fire and Police Commission seven months later, according to commission documents. The hearing focused on whether Adams violated the department rule against violating state law and whether he mistreated the woman.

“Given (the woman’s) extensive criminal history and her record of inconsistent and less than credible testimony in this and other forums, we find her uncorroborated testimony to be insufficient to serve as a basis for a finding of fact that rule violations were committed,” the commission’s decision says.

The commission also found that whether to arrest the woman was within Adams’ discretion, and not doing so was not a violation of department rules.

The woman is identified in court records, but the Journal Sentinel was unable to locate her.

Adams works the night shift in District 1, according to his personnel record.

‘Just cause’ for firing?

Most union workers, including Milwaukee police officers, can be fired or otherwise disciplined only for “just cause,” according to Paul Secunda, an associate professor at the Marquette University Law School who specializes in labor law.

Breaking the law may or may not qualify, depending on the circumstances. The infractions that most often qualify for discipline or dismissal under the “good cause” standard include chronic lateness, absenteeism and insubordination, Secunda said.

On the other hand, nonunion workers, who make up the majority of the private sector, are employed at will, which means they can be fired for a good reason, a bad reason or no reason at all, Secunda said.

For Milwaukee police officers, it is up to the Fire and Police Commission to determine whether the “just cause” standard has been met. Commissioners conduct their own investigation, but they also may consider what happened in the internal affairs investigation, said Tobin, the executive director.

Because Adams was found not guilty in criminal court, it would have been difficult for the commission to conclude he broke the law, Tobin said.

Perhaps discipline would have been upheld if Hegerty, who was chief at the time, had chosen to punish Adams for some other rule violation, Tobin said.




















That’s the route Milwaukee Police Chief Edward Flynn took with Cates, whose appeal hearing is pending.

Although federal authorities are investigating Cates for potential crimes, Flynn fired him for lying and for idling and loafing, not for breaking the law. This means the commission could uphold the punishment even if Cates is not criminally charged, or if he is charged and acquitted.

Police and firefighter disciplinary appeals

The Milwaukee Fire and Police Commission hears disciplinary appeals of Milwaukee police officers and firefighters. Here is a breakdown of its 121 cases over the past five years.

Five-year breakdown of disciplinary appeals

2010	Upheld	3		
	Withdrawn	9		
	Reduced	0		
	Employee resigned, retired or took duty disability before the appeals process ended	1		
	TOTAL	13		
2009	Upheld*	5		<i>*In one case, the commission increased the officer's punishment from a 30-day to a 60-day suspension and demotion from sergeant to police officer.</i>
	Withdrawn	6		
	Reduced**	4		<i>**In one case, the commission originally upheld the officer's punishment, but its decision was overturned in Circuit Court.</i>
	Resigned, retired or duty disability	0		
	TOTAL	15		
2008	Upheld	6		
	Withdrawn	4		
	Reduced	18		
	Resigned, retired or duty disability	7		
	TOTAL	35		
2007	Upheld	10		
	Withdrawn	10		
	Reduced	10		
	Resigned, retired or duty disability	4	 <i>One employee had two disciplinary cases pending</i>	
	TOTAL	34		
2006	Upheld	7		
	Withdrawn	4		
	Reduced	5		
	Resigned, retired or duty disability	7		
	Discipline rescinded by police chief	1		
TOTAL	24			

March 27, 2011

Powerful commission can restore officers' jobs Panel is more powerful than groups in most cities

By GINA BARTON

The future of fired Milwaukee Police Officer Ladmarald Cates is in the hands of the civilian Fire and Police Commission, which has the power to give him his job back.

Cates was fired in December after a woman accused him of raping her in the wake of a 911 call. He has appealed his dismissal, and a hearing before the commission is pending. Federal authorities opened an investigation after the Milwaukee County district attorney's office declined to file criminal charges.

Put in place 125 years ago to keep politics out of policing, the commission has the authority to do its own investigations and to overturn punishments imposed by the chief. It has significantly more power than many similar groups throughout the country, which can only advise their chiefs, according to Executive Director Michael G. Tobin.

In deciding whether Cates' firing was justified, the commission is allowed to consider his past record with the department, including complaints dismissed by internal affairs, Tobin said.

Cates has been investigated by internal affairs for possible crimes five times before, according to department records. The five are among 13 department reviews of Cates since 1998.

He was disciplined by the department in connection with seven of those incidents. Twice, the discipline was reduced through arbitration.

Disciplinary appeal hearings before the commission are similar to trials, although the rules of evidence are more lenient, Tobin said. There also is a lower standard of proof.

In a criminal court, jurors must be convinced of guilt "beyond a reasonable doubt." Before the commission, the standard is "preponderance of the evidence," which translates to "more likely than not," Tobin said.

Even so, the commission has reduced some three dozen disciplinary actions against police officers and firefighters after 68 hearings in the past five years. In one of those, the commission originally upheld the discipline, but its decision was overturned by the Circuit Court.

Commissioners, appointed by the mayor and approved by the Common Council, take the role of jurors. There are six commissioners, plus one vacancy. Based on their availability, panels of three are chosen to hear each disciplinary appeal.

Three officers now serving on the force — Scott D. Charles, Reginald L. Hampton and Milford Adams — were disciplined by the department after women accused them of on-duty sexual misconduct. Charles was suspended for 60 days and did not appeal. The other two were fired but reinstated after commission hearings.

None of the members serving today was on the commission in 1993, when Hampton's firing was overturned. Two different women had accused Hampton of sexual assault, one in 1990 and one in 1991.

Two of the current commissioners served on the panel that reinstated Adams in 2008, after he was acquitted by a jury in a criminal case. Like the criminal jury, the commission panel questioned the credibility of the woman who accused Adams of sexual misconduct.

"What I've seen is they really try to take each case individually regardless of what the discipline has been, and they do a really good job of making an independent finding," Tobin said of the commissioners. "We have a board right now that has demonstrated a lot of common sense and really brings the viewpoint of their part of the community."

Attorney Jonathan Safran, who has represented numerous victims of police brutality, said the commission's process for dealing with disciplinary appeals remains flawed despite the changes.

"It's still a very cumbersome process," he said. "I am one who continues to believe there needs to be a totally independent agency with no political ties at all to hear these appeals."

Changes at commission

In addition to getting a new slate of commissioners in recent years, the commission underwent a major reorganization in 2008, Tobin said. Two independent investigators now handle citizen complaints to the commission. In the past, the commission simply referred such complaints to the Police Department. People who are uncomfortable filing a complaint at a police station or at City Hall now can do so at social service agencies.

The commission also has hired a research analyst who studies trends within the department, including misconduct complaints, use of force and vehicle pursuits. Some of those reports have resulted in improved training for officers, Tobin said.

Also in 2008, the commission eliminated a backlog of some 30 disciplinary appeals for police and firefighters, Tobin said. Commissioners convened a total of 35 hearings that year, reducing 18 of the punishments.

Police officers no longer have incentive to delay their hearings, since the state Legislature has ended the practice of paying fired Milwaukee officers while appeals are pending.

The changes at the commission have led to fewer complaints to his office about problem police officers, said Ald. Bob Donovan, chairman of the Common Council's Public Safety Committee.

"Evidently something that they're doing over there is working or helping in terms of complaints about police behavior," he said.

What panel weighs

Under state law, the Fire and Police Commission must consider these seven questions when determining whether an officer was appropriately disciplined:

1. Could the officer have been reasonably expected to know the consequences of the conduct?
2. Was the rule the officer is accused of violating reasonable?

3. Did internal affairs conduct a thorough investigation before imposing the discipline?
4. Was the internal affairs investigation fair and objective?
5. Was there enough evidence gathered during the internal affairs investigation to support the charge?
6. In handing down the discipline, did the chief apply the rule fairly and without discrimination?
7. Does the severity of the punishment reflect the seriousness of the violation?

Source: Michael G. Tobin, executive director, Fire and Police Commission

Who is on the civilian commission

The civilian members of the Fire and Police Commission are:

- **Richard C. Cox**, commission chair, executive director of Neighborhood House, a social service agency that assists urban families; worked for the Milwaukee County sheriff's office for 17 years in numerous positions, ranging from deputy to administrator of detention services. Also spent nine years as superintendent at the House of Correction.
- **Kathryn Hein**, assistant director of the Les Aspin Center for Government at Marquette University
- **Carolina Maria Stark**, administrative law judge for the state Department of Workforce Development
- **Paoi X. Lor**, program coordinator and consultant for Hmong ABC Radio in Milwaukee
- **Sarah Morgan**, assistant professor of nursing at the University of Wisconsin-Milwaukee
- **Michael M. O'Hear**, a professor and associate dean for research at Marquette's law school

All of these commissioners were appointed after discipline was finalized against Scott D. Charles and Reginald L. Hampton. Hein and Stark were members of the panel that overturned the firing of Milford Adams in August 2008. The others were not.

Source: City of Milwaukee website, Fire and Police Commission records

Sept. 21, 2011

Fired Milwaukee police officer charged in rape case He's accused of sexually assaulting woman after she called 911

By GINA BARTON and JOHN DIEDRICH

A fired Milwaukee police officer was charged Tuesday with raping a woman after he responded to her 911 call in July.

Ladmarald Cates faces a maximum possible penalty of life in prison if convicted of the two federal felonies, which include violating the woman's civil rights while acting under the color of law and using a firearm in the commission of an act of violence, the indictment says.

The first count includes enhancers for causing bodily injury and aggravated sexual abuse, according to Assistant U.S. Attorney Mel Johnson, who is handling the case.

Attorney Robin Shellow, who represents the victim, called Johnson "my hero."

"With a kind and gentle hand he has made my client's cry in the dark the beam of justice in the future," she said. "On behalf of my client, I want to thank the U.S. attorney's office and those who worked with them for treating her with respect and dignity."

Cates' attorney, Bridget Boyle, said she has been aware for some time that federal prosecutors were considering an indictment. Cates plans to fight the charges, she said.

"Mr. Cates has every intention to proceed to a jury trial to have them decide whether he violated the law," she said.

Shellow's client said Cates raped her and forced her to perform oral sex after he responded to her 911 call about teenagers trying to kick in the door of her north side home.

In an earlier interview with the Journal Sentinel, the woman said numerous officers — on the scene and at the police station — accused her of lying when she begged for help and asked them to take her to the hospital. She spent about 12 hours in jail before being interviewed by internal affairs, the newspaper reported in January. Only after that was she taken to the hospital for treatment and evidence collection.

Cates first denied any sexual activity between them but later admitted to internal affairs investigators they had sex, according to records.

Police Chief Edward Flynn ultimately fired Cates for lying and for "idling and loafing" because having sex on duty is against department rules.

The Journal Sentinel does not name victims of sexual assault.

DA declined to prosecute

The U.S. attorney's office and FBI began investigating Cates after the Milwaukee County district attorney's office declined to charge him.

In a letter to Flynn, Assistant District Attorney Aaron E. Hall said he believed the woman's account but didn't think he would be able to prove a sexual assault case in court.

"While I did find the victim's version of events credible, I did not believe that her testimony would be strong enough to successfully prosecute Officer Cates," Hall wrote in October.

The district attorney's office also considered, but ultimately rejected, a state charge of misconduct in public office, Chief Deputy District Attorney Kent Lovern said at the time.

On Tuesday, Lovern said his office has prosecuted numerous police officers for various offenses, including Steven Lelinski, a former officer now in prison for on-duty sexual assaults.

"There are cases that could be subject to state jurisdiction that are more appropriate for prosecution by federal authorities," Lovern said. "This (the Cates case) is a case where we were unable to bring state charges, but the U.S. attorney was able to bring federal charges. That is the way the system is supposed to work."

Federal investigators believe the woman's allegations are both true and provable, Johnson said Tuesday.

"It seemed to us from the very beginning to be credible and serious enough to be worth investigating," he said. "We got to the point, after further investigation, where we felt we could prove it beyond a reasonable doubt."

Cates, 43, was fired in December. No other officers were disciplined in connection with the incident.

In February, a Journal Sentinel investigation revealed Cates had been accused of breaking the law five times before. Three of the previous allegations involved sexual misconduct — two with female prisoners and one with a 16-year-old girl. The incidents date to 2000, three years after he was hired by the department.

Internal investigators referred Cates to the district attorney's office for possible charges in two cases. The district attorney's office did not prosecute Cates on allegations of having sex with the 16-year-old. In the second case, a domestic violence battery in which his then-girlfriend said Cates shoved and choked her, prosecutors offered a diversion agreement.

A conviction on a domestic violence charge would have prevented Cates from carrying a gun under federal law and resulted in his removal from the force. The one-year diversion agreement allowed Cates to avoid charges by refraining from criminal activity, avoiding violent contact with the victim and undergoing counseling.

Flynn, who took over as chief in 2008, acknowledged in February that a computerized early-intervention system designed to identify potentially troubled officers didn't flag Cates.

"It is clear to me looking at this employee's record that from a management point of view an obvious pattern was overlooked," Flynn said at the time. "The department did not see the forest for the trees here."

Department managers now analyze employee behavior the same way they analyze crime, using data to evaluate officer performance. Weekly, they review indicators such as sick time. Quarterly, they delve into issues such as citizen complaints, Flynn said in February.

Shellow said both the Police Department and the district attorney's office should be "ashamed and embarrassed" for failing to protect the public from Cates.

"Each of those agencies knew the officer had committed acts of sexual misconduct with women and did nothing," she said. "Had they done something, my client would not have been raped."

It's a conflict of interest for the Milwaukee Police Department to investigate its own members, Shellow said.

In an email Tuesday, department spokeswoman Anne E. Schwartz said: "The first time then-Officer Cates came before Chief Flynn for a fireable offense, he was fired."

Cates, who is not in custody, is expected to make his first court appearance Sept. 30, Johnson said.

Jesse Garza of the Journal Sentinel staff contributed to this report.