

Final Report of Ad Hoc Committee on Extremism after meeting with SCSO
For Discussion and Approval June 5, 2023

Background

The Community Advisory Council established the ad hoc committee on extremism in 2021 to look at whether the Sonoma County Sheriff's Office (SCSO) had adequate policies and procedures to prevent extremists from joining its force and ferreting out extremism within its existing personnel.

At CAC's May 1, 2023 meeting, the ad hoc committee delivered a report and recommended policy changes. The CAC asked the committee to review the policy with SCSO prior to the CAC voting on whether to approve the policy recommendations. The committee members and IOLERO Executive Director met with Sheriff Engram and Asst. Sheriff Naugle on May 19, 2023. The Sheriff also provided the ad hoc committee with a written response to our report and recommendation that is attached as Exhibit B to this report.¹

The CAC's concern arose from the national conversation about the infiltration into law enforcement agencies nationwide by right wing extremists that began with the release of a 2006 assessment by FBI Counterterrorism Division² and continues to this day.³ Today, it is well-

¹ The ad hoc committee thanks Sheriff Engram for his willingness to meet with us and, more importantly, to consider and respond to our report and recommendation. We look forward to continued collaboration with SCSO.

² White Supremacist Infiltration of Law Enforcement, FBI Counterterrorism Division, October 17, 2006, available at: <https://www.iustsecurity.org/wp-content/uploads/2021/06/Jan-6-Clearinghouse-FBI-Intelligence-Assessment-White-Supremacist-Infiltration-of-Law-Enforcement-Oct-17-2006-UNREDACTED.pdf>; see also, Counterterrorism Policy Directive and Policy Guide, FBI Counterterrorism Division, published April 1, 2015, reviewed April 1, 2018.

³ See, e.g., Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement, Brennan Center for Justice, August 27, 2020, available at: <https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law>; Let's Not Forget the FBI Found Law Enforcement Has a White Supremacist Problem, Esquire, September 30, 2020, available at: <https://www.esquire.com/news-politics/politics/a34224305/fbi-report-white-supremacists-infiltrate-law-enforcement/>; White supremacists 'seek affiliation' with law enforcement to further their goals, internal FBI report warns, ABC News, March 8, 2021, available at: <https://abcnews.go.com/US/white-supremacists-seek-affiliation-law-enforcement-goals-internal/story?id=76309051>;

recognized that right-wing extremist groups actively recruit members of law enforcement and the military to their ranks.⁴

We are aware that all too often adherents of white supremacy and racism are found within police departments and their numbers often go undiscovered. “While it is widely acknowledged that racist officers subsist within police departments around the country, federal, state, and local governments are doing far too little to proactively identify them, report their behavior to prosecutors who might unwittingly rely on their testimony in criminal cases, or protect the diverse communities they are sworn to serve.”⁵ Even if only a few members of a law enforcement agency engage in extremist conduct, the impact on the culture, reputation, and public trust of the agency may be severe.⁶

Our concern is shared with other Sonoma County community members. In March 2021, the Sonoma County Commission on Human Rights (SCCHR) sent an email to law enforcement personnel throughout the County, including to then-Sheriff Mark Essick, asking the agencies to undertake routine investigations to ensure that their personnel do not harbor extremist affiliations.

For this reason, the Commission recently passed unanimously a resolution calling upon the leaders of all local law enforcement agencies to investigate its employees for any evidence of such extremist affiliations. We again call on you to initiate such action immediately. Such investigations are not complicated, requiring only basic investigative techniques. These include regular audits of texts between employees, searches of employee social media postings, the cataloging of employee tattoos, and a requirement that employees declare in writing whether they have any membership or affiliation with any such extremist or hate groups.⁷

⁴See, e.g., White Supremacist Infiltration of Law Enforcement, FBI Counterterrorism Division, October 17, 2006, *supra* at fn. 2; see also <https://www.pbs.org/newshour/politics/elected-officials-police-officers-and-members-of-military-on-oath-keepers-membership-list-report-says>

⁵ Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement, Brennan Center for Justice, August 27, 2020, available at: <https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law>

⁶ *Id.* “The continued presence of even a small number of far-right militants, white supremacists, and other overt racists in law enforcement has an outsized impact on public safety and on public trust in the criminal justice system and cannot be ignored.”

⁷ Text of email sent from Sonoma County Human Rights Commission on March 3, 2021, available in agenda packet at: <https://sonomacounty.ca.gov/commission-on-human-rights-meeting-may-25-2021>

The private political action organization, Committee for Law Enforcement Accountability Now (CLEAN), followed with a letter sent by email in June 2021 to all Sonoma County law enforcement heads, County Supervisors and City Council members, the County Administrator and Counsel, and City Mayors, Managers, and Attorneys, also asking that such investigations take place.⁸

IOLERO's 2020-2021 annual report, issued November 25, 2021, discusses a specific, reported incident of a deputy using social media to post "racist, anti-Semitic and extreme" remarks.⁹ SCSO received three complaints about two different listings. IOLERO found SCSO's response to these complaints inadequate. Although SCSO "determined that the deputy violated policy for posting content that had 'strong racial undertones,' SCSO concluded that the deputy "may not have intended it as racist content."¹⁰

IOLERO "did not find the deputy's explanations for his/her posting to be credible, concluded that the deputy was dishonest during his/her interview with the SCSO," and urged the SCSO to take further steps.¹¹ The SCSO has not apparently taken additional steps since the IOLERO audit was completed and the annual report published.¹²

In 2022, the ad hoc committee reviewed SCSO's existing policies and reviewed with the lieutenant then liaising with the CAC, Brandon Cutting, about how the policies are implemented. Specifically, we looked at Policy 320, Standards of Conduct (Rules and

⁸ Copy of letter sent to Sheriff Mark Essick attached to this report as Exhibit C. The identical letter was sent to the others identified in the body of the report.

⁹ IOLERO Annual Report 2020-2021 at 23 (Sustained Complaint No. 3).

¹⁰ *Id.*

¹¹ *Id.*

¹² Since this incident, the Ninth Circuit issued its opinion in *Hernandez v. City of Phoenix*, 43 F. 4th 966 (9th Cir. 2022), which addresses a law enforcement officer's use of social media to "denigrate[] Muslims and Islam." The Ninth Circuit found that the posts addressed "matters of social or political concern," thus requiring the law enforcement agency to show adequate justification for punishing the officer's otherwise protected speech. Sheriff Ingram (presumably on the advice of county counsel) noted that the posting at issue in the audited incident occurred in the context of the Black Lives Matter protests, thus placing the posting in the context of a "matter of public concern."

Regulations) and Policy 1000.7, Employment Standards.¹³ In our view, the policies as written, can prevent extremists from joining its force and ferreting out extremism within its existing personnel. We agree, however, that SCSO should, as recommended in IOLERO's audit, adopt a policy specifically disavowing white supremacy and extremism and prohibiting speech and association that promotes racist or extreme ideology.^{14 15}

Our larger concern is that, once an individual is hired by SCSO, SCSO currently takes no affirmative steps to ensure that its personnel continue to follow the standards set out in Policy 1000.7 and 320. Although the SCCHR and CLEAN recommended several investigative steps which would constitute a robust effort to ferret out extremism, the ad hoc committee initially proposed that SCSO take two steps. First, we recommended that SCSO require each employee to sign an attestation annually affirming that they have and are abiding by the existing standards addressing extremism, white supremacy, and bias.¹⁶ The proposed attestation, drafted directly from the SCSO policies, is attached to this report as Exhibit A. Second, we recommended that SCSO require each employee to open their electronic communications¹⁷ to a random SCSO audit to be conducted at least biannually.¹⁸

¹³ We also reviewed Policy 319 regarding investigations of hate crimes although it is not used for internal investigations into allegations of hate-related crimes or misconduct.

¹⁴ See, e.g., Oakland City Council Resolution No. 88167, establishing a zero tolerance policy for "racist practices, actions, and behaviors" and "association and/or affiliation with white supremacist groups, organizations, or cells" within the Oakland Police Dept. and other city agencies.

¹⁵ In the Sheriff's response to our draft report, he noted, "White supremacy, extremism and discrimination have no place at the Sheriff's office. The Sheriff's Office has several policies in place aimed to stop and prevent extremism within the Sheriff's Office personnel, and I am always open to consider additional ways to strengthen these policies"

¹⁶ Lt. Andy Cash, the recent liaison to the CAC, did not find the use of an attestation by any neighboring law enforcement agency but that should not deter the SCSO from adopting such a procedure. Oakland P.D. includes an admonishment to job applicants that, "racist practices, behaviors, or actions, or that show affiliations with white supremacist or other extremist organizations" are grounds for immediate disqualification.

¹⁷ "Electronic communications" should be interpreted broadly and should include, but not be limited to, texting via any app including encrypted texts; email via any app including encrypted messages; posts on any social media app; and other forms of digital communications not specifically listed.

¹⁸ We also intended to add a recommendation that SCSO undertake regular "open source intelligence" searches (i.e., searches of publicly available material that can be found on, *inter alia*, on-line publications, blogs, discussion

Attestation recommendation

The Ad Hoc Committee continues to recommend that employees be required to annually attest to their adherence to the specific policies listed in Exhibit A. Three obvious benefits accrue from the annual use of the attestation: (1) it underscores the SCSO's commitment to maintaining a bias-free, hate-free, workforce; (2) it keeps these particular standards front and center in the minds of the employees who must sign the attestation annually; and (3) it gives SCSO another tool in its belt for discipline if an employee is found to have lied on the attestation. A fourth benefit, less important but nonetheless compelling, is the ease with which this recommendation can be adopted.

The Sheriff has agreed to require employees to "attest to their adherence of Policy 320, Standards of Conduct (Rules and Regulations) and Policy 1000.7 on an annual basis.¹⁹ We continue to recommend that he adopt the draft attestation attached as Exhibit A to this report to underscore the Sheriff's view that "white supremacy, extremism and discrimination have no place at the Sheriff's Office." (Exhibit B.) Policy 320 and Policy 1000.7 address many standards of conduct beyond those addressed in Exhibit A and a general attestation to the entirety of the two policies would dilute what could otherwise be a strong and clear statement against extremism, white supremacy, and discrimination.

Monitoring recommendation

We have decided to withdraw our recommendation that employees' electronic communications be monitored on a random basis but at least biannually. We are cognizant of the numerous scandals involving law enforcement officers' use of personal electronic devices that have been uncovered during unrelated investigations, the most recent of which is in the Antioch Police Department. If we believed a monitoring program would be efficacious, we would continue with our recommendation but, for the reasons cited below, we have decided it would not be.

groups, videos, and other websites) on its employees but that recommendation was not sent to SCSO and, in light of our further research, we decided not to propose such searches.

¹⁹ See final paragraph of Exhibit B.

First, California Labor Code section 980 prohibits employers from requiring employees to give access to their social media except under very limited circumstances. Second, case law does not provide clear guidance to government employers about the circumstances and extent to which private texts and emails can be searched without voluntary consent. Third, and perhaps most important on a practical level, we have concluded that these types of audits do not produce the very laudable result of ferreting out white supremacy and extremism.

We met with a San Francisco Department of Police Accountability auditor about San Francisco's experience with auditing electronic communications by San Francisco police. That office has just issued a report of interim findings of their audit of electronic communications monitoring.²⁰

Monitoring electronic communications is an automated process in which suspect words are searched for and flagged when found. The San Francisco auditors found that the monitoring program of department-issued cell phones and emails produced false positives 99.7% of the time. Although some reduction of the false positives is possible, it would require familiarity with current terminology of extremist groups, updating the word lists at least quarterly to reflect the current terminology, and manual review of the positive hits to determine whether the words used actually reflect the views the monitoring seeks to ferret out. Each of these steps is quite labor intensive.

Secondly, keeping track of the devices and email lists that should be monitored can be a difficult process. The Sheriff issues cell phones to only some of its employees. Others use personal phones for both personal and business use. Should employees want to keep devices from being monitored, they can easily use more than one phone or email address. Moreover, patrol deputies use other means of communicating during working hours such as radios and computer-aided dispatch (CAD). To be thorough, the Sheriff's Department would have to monitor all devices. Ensuring that all relevant devices are registered is a labor-intensive task, even when a department is only monitoring its own issued devices and email addresses.

²⁰ <https://sf.gov/sites/default/files/2023-03/FINAL%20-%20Interim%20Deliverable%20-%20SFPD%20Electronic%20Monitoring.pdf>

Thirdly, although monitoring of electronic devices has been recommended by the United States Department of Justice (and others) for many years, we have not found evidence that such monitoring has resulted in ferreting out the kinds of attitudes and behaviors we hope to reach.²¹

Thus, we have concluded that a monitoring program is not an efficacious means to achieve our ends.

Conclusion

We urge the Community Advisory Council to approve our recommendation that the SCSO require every employee to sign annually the attestation attached as Exhibit A.

²¹ The Brennan Center for Justice did not include monitoring of electronic communications in its recommendations for local law enforcement agencies in its report, "Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement" (German, Michael, Aug 27, 2020), available at: <https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law>

EXHIBIT A

DRAFT ATTESTATION FOR SONOMA COUNTY SHERIFF EMPLOYEES (to be administered annually on (1) beginning of calendar year, (2) beginning of fiscal year, or (3) on anniversary of date of hire)

I, (employee name), do solemnly swear (or affirm) that in the past year I:

- (a) Have continued to meet the standard for duty that requires me to be free from any bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation which might adversely affect the exercise of police powers;²²
- (b) Have not joined or been a member of any extremist group;²³
- (c) Have not, unless required by law or policy, discriminated against, oppressed, or provided favoritism to any person because of actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, economic status, cultural group, veteran status, marital status, or any other classification or status protected by law;²⁴
- (d) Have not intentionally denied or impeded another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing the conduct is unlawful;²⁵
- (e) Have not associated with or joined a criminal gang, organized crime, and/or criminal syndicate, knowing or with reason to have known, the criminal nature of the organization;²⁶
- (f) Have not, on a personal basis, associated with any person who demonstrated recurring involvement in serious violations of state or federal laws, knowing or with reason to have known of such criminal activities, except as specifically directed and authorized by the SCSO.²⁷

I (employee name) do further solemnly swear (affirm) that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

²² SCSO Standards of Conduct (Rules & Regulations) §1000.7.1(g)

²³ SCSO Standards of Conduct (Rules & Regulations) §1000.7(h)

²⁴ SCSO Standards of Conduct (Rules & Regulations) §320.5.3

²⁵ SCSO Standards of Conduct (Rules & Regulations) §320.5.3

²⁶ SCSO Standards of Conduct (Rules & Regulations) §320.5.4

²⁷ SCSO Standards of Conduct (Rules & Regulations) §320.5.4



SONOMA COUNTY SHERIFF'S OFFICE

EDDIE ENGRAM
Sheriff-Coroner

JAMES NAUGLE
Assistant Sheriff
Law Enforcement Division

MICHAEL MERCHEN
Assistant Sheriff
Detention Division

HEIDI KEITH
Chief of Financial and
Administrative Services

May 19, 2023

RE: CAC Ad Hoc Committee on Extremism Recommendation Response

I, along with our County Counsel have reviewed the CAC ad hoc report on extremism and its recommendations, including that the Sheriff's Office

- adopt a policy disavowing white supremacy and extremism, and prohibiting speech and association that promotes racist or extreme ideology,
- require its employees to sign an attestation affirming that they have and are abiding by the existing standards addressing extremism, white supremacy, and
- require every employee to open their social media to an SCSO audit biannually.
- subject every employee to regular cataloging of their tattoos.

White supremacy, extremism and discrimination have no place at the Sheriff's Office. The Sheriff's Office has several policies in place aimed to stop and prevent extremism within the Sheriff's Office personnel, and I am always open to consider additional ways to strengthen these policies, including a commitment by Sheriff's Office personnel to follow these policies while serving and representing our diverse communities.

These policies and measures must be evaluated within legally permissible limits to ensure that they consider not only public safety, but also operational needs, employees' duties and obligations, as well as employees' private off-duty speech and association rights, privacy rights and labor laws. When an employee engages in improper speech or association while acting in an official capacity that potentially violates Sheriff's Office policy, the employee may be subject to a professional standards investigation under the Sheriff Office's existing policies.

However, when an employee speaks as a private citizen addressing a matter of public concern off-duty, the employee's private rights to free speech and association may also be implicated. To restrict those rights, an agency would have to show that the speech has an actual and disruptive impact on the agency's operations, which can vary depending on the circumstances and may be difficult to enforce through broad policy prohibitions effectively and legally.

In addition, requiring employees to open their private social media accounts for routine audits outside an investigation of alleged misconduct, may also impermissibly impact constitutional privacy rights, as well as labor, medical and other privacy laws that prohibit an agency from accessing employees' personal social media accounts outside of alleged misconduct investigations.

As it pertains to the cataloging of tattoos. At the preemployment stage, the Sheriffs Office has broad authority in respect to acceptable tattoos that align with our philosophy of an inclusive, discrimination free workplace. However, the regular cataloging of tattoos presents similar free speech and unreasonable search issues.

In the case of regular text searches, most Sheriffs Office employees are not issued cell phones. There is no legally permissible way to regularly audit employee's personal cellphones. Subjecting the few employees who are issued cellphones to regular audit places an unfair level of scrutiny on those few who are and would certainly be subject to Meet and Confer with the bargaining units representing the employees. Additionally, the unintended consequences of such a policy may dissuade qualified and diverse candidates for these positions from applying to maintain their privacy.

For these reasons, the Sheriffs Office will not be issuing a policy subjecting employee to routine searches of their personal social media accounts, Sheriffs Office owned phones, cataloging of their tattoos, or broad policy prohibitions that may not be effective, enforceable, or constitutionally valid. I will however continue to explore other ways to strengthen the Sheriffs Office commitment to stop and prevent extremism and discrimination, and to build upon and improve ways to provide public safety services in the communities we serve and live in.

According to your recommendations, you believe Policy 320, Standards of Conduct (Rules and Regulations) and Policy 1000.7, 'can prevent extremists from joining its force and ferreting out extremism within its existing personnel' and believe the Sheriffs Office should "require each employee to sign an attestation annually affirming that they have and are abiding by the existing standards addressing extremism, white supremacy, and bias." Accordingly, we will require employees to attest to their adherence to Policy 320, Standards of Conduct (Rules and Regulations) and Policy 1000.7 on an annual basis.

Sincerely,

EDDIE ENGRAM
Sheriff-Coroner



Exhibit C

COMMITTEE FOR LAW ENFORCEMENT ACCOUNTABILITY NOW

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JIM DUFFY KIRSTYNE LANGE NANCY P EMBERTON

June 17, 2021

Sheriff Mark Essick
County of Sonoma, CA
mark.essick@sonoma-county.org

Dear Sheriff Essick,

The Committee for Law Enforcement Accountability Now (CLEAN) has become aware that the Sonoma County Commission on Human Rights recently sent a letter to your agency requesting an investigation into possible affiliation of your employees with extremist organizations that call for: the denial of civil rights, the commission of hate crimes, domestic terrorist activity, or the violent overthrow of democratic government in the U.S. We write to support the CHR request and to strongly suggest that your agency follow up on this matter by immediately initiating such investigations.

There are a number of options available to your agency that can be completed in a legal and constitutional manner that respects the right of your employees to due process under the law. These include regular audits of texts between employees, review of employees' public social media postings, a requirement that employees disclose any tattoos indicative of such affiliations, and a requirement that employees declare in writing whether they have any membership or affiliation with any such extremist or hate groups. Prior to hiring new employees, your agency has even greater legal freedom to look for such evidence during the screening process. Your agency also should immediately adopt clear policies making such membership or affiliation or expressed beliefs grounds for termination of employment. Model policies for these purposes already exist and can be easily found.⁸⁸

⁸⁸ Focus: Guiding Principles for the Total Force DoD Policy on Extremist Activities, DoDI 1325.06, "Handling Dissident and Protest Activities Among Members of the Armed Forces" (Department of Defense Instruction 1325.06, November 27, 2009 incorporating change 1, February 22, 2012 USD(P&R); SUBJECT: ***Handling Dissident and Protest Activities Among Members of the Armed Forces***).

- Dignity and Respect: The Department of Defense places the highest importance on treating all personnel with dignity and respect, in an inclusive environment, free from impermissible discrimination, harassment, and hate. And as such, DoD policy expressly prohibits Service members from actively advocating supremacist, extremist, or criminal gang doctrine, ideology and causes. The Department of Defense also holds its civilian workforce to the highest standards of character and conduct required to protect and promote the public trust.
- Service members must reject active participation in organizations that advance supremacist or extremist ideology, which includes those that advance, encourage, or advocate illegal discrimination based on race, creed, color, sex, religion, ethnicity, or national origin, or those that advance, encourage, or advocate the use of force, violence, or criminal activity or otherwise advance efforts to deprive individuals of their civil rights. (DoDI 1325.06, Encl. 3, para 8.b.)



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As previously mentioned, efforts to root out extremism from your agency need not run afoul of the constitutional protections afforded public employees.⁸⁹ Court have allowed law enforcement agencies considerable latitude in restricting the speech or associational interests of their employees, given their “heightened need for order, loyalty, morale and harmony.”⁹⁰

- Recruitment: Extremist organizations and individuals often target current or former military members or DoD civilian employees for recruitment because of their unique military skills, knowledge, and abilities, as well as to gain legitimacy for their cause. Service members and DoD civilian employees must be vigilant of these efforts.
- Active Participation: Active participation includes, but is not limited to: “Fundraising, demonstrating, rallying, recruiting, training, organizing, leading members, distributing material (including posting online), or knowingly wearing gang colors or clothing, having tattoos or body markings associated with such gangs or organizations; or otherwise engaging in activities in furtherance of objectives of such gangs or organizations that are detrimental to good order, discipline, or mission accomplishment or are incompatible with military service.” (DoDI 1325.06, Encl. 3, para 8.b.) Active participation in such activities may also affect determinations of suitability or fitness for civilian employment or continued employment in the DoD and eligibility for National Security positions and/or access to classified information.
- Indicators: Participation may lead to violence. Some indicators of individual escalation toward extremism include clear identification with or support for extremist or hate-based ideology; making or attempting to make contact with extremist groups; the possession and/or distribution of extremist literature or paraphernalia; and threatening, intimidating, harassing, or harming of others consistent with extremism or hate-based ideology. While such conduct may not constitute “active participation,” such signs offer an indicator for commands, prompting action and intervention that can avoid active participation down the road.
- Duty to Reject: Service members and DoD civilian employees must reject participation in such activities. With regard to Service members, Department policy makes clear that commanders have the authority to employ the full range of administrative and disciplinary actions, including involuntary separation, dismissal, or even appropriate criminal prosecution against those who actively engage in such activity. Supervisors and leaders of all ranks must also take action to maintain good order and discipline and root out extremism.

⁸⁹ “Although the First Amendment’s Freedom of Association provision protects an individual’s right to join white supremacist groups for purposes of lawful activity, the government can limit the employment opportunities of group members who hold sensitive public sector jobs, including jobs within law enforcement, when their memberships would interfere with their duties.” (“White Supremacist Infiltration of Law Enforcement,” FBI Intelligence Assessment, 2006, pg. 6).

⁹⁰ See, e.g., *Garcetti v. Ceballos*, 547 U.S. 410, 417 (2006), citing *Pickering v. Board of Education*, 391 U.S. 563 (1968); *Oladeinde v. City of Birmingham*, 230 F.3d 1275, 1293 (11th Cir. 2000); *Doggrell v. City of Anniston*, 277 F. Supp. 3d 1239 (N.D. Ala. 2017), <https://casetext.com/case/doggrell-v-city-of-anniston-1>; and *State v. Henderson*, 277 Neb. 240. See also Robin D. Barnes, “Blue by Day and White by (K)night: Regulating the Political Affiliations of Law Enforcement and Military Personnel,” *Iowa Law Review* 81 (1996): 1085.



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In considering these factors in a § 1983 action brought by police officers against their public employer, we are required to consider the fact that members of a law enforcement agency are part of a quasi-military organization. *See Hansen v. Soldenwagner*, 19 F.3d 573, 577 (11th Cir.1994) ("The Pickering balance is also affected ... by the special concerns of quasi-military organizations such as police departments."). In a law enforcement agency, there is a heightened need for order, loyalty, morale and harmony, which affords a police department more latitude in responding to the speech of its officers than other government employers. *See Rogers v. Miller*, 57 F.3d 986, 991 (11th Cir.1995) (citing *Hansen*, 19 F.3d at 577); *see also O'Donnell v. Barry*, 331 U.S. App. D.C. 272, 148 F.3d 1126, 1135 (D.C.Cir.1998) ("Because of the special degree of trust and discipline required in a police force there may be a stronger governmental interest in regulating the speech of police officers than in regulating the speech of other governmental employees."); *Dill*, 155 F.3d at 1203 (recognizing that the government's interest is "particularly acute in the context of law enforcement, where there is a heightened interest ... in maintaining discipline and harmony among employees") (quoting *Moore v. City of Wynnewood*, 57 F.3d 924, 934 (10th Cir.1995)); *Campbell v. Towse*, 99 F.3d 820, 829-30 (7th Cir.1996) ("It surely cannot be doubted that individuals who work in the highest echelons of the command of a police department must be assured of the loyalty of their immediate subordinates, as these subordinates are entrusted with carrying out their orders, at times under the most trying conditions.").

(*Oladeinde v. City of Birmingham* (11th Cir. 2000) 230 F.3d 1275, 1293.)

While the January 6 insurrection brought these issues to greater public awareness, that event was consistent with at least 15 years of reports from the FBI, other federal agencies, and investigative journalists, that identified "domestic terrorism" organizations (including "military extremists, white supremacists, and sovereign citizen extremists") that have "active links to law enforcement." These connections fundamentally undermine community trust in law enforcement, the foundation on which effective policing must rest. Without such trust, community members will not cooperate with police in investigating crimes, nor will they report crimes against themselves.

Michael German, a former FBI Special Agent on Domestic Terror and Covert Operations, has stated:

"Explicit racism in law enforcement takes many forms, from membership or affiliation with violent white supremacist or far-right militant groups, to engaging in racially discriminatory behavior toward the public or law enforcement colleagues, to making racist remarks and sharing them on social media. While it is widely acknowledged that racist officers subsist within police departments around the country, *federal, state, and local governments are doing far too little to*



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proactively identify them, report their behavior to prosecutors who might unwittingly rely on their testimony in criminal cases, or protect the diverse communities they are sworn to protect. *The most effective way for law enforcement agencies to restore public trust and prevent racism from influencing law enforcement actions is to prohibit individuals who are members of white supremacist groups or who have a history of explicitly racist conduct from becoming law enforcement officers in the first place, or from remaining officers once demonstrated.*”

The infiltration of law enforcement agencies by “hate groups” undermines law enforcement legitimacy in several ways:

- It threatens the integrity of criminal investigations and the ‘legitimate authority’ of law enforcement in the eyes of the community;
- It increases threats to those targeted by such organizations; and
- It all but guarantees the discriminatory application of laws and provision of services in violation of the U.S. (14th Amendment) and California (Article 1, Sec. 7) constitutions.

Given the long and persistent history of disparate impacts by law enforcement against BIPOC people in our communities, including in Sonoma County, local law enforcement agencies must look into these issues. Every community deserves to have confidence that no extremists work within its local law enforcement agencies. Recent police violence against BIPOC protesters during the BLM protests in the Summer of 2020 (a police response that included officers from every local agency through mutual aid agreements) and the excessive force recently used against two Black men, Lamaricus MacDonald and Jayson Anglero-Wyrick, engendered continued distrust in local law enforcement. These events took place against a backdrop of historical distrust from past impacts of police violence on BIPOC community members. Given this distrust, our community needs fact-based assurances that county police agencies are free of extremist employees.

Thank you very much for your anticipated cooperation in ensuring that our communities are safe and that your agency will be a trusted partner in building relationships of mutual respect that honor the inherent dignity of all people.

Sincerely,

The Clean Committee
cleancommittee@gmail.com