



ATLANTA CITIZEN REVIEW BOARD

STUDY AND INQUIRY

INTO THE

ATLANTA POLICE DEPARTMENT'S
INVOLVEMENT IN THE DEATH OF
MS. KATHRYN JOHNSTON

May 13, 2010

Introduction

Pursuant to City Ordinance 07-0-0141, the Atlanta Citizen Review Board is authorized to select appropriate individual incidents to review and broader issues to study which may be of concern to the community, the police and the corrections departments. Additionally, the Board may initiate studies at its own discretion in order to fulfill the goals of the ordinance. The goals of the ordinance include the prevention of future incidents of police misconduct and abuses of civil rights and to promote public confidence in law enforcement.

In order to promote transparency and accountability, the Atlanta Citizen Review Board (ACRB or Board) voted to conduct a study and inquiry into the police involvement in the death of Ms. Kathryn Johnston. This review seeks to identify the underlying causes and actions that preceded her death and to integrate a community perspective into the analysis of these issues. The Board relied upon the Federal Bureau of Investigation (FBI) report, the Atlanta Police Department's Office of Professional Standards (OPS) statements and supporting documents which were provided by the Atlanta Police Department pursuant to a subpoena issued by the Atlanta City Council Committee on Council. The matter is still under investigation by the Atlanta Police Department Office of Professional Standards, and the Board has agreed to keep the facts confidential. The Board decided to study three categories of contributing factors, identified in the investigation:

- individual responsibility
- the "quota" system
- influence of extra jobs on the actions of police personnel.

The first part of this report focuses on the individual responsibility of officers. The Board does not want to perpetuate a “shame and blame” perspective or examination of this incident. This report is intended to present the underlying provable misconduct that may serve to encourage systemic change. There have been some characterizations that this misconduct was committed by “rogue cops” or “bad apples.” The “bad apple” defense is flawed in three respects. It does not comprehend the scale of the harm a handful of dishonest officers, acting with impunity, can do, nor does it convey the impact those few bad apples, if not removed, will have on the barrel. This defense also allows the organization to ignore responsibility for the systemic, organizational and management weaknesses.

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I. INDIVIDUAL RESPONSIBILITY

A. THE INDICTED OFFICERS

Clearly, the conduct of the five officers indicted by the United States government must be considered when evaluating the causes of the tragedy on Neal Street. The constitutional and criminal violations committed by Gregg Junnier, Jason Smith and Arthur Tesler have been analyzed and discussed in the community, and their actions, which resulted in the death of Ms. Kathryn Johnston, have been condemned by the community and punished by the courts. The officers' supervisor, Wilbert Stallings, was indicted and prosecuted for conspiracy to violate civil rights by executing a search of a private residence without the benefit of a search warrant. His role has not been the subject of a great deal of discussion and it deserves some analysis. The fifth officer indicted was Daniel Betts. He was an officer in Zone One who was convicted of extortion concerning conduct related to extra jobs. The extra jobs issue will be discussed in the third section of this report.

1. **Wilbert Stallings**

Wilbert Stallings was a sergeant in the narcotics unit and a 23-year veteran of the Atlanta Police Department. The criminal conviction against him concerned the execution of a search warrant at an apartment located at 1058 Dill Avenue in Atlanta. The apartment was part of a duplex, and the adjacent apartment was 1056 Dill Avenue. There was no warrant for 1056 Dill Avenue. The officer executed the warrant at 1058 Dill Avenue and recovered some marijuana in the bushes behind the apartment but found no drugs inside the apartment. Not having found what they expected to find at 1058 Dill Avenue, Stallings and Junnier discussed and agreed to make a forced entry into the adjoining apartment at 1056 Dill Avenue. The officers used a ram to break into the apartment. No one was home. No evidence of illegal activity was found. Stallings instructed the team to leave the

apartment and shut the door and said, "Just shut the door. They will just think it was a break-in."

The FBI report indicated that Wilbert Stallings knew and allowed officers to "trade" search warrants with one another. One officer would swear in an affidavit to have witnessed events he or she had never actually seen. Furthermore, he allowed officers to work extra jobs while on duty and, indeed, shared in the profits. He also permitted officers to use unregistered drug informants as sources of information and allowed them to falsely assert that the informants were reliable for the purposes of procuring search warrants. He was sentenced to 18 months in prison on June 19, 2009.

Wilbert Stallings was the first line of supervision for a team of narcotics officers. The failure to properly supervise officers was a contributory and proximate cause of the death of Ms. Johnston. His participation and ratification of unconstitutional and criminal activity helped to form the culture which led officers down the continuum of ethical compromise. His misconduct was not isolated and, as a supervisor, his behavior had a greater impact on the culture of those who worked with him and the resultant sense of betrayal by those he victimized and by the community as a whole.

It is difficult to know what individual supervisors have been instructed. However, at his sentencing, Stallings' attorney stated that the former sergeant was like a battered spouse who did not do what was right because he didn't want to be mistreated. This statement appears to indicate that supervisors, like Stallings, may not be aware that their failure to act, turning a blind eye, and facilitating or condoning unconstitutional behavior can result in personal responsibility. Furthermore, there does not seem to be an understanding among the indicted officers that a single lie can taint an officer's credibility forever and render the officer virtually useless as a courtroom witness.

2. Daniel Betts

The fifth officer indicted was Daniel Betts. According to prosecutors, Junnier received illegal payments for providing security to local businesses while on duty. Betts took over some of this work after Junnier was indicted. He collected monthly security fees from an apartment complex and split the money with another officer. He pushed drug dealers from the businesses that paid for protection onto others who simply expected the police to be doing their jobs. During sentencing, Judge Carnes noted that it is bad to give some people in the community the impression that others have better access to police services if they can pay extra for it. She also noted that this type of behavior is difficult to distinguish from those paid to provide police escorts at the NBA All-Star game while on duty. The issues surrounding extra jobs and off-duty employment raises ethical and moral concerns. The delivery of criminal justice services in an equitable manner, regardless of the person's ability to pay, is the foundation of our criminal justice system. It is important for municipal police departments to deliver services in a manner that does not discriminate against those who cannot afford to pay. The existing system of extra jobs permits the perception that access to police services improves if you can afford to pay for services. This leads to erosion of trust between the police and the community.

B. UNINDICTED OFFICERS

The United States Attorney declined to prosecute some misconduct that was discovered during the course of the prosecution of Tesler, Junnier, Smith, Betts and Stallings. Included in the report submitted to Chief Pennington were allegations that officers falsified information on numerous search warrant affidavits; officers padded vouchers; officers testified that they drove informants to the buy when they did not; officers rarely, if ever, conducted pat-downs before informants made buys; unregistered and unreliable informants were used; and it was common to use hand-offs. A

hand-off is where an officer provides information to establish probable cause to another officer to include in an affidavit for a search warrant. The second officer would write the affidavit stating that he had firsthand knowledge of the information. This information was developed by the FBI mostly from interviews conducted pursuant to a Proffer Agreement.¹ While this information has value, it is important that the accusations be verified.

1. Holly Buchanan

Holly Buchanan is still employed by the Atlanta Police Department. During the interviews conducted by the FBI, Junnier stated that Officer Buchanan took hand-offs from him on at least two occasions. On May 25, 2006 Officer Buchanan obtained a search warrant for 2479 Abner Terrace based on a drug purchase made by Alexis White. The incident report and the affidavit in support of the search warrant, which was signed by Ms. Buchanan, indicated that a Confidential Informant (CI) was sent to the location with \$20.00, and the CI purchased one bag of cocaine. White claimed that he attempted to make a purchase at that location for Officer Buchanan, but he told her that he was unable to make the purchase. When Ms. Buchanan was interviewed by the Office of Professional Responsibility on June 3, 2009, she said that to the best of her knowledge, and it was some time ago, Alexis White was paid for a hand-to-hand transaction and not for a buy out of the apartment on Abner Terrace. This illustrates the problems created when the administrative investigation is delayed until the criminal investigation and prosecution is complete. It is entirely credible that after three years, a busy investigator will not remember the details of even important incidents. Nevertheless, Officer Buchanan could not state with certainty that the details included in her affidavit and incident report were accurate. If her recollection is accurate, the affidavit is not accurate because it clearly states that the transaction took place in the apartment. Without that assertion, the search warrant would probably not have been issued for the residence.

¹ A Proffer Agreement is written agreement between federal prosecutors and individuals to give the government information about crimes and some assurances that they will be protected from prosecution.

The FBI first communicated with Ms. Buchanan on June 18, 2007. FBI Agents delivered a letter advising her that she was the subject of an investigation by the FBI. She was told that it was best that she retain a lawyer before speaking to the FBI. Nonetheless, Ms. Buchanan insisted upon knowing which of her search warrants were being questioned. The Agents wrote four addresses on a sheet of paper and gave it to her. She looked at it and said, "f...."

After the completion of the FBI investigation, the Office of Professional Standards conducted an interview. On June 3, 2009, Ms. Buchanan told the internal investigator that she was assigned to narcotics in 2006. She admitted that she did not always see the informant go to the address and make a drug purchase. She said that she was not aware that she needed to confirm the drug buy before executing a search warrant. She stated that the supervisors did not require her to do that and she only now has a vague notion of what the Standard Operating Procedures states about conducting drug buys.

The Standard Operating Procedure (APD SOP 5160) regarding the use of confidential informants was modified in May 21, 2008 to address some of the issues discovered by the FBI. Nonetheless, on the date of the incident and at all times after July 2004, officers were required to substantiate confidential source information and obtain additional information from other sources sufficient to meet the requirements of probable cause. It further directed officers receiving information from confidential sources to never take enforcement action based solely on the word of a confidential informant.

Ms. Buchanan was questioned about the manner that she used informants. She claimed that Alexis White never worked for her as a confidential informant; however, she used him to purchase illegal drugs more than five times. He was paid according to the schedule set forth by the narcotics unit. She also said that she used "CR" as an informant but that he was not a registered informant. When she was pressed as to how

she could use him if he was not registered, she said that her supervisor, Wilbert Stallings, told her to use him and said that he was trustworthy and would give very good information. The SOP requires that all informants be registered and approved before they are employed. This is a violation of SOP 5160 (2004 and 2008).

Ms. Buchanan was questioned about the use of Alexis White to purchase drugs from 3575 Boulder Park Drive. Records indicate that a search warrant was executed; however, OPS could not locate the affidavit that is used when an officer requests a search warrant.

Ms. Buchanan was questioned about the use of Alexis White as a confidential informant at 350 Lanier Street. Her incident report dated August 5, 2005 (Incident number 052171274) indicated that she met with a registered confidential source and that she searched him for money and drugs and found nothing. He was given \$5.00 and taken to 350 Lanier Street and the confidential informant walked up a flight of stairs to the apartment and made a purchase of one bag of marijuana. She indicated that she left the location and searched the confidential informant again and found nothing further. The informant described the person and said that the person used the name, "Twan." Ms. Buchanan paid the confidential informant \$20.00 for making the controlled buy. During Ms. Buchanan's interview with the Office of Professional Standards on June 3, 2009, she indicated that she personally did not use Alexis White to purchase drugs from 350 Lanier Street, Apartment C-6 on August 5, 2005. She said that the purchase was made by Gregg Junnier. She could not remember the specific details about where she was when Junnier observed the controlled buy. The incident report contains information that was not true. Her explanation is that this was the first narcotics search warrant she ever wrote, and she was instructed by Gregg Junnier to write the incident report in that manner.

Officer Buchanan explained that the practice of using hand-offs was used by her team pretty regularly, especially if an officer did not meet

the “nine and two” requirements. The nine and two requirements were that each officer had to make nine arrests and two search warrants each month in order to meet acceptable standards of productivity.

2. Cary Bond

Cary Bond is currently employed as a police officer. He was on Narcotics Team One for three years before the shooting of Kathryn Johnston. He was part of the entry team that executed the search warrant on Neal Street. Bond attended the briefing and was told that there was supposed to be a kilo of cocaine in a shoe box. He was the fourth cover officer and he fired two shots at 933 Neal Street. He also saw the gun by Ms. Johnston and moved it. He was treated for gunshot injuries after the incident on Neal Street. Alexis White told Cary Bond that he did not perform the buy at 933 Neal Street on the day that Bond gave a statement to the Homicide Unit, which records show was on November 24, 2006. Officer Bond reports that he passed the information to his supervisor, Wilbert Stallings. Bond then reported this conversation to the FBI on December 6, 2006, after he was summoned for an interview. This statement was not included in the files that were delivered pursuant to a subpoena issued by the Committee on Council. It is difficult to discern whether Bond neglected to disclose this in a timely manner.

a. Padding Vouchers

In Officer Bond’s interview with the FBI on December 6, 2006, he admitted that he has written up drug buys in order to get gas money for informants. For example, the informant might buy \$45.00 worth of drugs but Bond would submit a voucher for \$50.00 and give the informant \$5.00 for gas. Additionally, on July 1, 2009, during an interview with the Office of Professional Standards, Bond said that he had taken Alexis White out and gotten him something to eat and he added five dollars to the voucher in order to pay for the meal. The Standard Operating Procedure governing the payment of

informants makes no provision for this type of payment, and these practices do not comply with SOP 5160, Section 4.7 (2004).

Additionally, during the interview conducted by the Office of Professional Standards, Mr. Bond admits that he had Alexis White sign blank vouchers in order to make it easier for the informant to get paid. In this manner, Bond did not have to go meet them and get the vouchers signed. He was aware of the practice of padding vouchers for officers to purchase things for the department. Again, this is a clear violation of departmental standards that are designed to avoid misappropriation of government funds. The directive in the Narcotics Unit required that the voucher be signed by the informant and witnessed by two officers. Officers should not be making unilateral decisions concerning the needs of the department and should not use a voucher system to augment the Narcotics Unit equipment budget. This practice also makes it difficult to account for the money and it is not verifiable whether the money was spent for public safety or whether it was misappropriated to the officers or the informants.

b. False Affidavits in Support of a Search Warrant Application and Hand-Offs

Cary Bond used Alexis White as an informant, and White claimed that he never purchased drugs at 674 Alta Place. White's informant file showed that a search warrant obtained by Cary Bond was based on a drug purchase made by White in December 2004. Officer Bond was asked about Alta Place during an interview with OPS. He said that Alexis made a buy there and that he was present and alone when it happened. However, the warrant application, which is a sworn statement, says that Maurice Geurin was with him. Mr. Bond explained that he wrote this in the search warrant application because the policy required it. He claimed in his statement to OPS that, "because of manpower issues and such, you had to do stuff with the informant by yourself." He admitted that the affidavit was not

accurate. When Bond was asked why White would tell the FBI that he never made a drug buy from 674 Alta Place on December 10, 2004, Bond said that he probably knows some of the people arrested. He claims that he searched White and watched him go to this location and walk up to the house and make the buy. White claims that he received information that there were drugs being sold at this location; however, when he attempted to purchase drugs, he was turned down. White observed the handgun. White said that he did not get paid on the day he tried to make the buy but after the search warrant was executed, he was paid either \$1,300 or \$1,800. Bond claims that the only part of the affidavit that was not true was the paragraph that asserted that Maurice Geurin was there. The search warrant was executed on December 22, 2004, and a handgun, large amounts of cocaine and marijuana, drugs, money, and counterfeit money were located in the residence. If White's version of the event is correct, this practice was a violation of the SOP governing the use of confidential informants. His affirmation in the search warrant application that Guerin was present is a lie.

Gregg Junnier stated that Cary Bond did not conduct a controlled buy or observe a controlled buy at 940 Bolton Road, which resulted in a search for that address. Junnier said that he took Alexis White to that location on January 4, 2006 and that Bond was not present. Bond signed an affidavit indicating that he was present during the controlled buy. When Bond was interviewed by the Office of Professional Standards regarding this search warrant, he said that he did not remember the details. He could not remember whether he observed a drug buy at 3775 Martin Luther King, Jr. Drive, Apartment C-2 on March 30, 2005. He could not remember whether he observed a controlled buy at 387 Lanier Street in 2005. He knows that he made false statements on affidavits or police reports in order to obtain search warrants or arrest warrants. However, he could not remember how many times or where the search warrants were executed. The only reason that he remembered the Alta Place search warrant was

because of the unusually large amounts of drugs that were discovered in it. Again, the practice of waiting to conduct an administrative interview at the conclusion of the criminal prosecution makes this assertion credible.

When Bond was interviewed on July 1, 2009, he readily admitted that he did not conduct confirmation buys prior to executing a search warrant. He also admitted that he did not see the informant go to the address to make the drug purchase and that information was frequently included in the search warrant application. He permitted Alexis White to travel to and make drug buys from residents on his own. Bond did not conduct pat downs on the informants. He explains that Junnier taught him to do this. He said that his supervisor, Wilbert Stallings, was aware of the practice. This practice violates the current and former standard operating procedures and violates constitutional standards required to obtain a search warrant. In the criminal justice system, there are three ways to ensure that people tell the truth:

- by oath, which is a solemn declaration to God that their statement is true;
- by affirmation, which is a solemn declaration without reference to God; and
- by affidavit, which is a signed statement under penalty of perjury that the facts contained in a document are true.

For Fourth Amendment purposes, an affidavit has the same weight as an oath or affirmation even though it is little more than the equivalent of a notarized document. Affidavits are usually part of the warrant application process, and the procedure is the same whether the purpose is to obtain an arrest or search warrant. Each time an officer affirms a fact that he/she knows to be incorrect or not true, regardless of how insignificant, undermines our reliance on the criminal justice system. The practices described by Junnier, White and Bond were deliberate and unconstitutional and serious violations of protocol. It

is not credible that Officer Bond believed that this was acceptable because his supervisor was aware of the practice.

3. Brad Burchfield

Brad Burchfield was a member of the Field Inspection Team (FIT) assigned to Zone One at the time of Ms. Johnston's death. He was placed on administrative leave after the FBI investigation indicated that he participated in wrongdoing and resigned from the police department after being summoned for an interview in 2009.

Mr. Burchfield was not a member of the narcotics unit but used Alexis White as an informant. He had a relationship with White and had a number of conversations with him concerning Neal Street in the aftermath of the shooting. He also had at least one conversation with Junnier after he called Alexis White on Friday, November 24, 2006. Burchfield called White at 8:48 PM and then called Junnier at 8:51 PM. Burchfield indicated to the FBI that he had called Junnier to ask about his injury; however, the timing of the calls makes this explanation questionable. Junnier also asked for Burchfield to work his second job as an apartment security officer for him while he was on administrative leave.

Alexis White (*statement dated March 14, 2007*) reported that he first met Mr. Burchfield at an apartment complex at 3762 Martin Luther King, Jr. Drive. White was standing by a car and Burchfield drove up in a patrol car and put White in handcuffs and placed him in a patrol car. White did not know why he was detained and Burchfield did not respond when he asked him. White explained to Burchfield that he worked as a confidential informant for Gregg Junnier, and Burchfield returned to the location and released him. White then started to work for Burchfield as a confidential informant. White reported that in November 2006, he was directed to a residence at 826 Wood Street by Burchfield. Burchfield gave White \$50.00 to purchase drugs from 826 Wood Street; however,

White never made the purchase. White returned the \$50.00 to Burchfield. The two men then attempted to purchase drugs at 2422 Main Street and at a residence on Mary George Avenue. White purchased marijuana on Main Street but was unable to purchase drugs on Mary George Avenue. The two men went to 2415 First Avenue and a woman stopped White and said that they would not sell to White if they did not know him. White called Burchfield and Burchfield told White to use the lady to buy for him. White gave the woman \$20.00 to buy drugs and gave her some money for her help. The woman went to the house and returned with a piece of crack cocaine. The two men went to the BP gas station and White went into the BP to play lottery and when he returned, Burchfield had split the crack from 2415 First Street into two pieces and told White that he owed White \$30.00 for the buy on Wood Street. White signed three blank vouchers that day. White walked to Perry Boulevard where he met with Burchfield. White was unable to purchase drugs on Main Street and when he arrived at 2415 First Avenue, purchased crack from a location and Burchfield split the rock and put half of it on the location from where the individual had purchased it and half on a house on Wood Street.

The Atlanta Police Department incident report No. 06-3211174 dated November 20, 2006, submitted by Burchfield, indicates that a confidential reliable informant purchased \$10.00 in crack cocaine between the dates of November 16th and November 18, 2006 at 826 Wood Street. The report indicates that a search warrant will be "applied for." There is no indication from the files delivered to the ACRB that a search warrant was executed at the location. On December 1, 2006, Burchfield admitted that there was no drug buy by White at 826 Wood Street. However, in a statement that he gave on March 22, 2007, Mr. Burchfield said that, "he never knew anyone to use drugs as a ruse and never knew drugs obtained from one location being attributed to another location." Burchfield's police report and his statement, conflict. This is a serious violation that reflects upon this former officer's honesty. This allegation of dishonesty should be properly adjudicated by the

Office of Professional Standards in order to ensure that Mr. Burchfield cannot apply for another position as a peace officer in the State of Georgia or any other jurisdiction. It is worthy of note that White indicated that he reported this misconduct to ATF Agent Degree on the day that it occurred. White indicated that Degree told him that he was glad to know this because the ATF was going to join the APD in the execution of this warrant and that now they would not. This appears to have occurred before the incident on Neal Street. This information is not verified in the file.

a. Extra Jobs

Brad Burchfield took over many of Gregg Junnier's extra jobs after Junnier was suspended from the police department. According to a statement dated December 17, 2007 from the owner of an apartment complex, Brad Burchfield began to pick up cash payments for security services from him. Remberto Carbo, who owns 1247 Simpson Road, reported that sometimes he arrived in plain clothes and sometimes in uniform and that he drove a tan Taurus. The apartment complex owner was not satisfied with the level of services provided by Burchfield and confronted him with his complaint. Burchfield told him that he did drive-bys and made arrests on the apartment's property. Burchfield was performing this security with Daniel Betts. Betts was his partner in Zone One. Betts was later indicted and convicted of extortion related to the performance of extra jobs. In an interview conducted by the FBI on February 7, 2008, Daniel Betts indicated that he and Burchfield took over Junnier's extra jobs after Junnier was suspended. He said that he would go with Burchfield to pick up the money while on duty. He said that they were providing security for about six different locations. On February 25, 2008, Betts gave a statement to the FBI pursuant to a plea agreement indicating that in December 2006 Burchfield told him that Junnier gave him extra jobs and that by the end of January 2007 they lost most of the extra jobs. They kept the grocery store on

Simpson Road and 377 Westchester Blvd. Burchfield handled almost everything and they collected payments while on duty. Betts also stated that Burchfield arranged for other APD officers to work security for a festival. After Burchfield was suspended, Betts gave him half of the money he received from performing extra jobs.

Mr. Burchfield was given the opportunity to appear and give a statement to the Office of Professional Standards regarding the above allegations but declined and resigned. In view of the statements from both the apartment complex owner and Daniel Betts, it is clear that Burchfield violated the Extra Jobs Policy and the Code of Ethics for the City of Atlanta which prohibits the use of publicly supported property, labor or service for the private advantage of an employee. (See Sec. 2-811 of the Ethics Code).²

C. SUPERVISORY RESPONSIBILITY FOR INVESTIGATION

It is unclear from the records produced, who was in charge of the scene and the subsequent investigation into the death of Ms. Johnston and the culpability of the officers in the immediate aftermath of the search warrant and the shooting. Generally, the Homicide Unit takes charge of a homicide investigation. However, in this case, Lieutenant Gibbs responded to the scene of the shooting and observed Fabian Sheats in the back of a police raid van. She instructed Detective Schiffbauer to guard Mr. Sheats and not to talk to him. Detective Schiffbauer transferred Sheats into his van and guarded him for about three hours before he was allowed to call a transport unit to take Sheats to jail. Mr. Sheats was not interviewed until November 26, 2006, when Detective Wilson from the Homicide Unit conducted an interview. No questions were recorded regarding the identity of Sam or of

² **City of Atlanta, Ethics Code, Sec. 2-811 (Use of Property and Services)**

No official or employee shall request, use or permit the use of any publicly owned or publicly supported property, vehicle, equipment, labor or service for the private advantage of such official or employee or any other person or private entity. However, no official or employee is prohibited from requesting, using or permitting the use of any city-owned or city-supported property, vehicle, equipment, material, labor or service which as a matter of city policy is made available to the public at large or which is provided as a matter of stated public policy for the use of officials and employees in the conduct of official city business.

any drug activity at 933 Neal Street. He was not asked about his knowledge of the activities of Smith, Tesler, and Junnier despite the fact that it was clear that Mr. Sheats was present and an eyewitness to the investigation that led up to the shooting of Ms. Johnston. Indeed, he was the only person who was not involved in the misconduct who was present for the entire time. The first interview that addressed these questions was conducted by the Office of Professional Standards on November 30, 2006.

Despite the fact that it was clear that Fabian Sheats would recognize "Sam" if he existed, no one made any attempt during the first days to interview him. This would have been quite simple, since Sheats was in custody at the Fulton County Jail. Instead, members of the Fugitive Squad, the Narcotics Unit, Officer Burchfield and others made a number of attempts to locate Alexis White in order to show him a photo array in an attempt to locate the person named Sam who was alleged to be dealing drugs out of 933 Neal Street. The fact that no one interviewed Fabian Sheats in the immediate aftermath of the shooting is troubling in view of the time and energy that was consumed trying to locate Alexis White. This example of nonfeasance is difficult to understand. It is unclear whether the commanding officer for the Homicide Unit or the commanding officer for Narcotics should have ensured that Fabian Sheats was properly interviewed concerning the events of the entire day; not just whether he observed the shooting.

D. CONCLUSION

What is concerning about the misconduct that is described above in both the indicted and unindicted officers is that the system did not detect them earlier. The patterns of misconduct were longstanding, repetitive and ongoing. The misconduct cannot be characterized as isolated events. The city continues to employ two of these officers. This is also a symptom of a system of internal oversight that is slow to investigate and discipline, and this undermines the ability to ensure that officers are performing in a constitutional, legal and ethical fashion. When the dispensing of discipline is not swift, it hurts both morale within the police department and the credibility of the department with the public. It is also a mistake to

characterize the misconduct as the few acts of “rogue officers” or “bad apples.” It is evident that there was enough misconduct to indict and convict five (5) officers. It is a mistake to characterize the behavior as rogue because that allows an organization to avoid looking at systemic problems. It also absolves the collective organization from any responsibility. The crisis should be viewed as an opportunity to manage change in a positive, productive and intelligent manner.

E. BOARD RECOMMENDATIONS

The staff of the Atlanta Citizen Review Board recommends the following to the Board for their consideration:

1. The Police Chief should impose discipline on Holly Buchanan for violation of SOP 2010, 4.1.05 (Obey the Law); violation of SOP 2010.4.1.03 (Truthfulness) for lying in her search warrant applications and incident reports relating to 350 Lanier Street, Apartment C-6 and 2479 Abner Terrace. This is a Category D offense as defined in SOP 2020.4.3.02 and the recommendation indicated in the policy is dismissal.
2. The Police Chief should impose discipline on Cary Bond for violation of SOP 2010.4.1.05 (Obey the Law) and violation of 2010.4.1.03 (Truthfulness) for lying in his incident report and search warrant application concerning 674 Alta Place. This is a Category D offense as defined in SOP 2020.4.3.02 and the recommendation indicated in the policy is dismissal.
3. The Police Chief should adjudicate and assign the finding of sustained, regarding the allegations against Brad Burchfield for violations of SOP 2010.4.1.05 (Obey the Law) and violation of 2020.4.03 (Truthfulness) for lying in his incident report concerning the crack cocaine that was not

purchased at 826 Wood Street. Additionally, the Chief should adjudicate the allegation that Mr. Burchfield received compensation from the owner of the apartment complex at 1247 Simpson Road while on duty and sustain a violation of SOP 2010.4.1.08 which prohibits the solicitation of fees where there is any connection between the solicitation and their employment with the Department. Since Mr. Burchfield has resigned, no discipline recommendation is necessary; however, the adjudication should be reported to the State of Georgia Peace Officers Standards and Training Council.

4. The Police Chief should determine which supervisory or command person was in charge of the scene of the police shooting and question why Fabian Sheats, the most obvious and available witness, was not interviewed, in order to ascertain what he knew concerning the events that resulted in the death of Kathryn Johnston. Also, there should be some clarity about why so many people were trying to locate Alexis White in order to show him a photo array when the most obvious witness was in police custody.

II. THE “QUOTA” SYSTEM

This section is designed to address some of the problems with the “quota” system that may have contributed to the misconduct and corruption that caused the death of Ms. Kathryn Johnston in November 2006.

Introduction

During the course of the investigation conducted by the Federal Bureau of Investigation (FBI) and the United States Attorney’s office into the misconduct that preceded the death of Ms. Kathryn Johnston, Narcotics Unit officers insisted that arrest quotas created the need to fabricate evidence and testimony. Jason R. Smith, Gregg Junnier and Arthur Tesler all testified during their sentencing hearing that the Atlanta Police Department required that they arrest nine people and execute two search warrants each month in order to avoid being re-assigned to another unit. Almost all of the Atlanta Police Department (APD) officers interviewed agreed that there was an unwritten quota requirement and that their performance appraisals were tied directly to the “nine and two” requirement. They asserted that a poor performance evaluation could result in re-assignment, and this was viewed as a punishment because the flexibility of a narcotics unit assignment allowed them to work some better and higher paying off-duty jobs. While many asserted this, there was no evidence that any officer had been re-assigned or disciplined for failure to conform to this quota system.

Chief Pennington insisted that officers did not have to make a minimum number of arrests to avoid punishment but that they had performance standards. There were reports that there was a memorandum written by Major Finley while he was the commanding officer in the Narcotics Unit that articulated the nine and two requirement. This memorandum was not included in the materials subpoenaed by the

Board. However, there was a memo dated August 5, 2003 from Lieutenant Finley indicating that the Narcotics Weed and Seed Unit were required to make a minimum of 30 arrests per week and other teams in Narcotics were required to make a minimum of 20 arrests per week and execute a minimum of two to four search warrants per week. It remains undisputed that officers assigned to the Narcotics Unit felt that they needed to produce these types of numbers in order to meet performance standards within the Department.

The officers who complained about these performance measures were, in all likelihood, interested in mitigating their responsibility for the misconduct that was discovered during the investigation of Ms. Johnston's death. The misconduct included the use of hand-offs, falsifying affidavits on search warrant applications, and using unregistered confidential informants to make drug buys. Even if there was a quota, it was not the only reason that officers engaged in the unacceptable practices.

QUOTAS

A. DISCUSSION

Quotas are a difficult problem for law enforcement. Production quotas are a common part of modern life. Almost all of us work at jobs where we have explicit or implicit numerical goals. Many police departments establish quota systems requiring officers to take enforcement actions. Some require a certain number of arrests or traffic tickets. Almost always, the enforcement is centered on narcotics, prostitution, gambling and traffic. The unintended harm is that it frequently engenders arbitrary enforcement of the law. It may also encourage corruption. Beginning in New York City during the 1960's, narcotics officers were required to make a certain number of felony arrests each month. The Knapp Commission investigation

established that a *rigid* quota requirement may have pushed practically every narcotics detective in New York City into establishing corrupt relations with drug addicts who would provide them useful leads. The quota established by Police Commissioner Howard Leary was not the only contributory cause for the corruption. The NYC Police Department was very stingy with buy money. To reduce the uncertainties as to whether they could get buy money, detectives kept stashes of heroin taken from street addicts and they would pass the heroin to other addicts in return for tips that would help them make the required number of felony arrests. In the end, the arrest quotas combined with poor training and very little supervision resulted in Narcotics detectives becoming one of the major distributors of heroin in New York City.

A more recent problem arose in Tulia, Texas in 1999, where more than 40 residents — most of them black — were sent to jail after an officer allegedly lied in court about selling them drugs during a sting operation in 1999. This arrest and many others were performed by a poorly supervised, federally funded, drug task force. Among the problems identified during the investigation was that funding for the task force was based upon the number of arrests and not upon the impact on crime. The task force also lacked accountability to the local communities. The more relevant consideration for law enforcement is not the number of arrests but the impact upon the crime rates in a community. Merely counting the number of arrests encourages the arrest of low level drug users and does not measure the impact upon drug availability.

It is also important to note that other drug enforcement agencies have struggled to determine how best to measure the results of their efforts. The

Drug Enforcement Administration does not use arrest numbers in order to measure the impact of law enforcement activities on drug availability. They attempted to develop relevant performance measures; however, they have stated that there are no accurate measures of the quantity of drugs available on a national level, and it may be impossible to develop a model that measures the impact of law enforcement activities on drug availability.¹ Other published sources have suggested that procedures should include a standardized job performance evaluation criterion for each officer (*More, Wegener, and Miller, 1999*).² It is undisputed that law enforcement agencies should be graded on their ability to break up crime networks and apprehend violent offenders. There are too many examples of arrest quotas or pressures to increase the amount of drugs seized or forfeitures of property that have the unintended consequence of influencing officers to fabricate informants, raid homes on false evidence, lie to judges and plant evidence that this type of performance evaluation must be carefully crafted and supervised to prevent the type of harm that can taint the Police Department for many years.

While quotas or numerical performance standards may create significant problems, they are also an essential management tool. A manager must ensure that officers are working and the work is fairly distributed. Law enforcement agencies have collected data on performance in this fashion for many years. Traditional measures of law enforcement performance include such things as crime rates, arrests, seizures and clearance rates. These measures are simple, visible and easily understood; however, they tell us little in terms of the real impact of law enforcement in producing something of value to communities such as feeling safer or more secure. Denying their

existence is not a helpful remedy. Even if the memo from Major Finley did not exist, the fact is that the number of arrests made by individual officers was tracked and recorded. Quotas or numerical standards are problematic because if management talks about them, then the public will feel they are being picked on unfairly. If you deny what officers know exists, it feeds cynicism and this corrupts the whole system.

Interviews conducted with supervisory and command personnel for the purpose of this report, indicate that the issues identified by the indicted officers no longer exist. The Narcotics Unit no longer places unnecessary emphasis on the number of arrests or search warrants in order to assess officer performance. It is the focus of one of four dimensions used by the Narcotics Unit. The Performance Evaluation Form that is currently used evaluates officers on the following criteria:

- ability to maintain and provide service for all city-issued equipment;
- adherence to all departmental policies and procedures;
- use and implementation of tactical plans;
- completed case files with resulting arrest or cleared disposition.

The supervisory and command staff indicated that they are motivated by the desire to reduce crime and improve the quality of life for the communities they serve. They continue to closely monitor relationships with Confidential Sources and are diligent in their supervision of payments to the informants.

B. THE THREAT MODEL

One alternative to address this problem, developed in Texas after the corruption of officers was discovered, is the Threat Model. This model measures drug law enforcement success by relying upon its goal, to identify and then systematically disrupt and dismantle large drug trafficking organizations from the top. Narcotics officers identify and prioritize illegal drug trafficking organizations, and the most significant threats become the highest priority for the agency. The officers are then evaluated and rewarded for investigating, disrupting and dismantling the priority organizations. The focus of the enforcement is to arrest the identified priority targets. After one year of implementing the Threat Model at the Texas Department of Public Safety, drug arrests went down by 40 percent, yet drug seizures doubled. Drugs officers were not idle.

C. GEOGRAPHICALLY FOCUSED AND PARTNERSHIP MODELS

Another alternative, proposed and published by the Department of Justice (DOJ), is the problem-solving model. This study classified four generic law enforcement approaches in order to contrast the four commonly recognized drug law enforcement approaches:

1. **Community-wide** policing approaches that involve a wide array of diverse interventions that rely on the police forging partnerships (*e.g., with other police agencies, community entities, regulators, city inspectors*), and implementing strategies that are targeted at relatively large areas such as across entire communities or neighborhoods to address drug markets;

2. **Geographically focused** policing approaches that typically involve the use of problem-solving models and/or partnerships with third parties (*such as regulators, service providers, government agencies*), are targeted at drug hot spots, and include a wide array of interventions;

3. **Hot-spots** policing (*directed patrols, crackdowns, raids*) that involve police-only activities and are geographically focused on drug hot spots;

4. **Standard traditional approaches** to drug law enforcement that are unfocused and rely principally on law enforcement resources (*e.g., routine patrols, arrests*).

The DOJ's review found that geographically focused interventions using a range of approaches (*including problem-oriented policing, third-party policing, and Crime Prevention Through Environmental Design [CPTED]*) that typically involve strategic crime-control partnerships with a range of third parties are better than community-wide policing approaches that rely on partnerships to reduce drug and disorder problems across neighborhoods plagued with drug problems. Their review also found that either type of partnership approach (*i.e., geographically focused or community-wide approaches that use partnerships*) is likely to be more effective at disrupting drug problems than law enforcement-only approaches (*e.g., crackdowns, raids, directed patrols*) that target drug hot spots. Unfocused law enforcement only approaches to dealing with drug problems are a distant last.

If the Atlanta Police Department were to accept this problem-solving approach, managers could quantify the work performed by officers or

teams by assigning problem solving projects to small teams of officers and assessing the results when they complete their work. This is frequently referred to as the Problem-Oriented Policing model. The model requires officers to scan for problems, analyze the nature of these highly specific problems, tailor responses to directly address the immediate causes of the problems and then assess the effectiveness of the response.

D. CONCLUSION

These two suggestions are recommendations that may address the unintended and negative consequences associated with the reliance on numbers of arrests to analyze the work performed by all the drug interdiction units within the City of Atlanta. We know that the denial that numbers do not drive performance evaluations is not a helpful response. All drug enforcement agencies struggle with this tension; that is, how to quantify their work and not produce arbitrary and ineffective results.

The challenges include improving the interpretation of established measures such as arrest and seizures, evaluating new ideas, partnership building, and developing measures to assess the impact of interventions, including arrest numbers and seizures. It is clear that we will never know exactly how many drug sales occur within the City of Atlanta or how many lives are negatively affected by drug use and addiction. We can ascertain how many drug overdose deaths and drug overdoses are treated at local hospitals. This could serve as a benchmark to help measure the impact of drug enforcement. We also know that working collaboratively with the

community and public health officials can assist police officers in improving their ability to address this difficult problem.

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1. U.S. Department of Management and Budget, Drug Enforcement Administration, www.whitehouse.gov/omb/expectmore/detail/100000170.2003, p. 12
 2. More, Harry W.; W. Fred Wegener; and Larry S. Miller. *Effective Police Supervision*, Third Edition, Anderson Publishing Co. 1999.

III. Influence of Extra Jobs on Actions of Police Personnel

All police departments struggle with the regulation of extra jobs for police personnel. On the one hand, the entire city benefits from the presence of officers working extra jobs. On the other hand, danger exists that police officers' priorities may be altered and job performance may suffer when officers work extra hours. This system may also lead to less savory behavior particularly when officers work long hours and provide services for members of the public that are often the same types of services that police officers are supposed to provide without extra compensation.

During the course of the Federal Bureau of Investigation's (FBI) inquiry into the conduct surrounding the shooting of Kathryn Johnston in November 2006, they learned that police officers in the Narcotics Unit were engaged in extra jobs with multiple businesses whereby the business owners made weekly payments to Junnier and other officers to get them to respond while on duty to emergency calls and provide other services that citizens are entitled to expect free of charge. After Junnier was suspended, other officers took over the extra jobs he had developed with various business owners. Officer Betts was a five year veteran of the Atlanta Police Department (APD) and was assigned to Zone One. He was observed by the FBI making weekly visits to the owner of the property to collect a fee of \$120.00 in cash. Betts made it clear that the payments were for having him and other officers patrol the apartment complex and surrounding area while on duty. He said that he and other officers would push crime away from the paying owner's apartment complex and towards a nearby complex whose owner was not making payments to the officers. On one particular occasion, Betts patrolled through and around the apartment complex while a grant representative was visiting the property. Betts met with the grant representative and discussed how he and other

officers were working to reduce crime in and around the complex. This assurance was given in an effort to help the property owner secure a grant for which he had applied. Betts provided this service while on duty and the owner paid Betts \$80.00 in addition to his \$120.00 weekly fee. The grant representative was an undercover FBI agent. Betts was sentenced to a term of three years of probation for extortion.

The indicted narcotics officers also worked for apartment complexes that had been told that they needed to address crime within their complexes and were told that they could be sanctioned if they did not clean up their properties. One apartment complex owner claims that she received a telephone call from a person with the Fulton County District Attorney and was advised to hire Gregg Junnier to assist in reducing the crime and disorder on the property. She complied with this advice. Another property manager claims that she was advised by the District Attorney's office to meet with Officer Junnier in order to address crime problems on the property she managed. After the meeting, she hired Junnier to provide private security. The private business owners were also given the cell phone numbers of the officers so they could call them when problems developed, regardless of the time or whether the officers were working. This practice may still exist within the APD.

It is also worthy of examination whether Junnier, Smith and Tesler performed short cuts in their investigations in order to ensure that they had time to address the problems of their private employers while on duty, thus minimizing the amount of off-duty time they devoted to their private security services. They each reported that they got paid for extra work while on duty. They submitted requests to work extra jobs at businesses, claiming to be working as consultants. They used marked police cars to patrol their extra jobs and collect their earnings while on duty. One business owner said that the

narcotics unit made 32 arrests at his apartment complex in a 60-day period. Another complex that did not pay officers said that they were unable to get any type of support from the Atlanta Police Department despite making numerous calls and complaints. These same officers falsified search warrant affidavits. Their supervisor (Stallings) was aware of their activities and received a share of the money from the payments made to the narcotics officers. While the indicted officers suggest that the quota system and lack of training caused this misconduct and corruption, it is pretty clear from the record that the unregulated solicitation and administration of extra jobs influenced their behavior. It certainly creates a perception that those who pay receive better police services. The assertion by Junnier that he was an independent contractor was never verified and he used this category of employment to avoid scrutiny into his activities.

Almost all major cities in the United States allow officers to work extra jobs. Most of the departments have similar rules and practices concerning secondary employment; however, departments have different methods of organizing and managing the employment. The major difference among departments is whether their organization conforms to an officer contract or a department contract system of secondary employment. Larger jurisdictions usually conform to a departmental contract system. The City accepts requests for off-duty officers and contracts with the requester and then assigns officers to perform the work at the city negotiated rate. Clearly, this creates administrative costs, and these costs are passed on to the entities that request this service. This system promotes equity in the distribution of work, prevents potential ethical conflicts, and minimizes the negative effects of officers competing with one another for work and hourly pay. This also allows the City to address public safety needs and assign priority to those functions that have the greatest need and impact on public safety. This type of system tracks the number of hours worked by officers,

including officers who are otherwise not available for extra work. For example, an officer who is currently committed to a private employer may risk his position if he has to attend to mandatory training or court appearances. The department contract system fills the position with the next available officer and assigns the officer who was unavailable because of professional commitments to the next available job. This system makes it possible to control the number of hours worked by officers, the pay received and provide for the equitable distribution of extra work for all officers that are interested in earning more income. It also permits public safety administrators to those activities that have the most impact on public safety. While it may not eliminate the potential for conflicts of interest, it would minimize it. The City must be sensitive to complaints that private employment of uniformed officers confers special privileges or advantages on the employers or their patrons.

Almost universally, officers are prohibited from employment that would constitute a threat to the status or dignity of law enforcement. The Atlanta Police Department prohibits officers from working for or at an “adult entertainment establishment.” However, they are permitted to work for alcohol establishments and nightclubs. This is troublesome. This can create a conflict of interest. The police department oversees alcohol licensing and regulation for the City. They are the first line of enforcement of the alcohol ordinances and statutes. This practice is particularly risky because the alcohol establishments pay the officers directly. This raises concerns that officers cannot enforce the law impartially when they serve a private rather than a public interest. Occasions arise when their public duty to impartially enforce the law may be sacrificed to the interest of their private employers. While this is true in all officer contracted extra employment, it is particularly troublesome when it involves a highly regulated activity such as the sale of alcohol.

The Standard Operating Procedure governing extra jobs at alcohol establishments states that, "Employee(s) working extra jobs at businesses selling alcoholic beverages for consumption on the premises may not enforce any rules or regulations of the business, or act as bouncers or security guards to enforce the rules or regulations of the business. Officers are not to check the identification of patrons entering the business to determine the age of the patrons for the purpose of restricting access to the business based on the age of any patron, regardless of any rules or regulations of the business. Officers may check the identification of persons who are suspected of being underage when they are in possession of alcoholic beverages or they have a fraudulent or altered identification."

The restriction recognizes the difficulties but does not address the conflict. The conflict stems from the employer-employee relationship, not the nature of the work performed. It ignores the risks inherent when a person accepts employment from an entity that he or she oversees or regulates. The employment of officers in alcohol establishments, especially when officers use their uniforms and equipment may violate Section 2-820 of the Atlanta Code of Ordinances which states: "No official or employee shall engage in or accept private employment or render services for private interests when such employment or service is adverse to and incompatible with the proper discharge of official duties of the official employee." Since the police department regulates alcohol licensing, this type of employment may be more vulnerable to conflicts of interest than other forms of secondary employment. It may be advisable for the Atlanta Police Department to seek a formal Ethics Opinion regarding this practice.

It may also be worthy of examination as to whether the APD has sufficient resources to regulate extra jobs to ensure that officers' primary employment is not compromised by

their extra employment. The Atlanta Citizen Review Board requested documents from the police department regarding the number of officers whose extra job was cancelled or suspended during the calendar year 2009. The documents indicate that ten jobs were cancelled. There may have been other suspensions or denials but they are not maintained in a central location. The police department's Standard Operating Procedure (SOP) requires that officers maintain job performance and abide by all of the policies and procedures in order to retain their extra job privileges. The Board has seen a number of officers whose disciplinary record raises questions about their ability to perform extra jobs. In particular, one officer continued to work an extra job at a night club after he was arrested for driving while under the influence of alcohol. This officer was subsequently arrested for another DUI charge some months later, after consuming alcohol at the nightclub where he was employed. No one had suspended or cancelled his extra job permit at the nightclub after his first arrest. The ability of this officer to perform his work was compromised by his arrest. Officers need a valid driver's license to perform patrol duties. The police department may want to reconsider the extra job permits of officers who have been identified and referred to their Early Warning System.

The police department was asked for information concerning investigations and discipline of officers for violation of the SOP governing extra jobs. They responded that they do not have the ability to search files in such a generic manner. Given the indictments of Junnier, Stallings and Betts, as well as other incidents involving off duty employment, it would be important to know whether the current rules are being enforced. Careful and stringent enforcement of off-duty employment will prevent future criminal prosecutions.

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