

BACKGROUND TO GILES V. JOHNSON CITY

The Johnson City Police Department recently published photographs of men they arrested as part of a sting operation targeting gay and bisexual men. This ushered in the latest chapter in a long history of police departments' unequal treatment of people based on their actual or perceived sexual orientation. Listed below are examples of antigay activity by law enforcement agencies throughout the country.

- **Police departments have selectively targeted gay men for enforcement of public sex laws** while failing to devote the same enforcement efforts to public sex between men and women.¹
- **Some officers, not content with arresting wrongdoers, have gone to great lengths to entice men to commit crimes.** In July 2008, a Florida judge threw out charges of indecent exposure, committing a lewd act and battery, because the officer “initiated the topic of sexual acts and repeatedly asked the defendant ‘what he was working with’” in order to entice the defendant to expose himself.² In 2006 an appellate court in New Jersey reversed a conviction for lewdness because the defendant presented “a persuasive attack on [the officer’s] credibility, raising serious doubts about whether it was believable that a police officer could have had almost a hundred men approach him, pull out their genitals and start masturbating without any enticement by the officer at all.”³
- **As in the Johnson City incident, the police have often sought to further punish men arrested for lewd conduct, often before conviction of any crime, through unusual public exposure of these arrests.** Many police departments have publicized the identity of men arrested for this activity in ways that they do not do for other crimes, even those that are much more serious. “These solicitation laws frequently have devastating personal, social, and economic effects for those arrested, even though criminal penalties typically are slight . . .”⁴ One common practice has been sending reports of the arrests of gay men to their employers and landlords.⁵ “[T]he overwhelming majority of abuses, along with the customary notification of employers and publication of names in local newspaper, was simply endured.”⁶ “Very often, the charges were thrown out, but by that time, damage was done: local newspapers had published the names of the people charged, and their jobs, marriages, and positions in society were all at risk.”⁷
- **Over the years, police departments have engaged in large-scale roundups of gay men for “questioning”**

¹ See *Baluyut v. Superior Court*, 12 Cal.4th 826, 829 (1996) (court found that arrested gay men “established all of the factors necessary to establish constitutionally impermissible discriminatory prosecution . . .”); see also *Hope v. City of Long Beach*, 2005 WL 6009954 (C.D. Cal. 2005); *Brown v. County of San Joaquin*, 2006 WL 1652407 (E.D. Cal. 2006).

² *City of Fort Lauderdale v. Marsh*, In the County Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, Case No. 70-018738MO10A, Order Granting Defendant’s Motion to Dismiss.

³ *State v. Mamone*, 2006 WL 2237733 *6 (N.J. Super.A.D. 2006).

⁴ Richard D. Mohr, *Gays/Justice, A Study of Ethics, Society, and Law* (Columbia University Press, 1988), 54-55.

⁵ Robert K. Woetzel, “Do Our Homosexuality Laws Make Sense?,” *Saturday Review of Literature*, 48, p. 23-25, Oct. 9, 1965.

⁶ Gary David Comstock, *Violence Against Lesbians and Gay Men* (Columbia University Press, 1991), p. 13.

⁷ Simon LeVay and Elisabeth Nonas, *City of Friends: A Portrait of the Gay and Lesbian Community in America* (MIT Press 1995), p. 44.

with no charges. One of the most well-known of these antigay campaigns involved the rounding up of 1400 men in Boise, Idaho, in the 1950s.⁸ Miami Beach Police admitted to a similar practice, with the Miami Beach police chief saying that his force would “harass” gay men “and let them know in no uncertain terms that they are unwelcome on Miami Beach.”⁹ Tampa’s vice squad director confessed that this also was true in his jurisdiction.¹⁰

- **Law enforcement officials have falsely suggested that gay men are more responsible than heterosexuals for sexual assaults on children.** In Dade County, for example, a police commission official stated that there was a “connection” between the open operation of gay bars and increased complaints of child molestation in the community.¹¹

⁸ John Gerassi, *The Boys of Boise* (Seattle: University of Washington Press, 2001).

⁹ *One*, Vol. II, No. 1 (Jan. 1954), p. 19.

¹⁰ *One*, Vol. IX, No. 12, p. 9 (Dec. 1961) (the “harassment routine . . . will continue until we’re sure these people know without a doubt they are not wanted in Tampa.”). One incident reflected the Tampa police department’s hostility toward lesbians, in addition to gay men. There, the police held twelve women without charge on “general investigation,” to be fingerprinted, questioned and subjected to mug shots. If their records are clean, said the vice chief, “We’ll have to let them go for now, but we’re going to keep after them until we run them out of town.” *One*, Vol. V, No. 8 (Oct.-Nov. 1957), p. 19.

¹¹ *One*, Vol. II, No. 1 (Jan. 1954), p. 21. Indeed, not only have scientific studies failed to prove a link between men’s interest in other men and pedophilia, but some studies have shown that such an incidence is very rare. See Gregory Herek, “Facts About Homosexuality and Child Molestation,” http://psychology.ucdavis.edu/rainbow/HTML/facts_molestation.html (citing study of 175 men convicted of sexual assault against a child where, of the 60% who were primarily attracted to adults, none of them were primarily sexually attracted to other adult males (citing Groth, A.N., & Birnbaum, H.J. (1978). Adult sexual orientation and attraction to underage persons. *Archives of Sexual Behavior*, 7 (3), 175-181); citing a study of abused children in the Denver area where the abuser could be identified, only two of the 269 children were abused by a gay man or a lesbian (citing Jenny, C., Roesler, T. A., & Poyer, K. L. (1994). “Are children at risk for sexual abuse by homosexuals?” *Pediatrics*, 94(1), 41-44)).

- **Police have engaged in extortion schemes targeting gay men**, exploiting these men’s concerns about public trials that would expose their sexual orientation. For example, a grand jury in Pittsburgh uncovered a racket by Pittsburgh police “of framing men on ‘morals charges’ then arranging, through ‘cooperative’ attorneys, to drop charges after ‘payments’ were made.”¹² A nearly identical scheme was uncovered in Chicago, in which the lawyers would kickback some of their excessive fees to the arresting officers.¹³

Over the years, there has been a significant improvement in many police departments’ recognition of their obligation to “protect and serve” all members of the community, regardless of sexual orientation or gender identity. Many departments actively train their officers to respond to the needs of all segments of the community and some have created a liaison officer position to respond better to the needs of the LGBT community. Nevertheless, as this case reflects, much work needs to be done to ensure that the men and women charged with keeping our communities safe live up to the highest ideals of the public trust vested in them.

¹² *One*, Vol. V, No. 4, p. 11 (Apr. 1957).

¹³ Robert L. Jacobson, “‘Megan’s Laws’ Reinforcing Old Patterns of Anti-Gay Police Harassment,” 88 *Geo. L.J.* 2431, 2438 n.50 (July 1999).