

The Oath of Office

Officers have a 'social contract' to help the public

BY WILLIAM L. FLINK

A single act of police corruption or misconduct can become a major news event in today's society.

Whether it occurs from excessive force, a questionable search, drugs, greed or some lesser incident, each situation can raise serious questions among the public. In defending department hiring practices, training, policies, and procedures, administrators are often faced with in-depth review of their Internal Affairs operations in an attempt to develop more comprehensive anti-corruption practices.

Doubt regarding administrators' competence and abilities to prevent these acts from occurring, can often bring demoralizing change to the structure of the department. Accordingly, the restoration of public trust and a positive police perception become paramount tasks. These reactions become customary in managing allegations of corruption or misconduct. However, the reactions seldom seem to bring forth new thoughts on how to alter and enrich the character of our officers.

What preventive action can administrators develop to bring forth a fresh approach in building a strong, lawful and ethical foundation within the department? One answer, often overlooked, is to better define the role of the oath of office to police personnel.

What does the oath of office mean to law enforcement? On its face, the oath is a swearing of allegiance to the governmental agency, the public, and the State and Federal Constitutions.

In most jurisdictions, the

oath is the first traditional act administered to a new officer. It is also the first action in which the officer vows to behave in a lawful and ethical manner, at all times, throughout his or her career. The oath becomes an officer's badge of honor, and a "social contract" to support the expectations of, and obligations to, the public and the employing jurisdiction.

As early as July 29, 1775, the Congress provided for an Oath of Fidelity in office by the resolution, that many of the government's officials and deputies "shall take an Oath to truly and faithfully discharge the duties of their respective stations." The intent of taking such an oath was later referenced, in writing, by George Washington, when he wrote: "As every Oath should be a free act of the mind, founded on the conviction of the party, of its propriety, I would not wish, in any instance that there should be the least degree of compulsion exercised, or to interpose my opinion in order to induce any to make it, of whom it is required."

Washington's belief in an oath
of office

has remained unchanged since the founding of our country—an oath to faithfully discharge the duties of office, which is taken freely, by a person of whom it is required.

In accepting the oath, an officer pledges to become competent in the position, to provide free and open access to services, to use the people's taxes wisely, and to be a person worthy of trust. Furthermore, the officer promises not to abuse the power of their position, use the position for personal or private gain, or to give preferential treatment to anyone.

Having this in mind, consider the following question: How much thought does your government devote to the oath of office?

The results of an informal survey of approximately 200 law enforcement agencies found most officials fail to provide any explanation or discussion on the oath of office with newly-employed officers prior to the commencement of the oath. Likewise, the survey indicates employers fail to provide officers with any training concerning the meaning of the oath of office, from the government's perspective, either before or after the officers had sworn to the oath.

Furthermore, many agencies reported using city or county clerks to administer the oath of office, instead of a judge or magistrate. The results of this survey tend to indicate that, currently, the oath of office is not being addressed or used in a manner that benefits the officers or the public.

What does it mean to subscribe to an oath of office? What are the consequences if an officer fails to abide by the oath of office? Can the



untrained officer be disciplined or discharged from employment for violating the oath? What have the courts said about an officer's duty to live up to the oath of office? Does government have a compelling interest to insure that knowledgeable officials administer the oath ceremony in a meaningful and competent manner?

These questions raise significant issues about the oath of office that department administrators should discuss with every officer in their command. However, it's not only adminis-

trators who have failed to consider the true significance of this issue, but also, most trainers.

Initiating training about the oath of office can answer all these questions and help properly direct the new officer's career. Additionally, by providing in-service training about the oath, administrators can demonstrate vision and leadership, while reminding veteran officers of their public responsibility towards governmental loyalty and organizational values.

Determining the applicant's level

of understanding regarding the oath of office can be an important task for the employer. It should be the design of every government to pursue appropriate instruction on the oath of office before the badge of authority is presented to the officer. Ideally, it should become part of the final employment interview process.

By knowing the applicant understands the government's intent in administering the oath, the administrator has reasonable assurance that the new officer will respect the public's rights under the law.

The minimum training conducted regarding the oath should include instruction about:

1. the meaning of the oath;
2. the effect the oath has upon an officer's duties and responsibilities;
3. fair notice of the consequences for failing to abide by the standards of the oath; and
4. the discipline available for those who violate the oath.

The training can be conducted in approximately 30 minutes. A benefit of completing such training before the oath's commencement is that the officer may take more seriously the honor of swearing to the oath.

There are many versions of an oath of office which are used to officially swear appointed or elected officers into positions of trust. Although the words may vary, each oath is equally important to the formal authorization of an officer.

Many oaths include a few well-chosen words within them, such as: "I (name) do solemnly swear to support and defend the Constitution of (the state) and the Constitution of the United States to the best of my ability," and may include other language of importance to the jurisdiction.

How does an administrator explain the oath's meaning to an individual? One example could occur by using descriptive variations of the words contained within the oath and defining each phrase within the oath's framework. For example:

"I (name) do solemnly swear" *seriously, steadfastly affirm, pledge, vow or promise* "to support" *strengthen, advocate, sustain, or maintain* "and defend" *fortify, guard, shield, or pro-*



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tect "the Constitution of (state) and the United States" the code, laws, statutes, or establishment of (state) and the United States "to the best of my ability" to the best of my capability, competence, proficiency, expertise, aptitude, gift, or talent.

The use of descriptive variations is not limited to only one method. However it is implemented, emphasis should be directed towards bringing about a better definition in the meaning of this affirmation to the government.

Another method to illustrate the meaning of the oath could be to separately read each phrase of the oath of office, and then ask the individual to explain what each phrase means. If the individual's definitions demonstrate a satisfactory understanding of the meaning of the oath, the department's instruction could then continue on to other issues. If the individual is unable to demonstrate a satisfactory understanding of the oath, instruction using descriptive variations or other means could be necessary to meet the need for a clearer understanding.

Once the literal meaning of the oath is clearly understood, an explanation of the oath's purpose, from the eyes of the government, should be undertaken with the individual. This governmental perspective of the oath is important, because it's unlikely that two governmental agencies will view the oath's implications and importance in the same way. It is the manner in which each jurisdiction perceives and applies the oath to its public officials that becomes the aberration to the establishment of an oath by our governments.

The ceremony of administering an oath of office is usually received by an officer, while standing, with the right hand raised, and the palm of the hand facing the person directing the oath. The raising of the right hand symbolizes the sword hand of the warrior, coming up mightier than the cause itself (Roberts, 1994). Together, the raising of the right hand and the affirmation of the oath signify the intention of the officer "to be bound in conscience to the faithful and truthful performance" of law enforcement

duty, according to the Encyclopedia Britannica.

Whenever possible, the person directing the swearing of the oath should have a legal background and a prominent governmental status; preferably it should be administered by a judge or magistrate. Conducting the swearing ceremony this way emphasizes the true significance of this official act, especially if the ceremony is presented before a community or police-related function where family or friends may observe the officer

swear to the oath and receive the department's badge.

The importance of swearing to an oath of office is underscored by the fact that our governments do not require all public employees to subscribe to such an oath. Most jurisdictions only require their elected officials and criminal justice officers to be sworn into office or appointment by an oath.

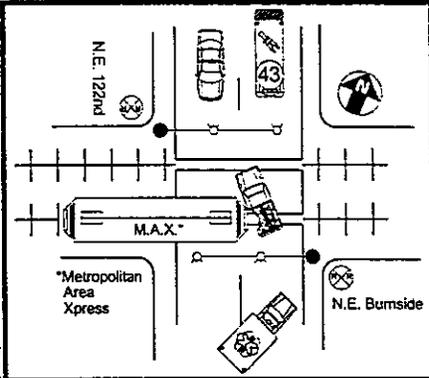
Law enforcement officers take an oath because they are a symbol of stability and authority, upon whom

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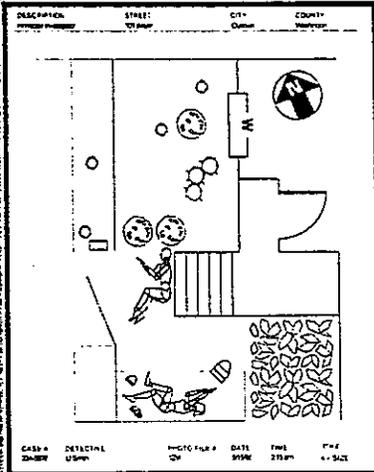
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the people must rely, when a need arises. By their position in government, officers have a greater responsibility in society than the average public employee.

Accordingly, they must rise to higher standards of conduct. These higher standards make it incumbent upon officers to take special notice of their oath of office. This is due, in part, to the fact that only the officer is clothed with the authority to enforce the laws established by the government, as entrusted within our constitutions.

The authority to enforce the law creates an "affirmative duty" or obligation upon the officer to act in accordance with the law. This "affirmative duty" is binding upon the officer, because, as Chief Justice Earl Warren stated, only the police officer "can deprive an American of his liberty," and only an "defines the real law of the land on a daily basis." For any officer to violate the law that he has sworn to enforce, would surely be a hypocritical act upon their oath.

After all, officers and governments "derive their just powers from the con-

sent of the governed." according to the preamble of the U.S. Constitution. An officer's ability to perform law enforcement responsibilities on behalf of the people, must be accomplished with the full knowledge that they have sworn their loyalty and respect to the law, the government, and to the people.

*You either believe in
and exemplify the oath's
responsibilities, or you
trample on them.*

"Knowledge" includes a full understanding of what their sworn oath means to their continued employment as an officer; and with knowledge, a broad explanation of the parameters of the oath of office should be cited by the employer in order to provide officers with fair notice of the consequences should they violate their oath.

Our courts have provided guidance on the subject of the oath of office. In the case of *Duffy v. Ward*, the court

held that "While the oath itself does not expressly establish a duty to act with moral integrity, the very act of taking the oath is rendered meaningless if the officer lacks the capacity to swear honestly or has no serious intention of abiding by its promises. When an officer's moral integrity is called into question, so is the oath, and the public's trust in its government is necessarily undermined."

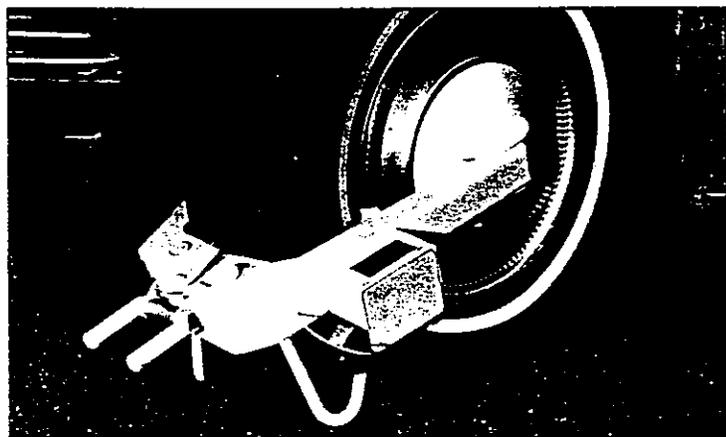
Many court cases have addressed discipline or criminal activity involving public officials; others emanate from serious procedural actions which officials exercised in performing their duties. The following provides meaningful insight into the thoughts of our judiciary.

In 1990, an intoxicated individual directed a series of expletives and obscene hand gestures at a police officer, who responded by detaining and arresting the plaintiff and his spouse. In this case, the court held that "Government officials in general, and police officers in particular, may not exercise their authority for personal motives, particularly in response to real or perceived slights to their dignity. Surely, anyone who takes an Oath of Office knows—or should know—that much." (*Duran v. City of Douglas*)

In *City of Martinville v. Norman*, Norman falsified an evidence form and subsequently exchanged evidence. "Norman could have been criminally charged with being a principal to the crime of theft of utilities . . . or malfeasance in office. Although the [hearing board] found Norman did not tamper with the utility meter, he refused to disclose the identity of the person or persons who were involved when questioned at a formal City Council meeting and again when questioned by the Chief of Police. Essentially, there was a criminal offense committed against the City and Norman concealed the name of the City employee he knew committed the offense, despite his oath of office and attendant duty as a police officer."

In a case that involved the failure of officers to advise the suspect of his Miranda rights, the court stated, "A suspect may not be compelled to be a witness against himself . . . No arguable interest, no 'necessity' makes the offi-

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cers' violation of their oath of office excusable by the apologist for governmental power. Their duty was clear and their opportunity to comply ample, indeed abundant . . . No police officer can be unaware of the constitutional requirement to read a suspect his rights." (*U.S. v. Mendez*) This case emphasizes a fundamental point: if officers clearly violate a citizen's constitutional rights, they dishonor themselves and their oath of office.

The last, important, oath of office issue arises regarding the "legality" of an officer's actions or orders to the public. This issue has brought about controversy, and occurs when claims are brought forth that the employing government failed to require an officer to swear to an oath of office upon employment. Litigation before our courts has brought forth decisions that vary depending on the law and the venue.

Many states, statutorily, require officers to affirm their support for the government through an oath of office, upon employment. In those states, failure to swear to an oath of office cre-

ates a legal challenge to an officer's legal authority. Depending upon the circumstances, the officer may be deemed unacceptable for governmental service.

Conversely, there are court decisions where states have extended the authority applied to officers who are not required to take an oath of office for a limited period. In one state, statutory language exempts jurisdictions from ever requiring an oath of office from their officers—acknowledging them to be "de facto officers." Administrators should review their own state statutes, and, if appropriate, implement the state law into an officer's instruction about the oath of office.

The ceremony of swearing to an oath of office is more than an important historical custom in our governmental heritage. It is a declaration of duty and personal honor, which should never be taken thoughtlessly, nor forgotten after it has occurred. The oath should be defined and reinforced throughout an officer's tenure in government employment.

The public's perception and trust in

the government rests heavily upon each officer's actions. "We the people" have established our laws and expectations towards the rights of the people. We place those rights at the forefront of our society, expecting our leaders to secure what we have established for the people, without having the government's image tarnished by corruptive practices or senseless misconduct.

It is government's responsibility to assure the public that the government has done everything reasonable, within its power, to prepare officers for public service. Training officers about their Oath of Office serves that necessary purpose. L&O

William Flink is a program administrator with the Standards and Certification Section of the Virginia Dept. of Criminal Justice Services.

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