

給合志願民力於警政建設 的潛在利弊得失

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中文摘要

在面臨全面性預算緊縮的困境中，爲了維持既定的服務品質以及提昇工作績效，許多美國警政單位積極結合民間自願民力去從事各項警政工作，此舉一方面減少警察局的人事支出並且擴大民眾對公益事業的參與層面，另一方面也可能降低社會大眾對犯罪的恐懼感。尤其重要者，是此項革新使得正規警力獲得更充裕的時間與更專注的心神去對付犯罪問題。

可是結合自願警力於警政建設也可能引發起諸多層面的問題，其中有如自願警力與正規警力間的相互抗爭；自願警力的福利、撫卹、保險與獎懲；志願警力中侵權行爲的責任賠償問題；以及他們的工作訓練與勤務督導。

無可諱言，這種憑附著社會志願人力資源以從事於警政革新的方式將會更加普遍。然而於戮力推展此舉的同時，應該不可忽略它可能衍生的副作用，在籌劃階段即應詳細考量潛在的弊端，並且積極作好應對的準備。

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2. 本文初稿曾蒙美國德州聖休士頓大學Larry Hoover, Merlyn Moore, Ralph Pease, 及 Victor Strecher 等4位教授提供寶貴建議，特此致謝。



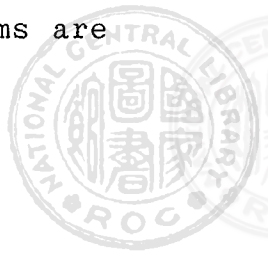
THE POTENTIAL ADVANTAGES AND PROBLEMS OF THE USE OF VOLUNTEERS IN LAW ENFORCEMENT

- I. Introduction
- II. Current Impetuses to Recruit
Law Enforcement Volunteers
- III. Potential Advantages and Problems of
Utilizing Volunteers in Law Enforcement
- IV. Legal Issues of the Use of
Law Enforcement Volunteers
- V. Conclusion

Introduction

Volunteers organized the first law enforcement agencies in American history. More importantly, volunteers also served as the first law enforcement officers as well. Notwithstanding this significant place of volunteers in law enforcement has recently become a topic of contention among bodies that govern law enforcement agencies, the general public, and the law enforcement agencies themselves. The cause for concern over volunteers in law enforcement functions is due to increasing budget constraints, the public's demand for better service, the necessity for citizen participation in controlling crime, and police professionalism itself. In many cases, it has been proven that the use of volunteers greatly reduces personnel costs, decreases residents' fear of crime, maximizes feasible citizen participation, and provides professional law enforcement officers much more latitude in improving their performance.

Nevertheless, law enforcement volunteer programs are



not always successful. According to several studies, recent attempts to attain successful volunteer programs have created a number of problems and dilemmas instead of solving them. Among the predicaments are the marginal nature of volunteer programs (Bennett-Sandler, 1980), the friction between volunteers and full-time, paid staff (Sundeen and Siegel, 1986), the problems of liability (Dow, 1978), the question of maintaining confidentiality of information, and the high turnover rate as well as the need for additional supervision of the volunteers' activities.

With the increasing numbers of police volunteers participating in law enforcement activities and the varieties of volunteer programs ranging from patrol, clerical work, victim assistance, to radio, telephone, and desk operation, the nature and magnitude of problems vary, thereby making it difficult to generalize answers. Moreover, the legal issues pertaining to the use of volunteer police are not at all clear and thus substantial uncertainty exists. Any attempt to initiate or to expand a police volunteer program without examining the potential advantages and disadvantages may result in a number of problems for police officers.

The present study commences with an analysis of the current environmental impetuses to recruit law enforcement volunteers. Potential advantages and disadvantages of utilizing volunteers in law enforcement are also included in the examination. It then focuses on various facets of legal considerations including municipal liabilities, constitutional limitations, and personnel issues. Many key questions need to be addressed, so that steps might be taken to prevent such problems.

Current Environmental Impetuses

"Volunteering is a pervasive part of American life"



(Rydberg and Peterson, 1980); moreover, volunteering itself is also a dynamic part of a changing world. In a time of rapid change, volunteering is constantly challenged by many environmental conditions. For example, inflation as well as changes in lifestyles and attitudes affect the numbers of volunteers (Rydberg and Peterson, 1980), the diversity of volunteer programs, and the duration of volunteer activities. Pursuant to a report published by Volunteer - the National Center For Citizen Involvement, there were generally eleven rank-ordered factors impacting volunteerism in the 80's (Rydberg and Peterson, 1980):

1. Inflation.
2. Feelings, attitudes, values, changing expectations, motivations of volunteers.
3. Government, changing roles, responsibility, impact.
4. Energy shortages.
5. Empowerment, minority needs, equal opportunities, women's movement, reaching the young.
6. Mechanization, automation, work, earning a living.
7. Demographics, lifestyles.
8. Stance of the helping establishment.
9. Corporate involvement.
10. Litigious society.
11. The nature of American society.

Specifically, since the 1980's law enforcement agencies across the nation have been confronted with many difficult challenges, such as limited financial resources, the growing demands for better service, the necessity for citizen participation in solving crimes and the professionalism of law enforcement itself. Ways to reduce costs, maintain established service, increase productivity, and search for new revenue sources are now a way of life for law enforcement agencies. A variety of alternatives have

been proposed for passing through these hard times. Significantly, many law enforcement agencies resort to alternative resources from the volunteer sector. It has been noted that the turn to the alternative resources from the volunteer sector by many law enforcement agencies could greatly reduce personnel costs, decrease fear of crime, maximize feasible participation for citizen, and "provide the precessional much more latitude in his time usage" (Bocklet, 1988; Burden, 1988, Siegel and Sundeen, 1986; and Bennett-Sandler, 1980). In the area of law enforcement, major environmental impetuses to resort to the alternative resources from the volunteer sector are discussed in the followings.

Limited Financial Resources

During the last decade, a majority of law enforcement agencies claimed to have insufficient manpower due to budget restrictions and fewer funds from higher levels of government. Apparently, new vast sources of revenue sources were no longer available and additional taxes were unacceptable. Many agencies were trying to cope with shrinking financial resources and were also attempting to maintain or stabilize the existing level of services. Subsequently, the so-called cutback management process was introduced into many agencies to "manage organizational change toward lower levels of resource consumption and organization activity" (Levine, 1978).

To date, limited financial resources have forced law enforcement agencies to transfer various duties to either civilians (paraprofessionals) or volunteers. Some agencies have reduced costs by using civilians or incorporating more non-sworn personnel within organizations where possible. However, "there appears to be limited scope for making further cuts without reducing service level" (MacMillan,

1986). In contrast, the use of unpaid citizen volunteers appears to be a better alternative because voluntary services can be put to use in a department at no additional costs; thereby, enabling regular staff to provide a higher level of services to the public.

Public Demands for Better Service

Another impetus affecting volunteerism in law enforcement is that demands for participation and involvement in law enforcement work have increased over the last two decades.

It must be noted that when a law enforcement agency opens the door to citizen voluntary involvement, it also opens the door to the community. Volunteers programs, as part of their activities, offer opportunities for the public to understand more about the role and function of police in a free society. Such an enhancement of community interaction with its law enforcement department would increase the understanding about police tasks, resulting in a definite gain in public support (Bocklet, 1988). It is of little surprise that the Urban Police Foundation (Bennett-Sandler, 1979) urged that:

Police agencies should cooperate with those who seek an understanding of police operations by affording opportunities for interested citizens to acquaint themselves with police operations and by providing access to the accumulation of knowledge and experience of the police possess.

With improved service delivery by law enforcement officers and volunteers as well as better communication between the community and the department, the public support for the department would increase as well.



Coproducers of Crime Prevention

The growing realization that the police need community assistance in fighting crime also serves as a major impetus that brings many volunteers into law enforcement works. The Presidential Commission of 1967 explicitly called for an active and involved citizenry which would reduce the circumstances and situations in which crimes are most likely to be committed. As noted by Radelet (1986), "in a democracy every citizen has a serious obligation to do police work, and the existence of a paid police force does not alter this duty." Apparently, greater volunteer activities in crime prevention, particularly neighborhood watch and citizen patrol, appeared to contribute to greater community safety and more crime reportings (Sundeen and Siegel, 1986).

"In the absence of citizen assistance, neither more police nor incarceration and improved technology can effectively combat crime" (Greenberg and etc., 1985). In the same manner, "citizens are not simply clients of the police" (Percy, 1979). Both law enforcement officers and voluntary citizens are the coproducers of crime prevention.

Professionalism in Law Enforcement

Apart from the above environmental factors, professionalization of law enforcement work itself needs more volunteer time, skills, and expertise to link police and community resources together in improving performance. Many studies have demonstrated that police officers' service activities, instead of enforcement activities, occupied a larger portion of their working time. Volunteers could provide officers with greater flexibility in their time usage so as to meet their law enforcement duties and responsibilities. Thereby, officers could devote more time to tasks which required their special skills and training while volunteers handled some of the more routines function



and service activities (NRTA-AARP, 1980). Accordingly, officers could increase their effectiveness in dealing with both the department and the community through volunteer programs.

Moreover, today's skills and technology are developing in a rapid fashion that has diversified the service render and the crime pattern in a more complex fashion. "It is beyond the resources of the federal, state, or local governments to monitor and respond to the multitude of problems" (Dart, 1986). To a great degree, the lack of community input in assisting the professionalism process of police service is usually a cause why departments are unable to perform effectively. Computer operation and forensic identification, for example, are current skills contributed by citizens to the law enforcement field.

Potential Advantages and Problems

It was perceived that there were many potential benefits to both the department and the community that could be derived from volunteer services or programs which:

- . enhanced public image of agencies due to new opening channels of communication;
- . decreased crime rates and level of fear of crime in the community;
- . increased morale of officers due to greater citizen support and awareness;
- . released agencies from budget constraints and also decreased use of overtime salaries;
- . increased availability of particular experience or expertise not otherwise available to the agencies;
- . released paid staff for other important duties and thus increased productivity of agencies;



- . improved services delivered by agencies;
- . provided a trained pool of personnel for use in the event of emergencies;
- . provided a meaningful role for citizens' wishing to fulfill their civic obligations;
- . provided the forgoing advantages at very little cost

(AAPR, 1989; Sundeen and Siegel, 1986; Dorsey, 1985; and Greenberg, 1979).

It should be noted that the above benefits were neither uniformly nor clearly perceived. Obviously, this was an area that should receive greater attention for further study. Also, administrators might want to inquire into assessment between advantages and potential problems that could be associated with volunteer programs.

Thus far, the use of volunteers has exposed some potential problems that need to be addressed in order to ensure a successful program. The major problems including labor unions, staff acceptance, and confidentiality of information are discussed in this section. Another potential problem was legal liability, which will be included in the section on legal aspects.

Unions or Associations

Unions or associations often claimed that new volunteer programs might eliminate paid positions, inhibit promotions, interfere with regular personnel, limit preferred assignments, and cause a reduction in fringe benefits (Dorsey, 1985). Thus, at the initial planning stages, it was suggested that unions should be consulted and an agreement should be reached (AAPR, 1989). Barriers to agreement might be avoided if union officials were sincerely convinced that volunteers would not take away jobs and that volunteers would make jobs easier to perform (Dorsey, 1985).



Staff Acceptance

The levels of acceptance exhibited by paid staff was very crucial to the success of a volunteer program. According to Carson's experience (1984) as sheriff of Jacksonville Florida, there was a natural fear that the regular officers "won't accept volunteers into their inner circle" because "police officers as a general rule are very clannish and hesitant to place any confidence in people other than fellow officers." Congruently, it was very important for the executive to demonstrate personal commitment to a volunteer program and to make staff aware of the proposed program during the earliest stages (AARP, 1989).

Confidentiality

In performing some assignments or tasks, volunteers occasionally needed access to confidential or privileged information. Though it is noted that the volunteers themselves tended to be very sensitive about the information they were allowed to have, volunteers' access to confidential or privileged information should be on a "need to know" basis (Dorsey, 1985). In addition to consistently following procedures that have been established to control access to confidential materials, volunteers should be subjected to a thorough background investigation as well as appropriate instructions and training at the earliest stages of their volunteer career.

Other areas of concern frequently voiced by law enforcement administrators included the high turnover of volunteers, the need for regular supervision of volunteer programs, and the limited availability of volunteer activities. In many cases, the benefits, as well as problems that posed above, were neither similar nor clear-cut. Some programs did not present any critical problems; others were unable to exist for an extended period of time. The success

or failure of police volunteer programs, to a greater extent, were decided by how they were being managed.

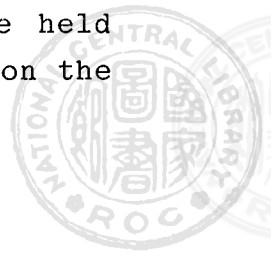
Legal Aspects of the Use of Volunteers

At the present time, legal issues pertaining to the use of law enforcement volunteers are far from clear; thus, substantial uncertainty exists. Consequently, any attempts by administrators to initiate or to expand a volunteer program without considering the potential legal problems might result in unanticipated troubles. This section was constructed to examine the various facets of legal considerations, including municipal liabilities, constitutional limitations, and personnel issues.

Municipal Liabilities

In the past, municipal corporations enjoyed absolute immunity from legal liability. Today, law enforcement officers as well as municipalities may be held liable for certain actions performed during the performance of their job duties. Under Title 42 U.S.C. Sec. 1983, municipal officials can be held liable for acts of a law enforcement officer who has deprived a citizen of a right, privilege, or immunity secured to him by the Constitution or laws of the United States. In Monnell v. New York City Department of Social Services, 436 U.S. 658 (1978), the U.S. Supreme Court abolished "sovereign immunity" defense for local government, noting that municipal officials had no immunity from liability under the Section 1983 if there is a constitutional violation by their employees while performing under the color of official policy and custom.

Accordingly, by utilizing law enforcement volunteers, a municipal official will be establishing an official policy or custom for which the municipality could be held liable in a legal action if a volunteer infringed upon the



rights of persons secured by laws while acting within the scope of the official policy or custom (Current Municipal Problem).

In accordance with the distribution of previous lawsuits against law enforcement agencies or municipal officials under Section 1983, criteria to determine whether police chiefs, mayors, and other officials act in good faith in cases involving the Section 1983 liability of municipalities for acts of regular or volunteer officers would be, to a larger extent, in the area of selection, training, and supervision. In addition, there may be a possible liability if there is a evidence of a causal relationship between the deprivation of a right and the supervisor's failure to properly supervise the wrongdoer is established (Owen v. City of Independence, 445 U.S. 622, 1980).

Naturally, questions about whether the volunteer's action falls within the scope of the authorized actions and duties must be answered prior to the step of examining causal relationship. The general rule in the state of Minnesota is that the municipal officials would be responsible for a volunteer's act if it was related to the volunteer's duties and occurred within the work-related limits of time and place. If it was a negligent act, courts in the state of Minnesota also asked whether the volunteer was intending to further the interests of the city by performing the act (Longfellow, 1988).

No case has been published involving the Section 1983 liability of municipal officials for acts of law enforcement volunteers. A similar federal case in this area was Beverly v. Morris, 470 F.2d 551 (5th Cir., 1972), where an action was brought against a police chief for personal injuries sustained by a plaintiff when he was blackjacked by an auxiliary police officers. The U.S. Court of Appeals for Fifth Circuit held that evidence indicated that the



police chief was negligent in failing to properly train the auxiliary officer and to supervise his patrol duties. The other case was Terrell v. Big Brother/Big Sister, 359 S.E. 2d 241 (1987), where the Georgia Court of Appeals concluded that an organization, if it reasonably screened the applicants, was not liable for a volunteer who later abused a child after being introduced to the child through that organization.

Constitutional Limitations

It is well recognized that the Constitution acts as a major legal limitation on the powers of the public officers. In those areas controlled by the Constitution, a private person may be less restricted and thus have more power than the police. Nevertheless, volunteers are generally under official supervision or guidance. Thus, they are also subject to the same constitutional limitations that are imposed on regular officers, despite the fact that volunteers are private citizens.

What concerns most communities considering using or expanding their use of volunteer police are those restrictions that are derived from the "exclusionary rule" of Mapp v. Ohio, 367 U.S. 643, (1961). Aside from an increasing number of exceptions, this rule directs courts to exclude any evidence of guilt obtained by the government in violation of the Fourth Amendment guarantee against unreasonable search or seizure (Del Carmen, 1987). Since law enforcement volunteers are subject to the same restrictions, special attention needs to be given those laws governing topics like use of force, arrest, and search and seizure. If a law enforcement volunteer were to make an arrest on insufficient evidence, conduct an illegal search, or fail to inform a suspect of his rights, any evidence thereby obtained would most likely be inadmissible. This follows that volun-

teers should not be used in a law enforcement capacity unless they have sufficient training (Dow, 1978).

Since no standards have been established to reduce the uncertainty regarding the area of constitutional limitations on law enforcement volunteers, any attempts to draw guidelines is difficult. However, adopting more restrictive guidelines than those for regular officers would make any act of volunteers more legitimate. In addition, only properly trained volunteers can be expected to deliver with convictable evidence to court any degree of regularity.

Personnel Issues

Government officials should be careful to provide law enforcement volunteers with adequate due process protections necessitated by the laws. Currently, most police volunteers' legal issues in the areas of personnel could be classified into three areas: compensation, employment issues, and data security.

Title 29-22 of the Connecticut State Statute gives a clear prescription that "All members of the volunteer police auxiliary force shall be compensated for death, disability or injury incurred while in training for or on auxiliary state police duty ..." In Arkansas, the auxiliary law enforcement officers or the political subdivision "may elect to join the workers' compensation system for the benefit of the auxiliary law enforcement officer" (Arkansas Code of 1987, 12-9-307a). Such clarifications through the prescribed states' statutes, however, are not always the case.

Most worker's compensation statutes apply only to employees. Volunteers are generally not considered to be regular employees of the municipality; therefore, they are not entitled to most of the usual benefits or insurance coverages which regular police officers enjoy. For example,

Section 1 of the Texas Civil Statute 8309(h) has not included law enforcement volunteers in its coverage, stating that "one who assumes a service in Texas of his own free will without any express or implied promise of remuneration is a 'volunteer' and not an 'employee' for purpose of Workman's Act" (Texas Civil Statute 1-8309h); in Arizona, a statute excludes on-duty highway patrol reserves from worker compensation (Arizona State Statute, 41-1744). Under such a situation, an injured law enforcement volunteer may, indeed, submit claim to the city if the volunteer believes that the injury was due to the city's or his supervisor's negligence. The volunteer would also have the right to sue the city in court for a determination of liability (Longfellow, 1988).

Another controversy that is developing concerns the compensation rate which law enforcement volunteers should be paid in the event they are injured while on duty or in training. It must be considered that by paying an injured volunteer significantly more money than the volunteer received when actually performing the volunteer services, the possibility of fraudulent claims is substantially increased. On the other hand, it may not be fair to pay so little to those who give so much (Bush, 1986). Due to the complexity of monetary receivings of volunteers and the lack of judicial guidance, municipalities or police department must struggle with this problem and adopt a policy which protects against fraudulent claims but, at the same time, considers the contribution made by law enforcement volunteers to the community (Bush, 1986).

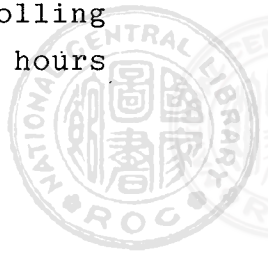
Because a volunteer is generally not receiving compensation, no property interest exists in the job the volunteer is performing. In Kyle et. al., v. City of Oak Forest, 648 F. Supp. 1557 (1986), auxiliary police and pay-on-call firefighters brought action to challenge denial of re-



appointment by the current mayor as political retaliation for campaigning for the mayor's political opponent; they felt the new mayor had violated their rights under the First Amendment and procedural due process. The District Court concluded that since the petitioners did not have a right to reappointment, they were not deprived of property interest; accordingly, the volunteers were not entitled to procedural due process guarantees of notice and hearing, even though the mayor unconstitutionally ended employment in violation of the First Amendment.

Further, a city may not deprive a volunteer of property interest, if it does exist, without due process consisting of notice of the complaint or charge and an opportunity to be heard. In Nowak v. City of Calumet City, 648 F. Supp. 1557 (1986), a reserve police officer brought a section 1983 civil rights action, alleging that the city, mayor, and police chief violated her due process rights by firing her without notice or opportunity to challenge her dismissal at a hearing. The District Court struck down a provision of the rules and regulations of the city police department, stating that the officer was deprived without due process of her property interest in continued employment.

Many police officers, whose departments utilize volunteers to perform certain types of duties, are fearful of losing overtime pay and being displaced from their jobs. One example was Police Benevolent Association v. City of Yonkers, 348 NYS 2d. 500 (1983), where the petitioner attacked the use of the auxiliary police as a subterfuge in avoiding the appointment of regular officers to fill twenty-three vacancies within the police ranks. Here, the New York Supreme Court held that the use of a small group of auxiliary policemen for a limited purpose of patrolling otherwise unprotected public parks during limited hours



constituted a lawful drill exercise within the Emergency Defense Act.

Courts might give volunteers a privacy or liberty interest, despite the fact that most volunteers do not have property interest in their volunteer positions. The courts have defined a liberty interest to include one's reputation for honesty and integrity (Longfellow, 1988). Thus, cities considering using or expanding their use of law enforcement volunteers should be careful about what information they place in volunteers' records and what information could be released from those records. Besides, law enforcement volunteers may be subject to criminal and civil penalties for releasing confidential or private information.

In short, without adequate knowledge regarding legal issues in the usage of volunteers, agencies may submit themselves to legal troubles they had not anticipated. There have been arguments as to whether law enforcement volunteer should be considered as a "community asset or professional liability" (Dow, 1978). Research studies indicated that law enforcement agencies should begin by using job descriptions for volunteer positions in order to clarify the scope of their duties and responsibilities. Without providing adequate training and supervision, municipalities could be held liable for money damages as the result of volunteers' actions. Any evidence obtained by volunteers in violation of the search and seizure clause of the Fourth Amendment would be inadmissible. Finally, governmental officials should be careful to provide law enforcement volunteers with adequate due process protections and benefits necessitated by the laws.



Conclusion

There has been varying experience with the use of volunteers in policing ranging from highly successive to general failure. In fact, the advantages as well as disadvantages of the use of volunteers are neither similar nor clear-cut. Some programs do not present any critical problems; other are not able to last for a long time. In other words, the success or failure of volunteer programs, to a great extent, are decided on the quality of their management.

combining the literature review with personal speculation, five conclusions seem in order. Firstly, the use of volunteers in policing represents one alternative to response to the changing times. "Volunteers can be brought into the various components of the system" (AARP). In the coming decade, this kind of activity through tapping community resources to enrich police service will be more popular and applicable.

Secondly, with respect to the reasons that many police departments are worry about using volunteers, or are only using them to a limited extent, these include confidentiality of information, acceptances of internal officers, liability problems, lack of a qualified person to run the program, and no clear-cut commitment from the top. Thus far, the impact of the use of police volunteers is "neither uniformly nor clearly perceived by the chiefs or their representatives" (Sundeen and Siegel, 1986).

Thirdly, the legal aspect of police volunteer will come to surface in the near future of expanding volunteer programs. There is already strong argument on whether volunteer police is "community asset or professional liability" (Dow, 1978). This evidence implied that legal issues on personnel, municipal tort liability, and constitutional



limitation will become important to the success of volunteer programs.

Fourthly, a successful voluntary program in policing is highly dependent on good planning and managing. From the beginning of forming objectives and setting strategies, to the recruitment, training, retention, motivating supervision and feedback, and the systematic evaluation, all must be planned and administrated on a step-by-step basis.

Finally, this is a critical area subject to a broader base of empirical approach. It would be indispensable to both researcher and practitioner to obtain a stronger empirical foundation before implementing or expanding a volunteer program. Also, it would be very beneficial to volunteers to have a much clearer picture about legal issues, as well as perceptual and environmental settings prior to their involvement in law enforcement volunteer activities.

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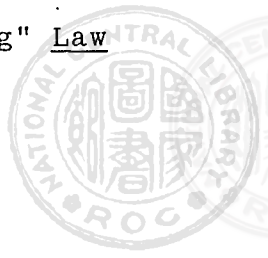
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